

THE REPUBLIC OF UGANDA
IN THE COURT APPEAL OF UGANDA AT FORT PORTAL
(Coram: F.M.S Egonda-Ntende, Hellen Obura & Christopher Madrama, JJA)
CRIMINAL APPEAL NO. 132 OF 2014
(Arising from High Court Criminal Case No. 0121 of 2012)

KULE RONALD:.....APPELLANT

VERSUS

UGANDA:..... RESPONDENT

*(Appeal from the decision of the High Court of Uganda at Fort Portal before Hon. Justice Dan Akiiki-Kiiza)
dated 8th October, 2013 in Criminal Case No. 0121 of 2012)*

JUDGMENT OF THE COURT

Introduction

This appeal is against a sentence of 30 years imprisonment imposed against the appellant by the High Court (Akiiki-Kiiza, J) having been indicted, tried and convicted of the offence of aggravated defilement contrary to section 129(3) and 4(a) of the Penal Code Act.

Background to the appeal

The facts as found by the trial Judge are that on 20th July, 2011, Mbambu Lakeri (PW1) left her daughter M.J (victim) at home with Seseko Nason (PW2) and Kule Nason. The victim, aged 14 years was disabled, mentally challenged and deaf. PW1 and PW2 went briefly to a nearby shop in the Trading Centre and upon return they overheard the victim crying behind their house. When they moved to the scene, they found the appellant, Kule Ronald having sexual intercourse with her. PW2 went and called his brother, a one Masereka who arrested the appellant and took him to Kicwamba Police Post where he was charged with the offence

of aggravated defilement. He was tried, convicted and sentenced to 30 years imprisonment. Being dissatisfied with the above decision, the appellant appealed to this Court against the sentence only on the following grounds;

1. *“That the learned trial Judge erred in law and in fact when he imposed on the appellant a sentence of imprisonment of 30 years without complying with the Constitution of the Republic of Uganda and in the result rendering the sentence illegal.*
2. *That in the alternative, sentence of imprisonment for 30 years imposed on the appellant was unfair, harsh and excessive in the circumstances.”*

Representation

At the hearing of this appeal, Mr. Collins Acellam represented the appellant on State Brief while Ms. Racheal Namazzi Senior State Attorney from the Office of the Director Public Prosecutions represented the respondent.

Case for the Appellant

Counsel for the appellant sought and was granted leave to appeal against sentence only. He then adopted the written submissions he had filed earlier. Counsel submitted that while sentencing the appellant, the trial Judge did not take into account the period spent in lawful custody as required by Article 23(8) of the Constitution. Counsel relied on the authorities of ***Rwabugande Moses vs Uganda, SCCA No. 25 of 2014; Kabwiso Issa vs Uganda, SCCA No.7 of 2002,*** and ***Guideline 15 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Direction, Legal Notice No. 8 of 2013*** to support his submission. He prayed that this Court finds the sentence imposed by the trial Judge illegal, sets it aside and impose an appropriate sentence.

On the alternative ground, counsel submitted that the trial Judge imposed a severe sentence on the appellant without taking into account the mitigating factors in favor of the appellant. He

prayed that this Court be persuaded by the mitigating factors and impose a sentence of 7 years imprisonment.

Case for the Respondent

Counsel for the respondent opposed the appeal and submitted that the trial Judge took into consideration the period the appellant had spent on remand during sentencing.

Resolution by the Court

We have carefully studied the court record and considered the submissions of both counsel as well as the law and authorities cited to us. We are alive to the duty of this Court as the first appellate court to review the evidence on record and to reconsider the materials before the trial Judge, and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. **See: Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, SI 13-10 and Kifamunte Henry vs Uganda; SCCA No 10 of 1997.**

As regards the ground on legality of sentence, we find that by the trial Judge stating that the appellant had been on remand for "about" 2 years he was not certain about that period. We cannot therefore say with certainty that during sentencing the trial Judge took into account the period the appellant had spent on remand as enjoined by Article 23 (8) of the Constitution. In **Rwabugande Moses vs Uganda (supra)** the Supreme Court stated that the period spent on remand is known with certainty and precision and as such it ought to be credited to a convict and deducted from the final sentence.

Even where a sentencing Judge chooses to take into account the period spent on remand without necessarily arithmetically subtracting it from the sentence to be imposed as the Supreme Court stated in its earlier decisions in **Kizito Senkula vs Uganda SCCA No. 24 of 2001, Katende Ahmad vs Uganda SCCA No. 6 of 2004, Bukenya Joseph vs Uganda**

SCCA No. 17 of 2010 and in the recent decision in **Abelle Asuman vs Uganda SCCA No. 66 of 2016**, the period spent on remand should still be stated with precision. Failure to do so contravenes Article 23 (8) of the Constitution thereby making the sentence illegal and we so find in this case.

We also note that the trial Judge stated that the appellant is “allegedly” a first offender. This implies that he did not take this essential mitigating factor into consideration which prejudiced the appellant. We do not find any record of the appellant’s previous conviction thus implying that he was indeed a first offender and not an ‘alleged’ first offender as stated by the trial Judge.

For the above reasons, we set aside the sentence of 30 years imprisonment imposed upon the appellant and having so found, there is no need to consider the alternative ground on severity of sentence. We now invoke section 11 of the Judicature Act, which permits this Court to exercise the power of the trial court, to impose an appropriate sentence.

We take into consideration the aggravating factors, namely; that the victim was injured in her private parts and she bled; the victim is deaf, disabled and mentally challenged; the appellant was not remorseful and he is a danger to young girls; and the maximum sentence of the offence is death. The mitigating factors are that; the appellant is a first offender who was on remand for over 2 years; he has a wife, 3 children and he is the sole bread winner.

We have also looked at the range of sentences in offences of similar nature. In **Ninsiima vs Uganda, CACA No. 0180 of 2010** this Court found that the range of sentences for similar offences of aggravated defilement is 15-18 years. In that case, this Court reduced a sentence of 30 years to 15 years imprisonment for the offence of aggravated defilement. In **Rugarwana Fred vs Uganda, SCCA No. 39 of 1995** the Supreme Court upheld the appellant’s sentence of 15 years for aggravated defilement of a 5 year old girl. In **German Benjamin vs Uganda, Court of Appeal Criminal Appeal No. 142 of 2010** the victim aged 5 years was sexually

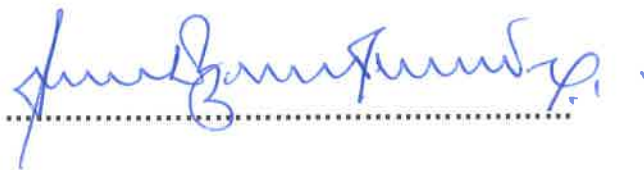
assaulted by a 35 year old appellant who was convicted and sentenced to 20 years imprisonment. On appeal this Court set aside the sentence and substituted it with a sentence of 15 years imprisonment.

Having taken into account both the aggravating and mitigating factors set out above and the range of sentences imposed by this Court in cases of aggravated defilement which we find is between 15-18 years imprisonment, we are of the considered view that a sentence of 16 years imprisonment would be appropriate in the circumstances of this case. In accordance with Article 23(8) of the Constitution, we deduct the period of 2 years 2 months and 17 days spent on remand from the 16 years and sentence the appellant to 13 years 9 months and 13 days which he shall serve from the date of conviction, which is 08/10/2013.

In the result, this appeal is allowed in the above stated terms.

We so order.

Dated at Fort Portal this 30 day of July 2019



F.M.S Egonda-Ntende

JUSTICE OF APPEAL



Hellen Obura

JUSTICE OF APPEAL

A handwritten signature in black ink, appearing to read 'C. Madrama', is positioned above a horizontal dotted line.

Christopher Madrama

JUSTICE OF APPEAL