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**THE REPUBLIC OF UGANDA**

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**IN THE COURT OF APPEAL OF UGANDA**

**AT MASAKA**

**Criminal Appeal No. 0057 of 2015**

15 *(Appeal from the Judgment dated 6<sup>th</sup> February, 2015 of the Hon. Justice Rugadya Atwoki, in High Court at Masaka Criminal Case No. 058 of 2012)*

**Ssali Alex ::: Appellant  
versus**

**Uganda ::: Respondent**

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**Coram: Hon. Lady Justice Elizabeth Musoke, JA  
Hon. Justice Ezekiel Muhanguzi, JA  
Hon. Justice Remmy Kasule, Ag. JA**

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**JUDGMENT OF THE COURT**

The appellant appealed against the sentence only, pursuant to his supplementary memorandum of Appeal. He abandoned the other grounds contained in the earlier memorandum of appeal.

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30 **Ground of Appeal.**

*The single ground of the Appeal is that the learned judge erred in law and fact when he sentenced the appellant to 40 years imprisonment which sentence is harsh and manifestly excessive in the circumstances.*

35 This Court, with no objection from the respondent's counsel, granted leave to the appellant to appeal against the sentence only pursuant to Section 132(1) (b) of the Trial on Indictments Act.

**Background:**

40 The appellant was tried and convicted by Hon Justice Rugadya Atwoki in Masaka High Court Criminal Case No. 058 of 2012 of the offence of Rape contrary to Sections 123 and 124 of the Penal Code Act.

The appellant was a traditional medicine man. The victim went to him to have her family problems solved. The appellant took the  
45 victim to a deep forest, ordered her to undress, deceiving her that by doing so she was going to get rich by regaining all the money she had lost which was about shs. 38 million. The Victim, believing the appellant, undressed, whereupon the appellant raped her. She tried to resist by making an alarm; but no one came to her rescue  
50 as the two were deep in the forest. After being raped the victim reported the appellant to the leader of the traditional healers in the area, that is Kasensero, Rakai District. The appellant was arrested, charged, tried and convicted. He was sentenced to 40 years imprisonment. Dissatisfied, he appealed against the sentence.

## **Legal representations**

At the hearing, the appellant was represented on state brief by Ms. Namata Edith while Ms. Naluzze Aisha, Assistant DPP was for the respondent.

### 60 **Appellant Counsel's submissions**

Appellant's Counsel submitted that the sentence of 40 years imprisonment was too harsh and excessive in the circumstances.

The appellant was a young man of 35 years of age, was a first offender and had a family to look after. These mitigating factors  
65 were not considered by the trial Judge. She implored this Court to consider the principle of uniformity and consistency in sentencing following the decision of ***Mbunya Godfrey v Uganda: Supreme Court Criminal Appeal No. 4 of 2011***, where it was stated that:

70 ***"We are alive to the fact that no two crimes are identical. However we should try as much as possible to have consistency in sentencing"***. Counsel provided authorities of cases of rape where the sentencing never exceeded sixteen years.

***In Bizimana Jean Claude v Uganda: Court of Appeal Criminal Appeal No. 143 of 2010***, the sentence was reduced by this Court  
75 from 18 years to 15 years for rape. The appellant was aged 36 years and raped the victim, a refugee mother, in front of her children.

In ***Oyeki Charles v Uganda Court of Appeal Criminal Appeal No. 126 of 1999***, the victim, a mother, was raped in a public path, in the presence of her child and other members of the public who  
80 were passing using the path. The rapist was sentenced to 15 years

imprisonment by the trial Court and the same was confirmed by this Court on appeal.

Counsel prayed the Court to reduce the sentence to 7 years imprisonment.

85 **Respondent Counsel's Submissions:**

Learned Counsel for the State, on the other hand, supported the decision of the High Court of sentencing the accused to 40 years imprisonment.

90 She submitted that the offence of rape carries a maximum sentence of death, and that the prosecution at trial prayed for 40 years and the defence prayed for 30 years and court went ahead to sentence the appellant to 40 years. Counsel further argued that it was a settled law that this honourable court cannot interfere with the sentence imposed by the trial court in the exercise of its  
95 discretion. She referred court to ***Kiwalabye Bernard v Uganda Supreme Court Criminal Appeal No. 143 OF 2001 2013***, where it was stated that:

100 ***“The appellant court will not interfere with the sentence imposed by the trial court in exercise of its discretion unless such exercise of discretion results into a sentence which is manifestly excessive or so low as to amount to a miscarriage of justice”.***

Counsel also invited Court to consider the case of ***Mubangizi v Uganda: Court of Appeal Criminal Appeal No. 12 OF 2012***, a  
105 rape case, where the appellant was sentenced to 30 years imprisonment and this very court upheld the said sentence.

### **Decision of the Court:**

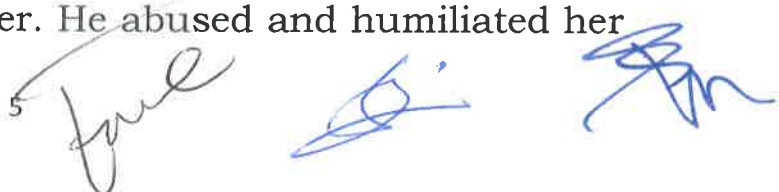
We have considered the submissions of both counsel, the evidence adduced at trial as well as the Court decisions referred to us on  
110 the main issue of whether the learned judge erred in law and in fact when he sentenced the appellant to 40 years imprisonment, which sentence, the appellant contends, is harsh and manifestly excessive in the circumstances.

It is now a well settled position of law, that this Court, as the  
115 appellate Court, will only interfere with the sentence imposed by a trial court, only where the said sentence is either illegal or founded upon a wrong principle of law, or where the trial court did not consider a material factor in the case or where the court imposed a sentence which is too harsh and manifestly excessive or too low,  
120 in the circumstances, that it results in a miscarriage of Justice.

See: **Bashir Ssali v Uganda Supreme Court Criminal Appeal No. 40 OF 2003** and also **Ninsiima Gilbert v Uganda: Court of Appeal Criminal Appeal No. 180 OF 2010.**

We have ourselves reviewed and subjected to fresh scrutiny the  
125 evidence that was before the trial judge and the factors he considered in arriving at the decision of sentencing the appellant to a term of imprisonment of 40 years.

The Learned trial Judge while passing the sentence upon the  
130 appellant considered the mitigating factors of the appellant being a first offender, a young man who can reform and who had a family to look after. The aggravating factors were that the victim went to the appellant seeking for his help as a medicine man and then he turned against her and raped her. He abused and humiliated her

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by first making her naked. The Learned Judge also considered the  
135 period of 2 years and 10 months that the appellant had spent on  
remand. This Court upholds the learned trial Judge as having  
acted properly in this regard.

However, the learned trial Judge did not consider any past  
decisions for guidance as to the proper sentence, and with respect,  
140 did not address himself on the necessity for consistency and  
uniformity when sentencing the appellant. See: **Mbunya Godfrey  
vs Uganda (Supra).**

This Court will thus proceed to examine some past Court decisions  
having some similarity with the facts of the appellant's case.

145 In **Court of Appeal Criminal Appeal No. 126 of 1999: Oyeki  
Charles Vs Uganda**, the victim mother was walking back to her  
home together with her daughter at 9:00 p.m. when the appellant  
seized and raped her in a public path and in the presence of her  
daughter and other passers-by. Appellant was a first offender,  
150 spent 4 years on remand and caused some injuries to the victim.  
This Court left undisturbed the sentence of 15 years imprisonment  
imposed by the trial Court upon the appellant.

The facts in **Bizimana Jean Claude v Uganda: Court of Appeal  
Criminal Appeal No. 143 of 2010**, were that the appellant, aged  
155 36 years, a father of 2 children, attacked and raped a victim who  
was in her house with her young children aged 3 and 4 years. The  
victim had just finished bathing and was in her night dress without  
knickers when the appellant kicked, opened the door of her house,  
and armed with a knife, raped her after which he ran away and left  
160 the victim and her children locked inside the house. The appellant

locked the house from outside. It is the victim's husband who on returning home, found the victim and the children locked inside. The appellant spent 5 years on remand. This Court set aside the sentence of 18 years as being harsh and excessive and substituted  
165 the same with a sentence of 15 years imprisonment.

In **Aliga Ben Vs Uganda: Court of Appeal Criminal Appeal No. 69 of 2014**, a sentence of 24 years imprisonment for rape was set aside as being harsh and excessive and was substituted with a reduced sentence of 16 years imprisonment.

170 However, in **Mubangizi V Uganda, Court of Appeal Criminal Appeal No. 12 of 2012**, the appellant was sentenced to 30 years imprisonment for rape and the sentence was upheld on appeal.

Having taken in to consideration the submissions of Counsel, the decisions of Court, as regards to the sentence for rape, this Court  
175 has concluded that the sentence of 40 years imprisonment passed upon the appellant was too harsh and excessive in the circumstances. The same is accordingly hereby vacated.

This Court substitutes the said sentence with a sentence of 20 years imprisonment. Out of this 20 years imprisonment sentence,  
180 this Court deducts the 2 years and 10 months, the appellant spent on remand. Accordingly the appellant is to serve a sentence of 17 years and 2 months imprisonment as from the date of conviction of 6<sup>th</sup> February, 2015

This appeal partly succeeds in the terms stated above.

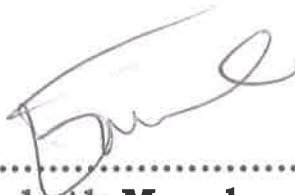
185 We so order.

Dated at Masaka this.....<sup>15<sup>th</sup></sup> day of <sup>Jan</sup>..... 2019.

  
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**Elizabeth Musoke**  
**Justice of Appeal**

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**Ezekiel Muhanguzi**  
**Justice of Appeal**

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**Remmy Kasule**  
**Ag. Justice of Appeal**

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