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# REPUBLIC OF UGANDA

## IN THE COURT OF APPEAL OF UGANDA

### AT FORT PORTAL

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## CRIMINAL APPEAL NO. 0180 OF 2010

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*Appeal from the Judgement (Akiiki-Kiiza, J) dated 09.09.2013 in High Court at Fort Portal Criminal Session Case No. 041 of 2011)*

NISIIMA GILBERT :::::::::::::::::::::::::::::::::::::::APPELLANT

VERSUS

UGANDA :::::::::::::::::::::::::::::::::::::::RESPONDENT

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**Coram: Hon. Mr. Justice Remmy Kasule, JA  
Hon. Mr. Justice Eldad Mwangusya, JA  
Hon. Mr. Justice F.M.S. Egonda-Ntende, JA**

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## JUDGMENT

The appellant was convicted of aggravated defilement contrary to Sections **129(3) (4)(a)** of the Penal Code Act and sentenced to 30 years imprisonment.

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Having abandoned the ground of appeal that challenged his conviction, and with leave of this Court, the appellant is appealing only on one ground that the sentence of 30 years passed upon him was harsh and manifestly excessive. He prays that the same be set aside and a reduced sentence

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substituted.

5 Learned Counsel Bahenzire Angella appeared for the  
appellant while Principal state Attorney Tumuhaise Rose  
represented the state.

10 The facts as found by the trial Judge were that on 23.11.09  
at Ruhangire village, Kyegegwa District, the appellant  
defiled Matembe Miria, a girl aged 8 years. The mother of  
the victim, one Mwebaze Scovia was in the garden with the  
victim and also with Evaline Twikirize, wife to the appellant.  
15 In the meantime, the appellant was in his house sleeping on  
a mat where also his baby of which his wife, Evaline  
Twikirize, was the mother, was also sleeping. From the  
garden, Evaline Twikireze, sent the victim, Matembe Maria,  
to go and get the baby from the house where it was sleeping.  
20 When the victim reached the house, the appellant aged 29  
seized her and defiled her. The victim later revealed this to  
her mother whereupon the appellant was arrested, charged,  
prosecuted, convicted and sentenced to 30 years  
imprisonment. Hence this appeal.

25 For the appellant, it was submitted that the sentence of 30  
years was manifestly excessive as Courts over a number of  
years had imposed for similar offences sentences ranging  
from 15 to 18 years imprisonment or thereabout.

30 The sentence of 30 years was more than life imprisonment  
which the Prisons Act puts at 20 years for purposes of  
remission. The appellant, aged 29 years at the time of the  
offence, will be about 59 years by the time he leaves prison  
if he serves the 30 years sentence. He will thus miss an  
35 opportunity to reform as all that time he will be under  
confinement serving the sentence.

Being a family person and a parent the appellant would be  
missed by his wife, children and his community for 30  
40 years. Counsel thus prayed that the sentence of 30 years,

5 being manifestly excessive, be set aside and substituted with a sentence of 10 years imprisonment.

Counsel for the State opposed the appeal. She submitted that the sentence of 30 years was appropriate as the  
10 appellant who was aged 29 years defiled a victim aged only 8 years. The appellant who was supposed to protect the victim had instead defiled her. He had also disabused the trust of the mother of the victim and that of his (appellant's) wife who, all along, had regarded him as a responsible  
15 husband and parent. He had instead defiled the young victim, daughter of a neighbour and a villagemate.

Further, the victim had signs of venereal disease which caused her and her parents more trauma. Counsel thus  
20 prayed that the sentence of 30 years be not disturbed.

This Court can only interfere with the sentence of the trial Court if that sentence is illegal, being based upon a wrong principle, or the Court has overlooked a material factor, or  
25 the sentence is harsh or manifestly excessive. See: **KIZITO SENKULA V UGANDA: CR. APPEAL NO. 24 /2001 (SC) : JAMES vs R:(1950) 18 EACA 147**

**and**

**Ogalo S/O Owora VS R (1954)24 EACA 270**

30 We note that the trial Judge while sentencing the appellant held that:

**“Putting everything into account and given the sentencing range for aggravated defilement, I sentence  
35 the accused to 30 (thirty) years imprisonment”.**

By “sentencing range” we understand the trial to have been referring to the range given in the recently published Judiciary sentencing guidelines.

40 In our considered view, the said guidelines have to be applied taking into account past precedents of Court

5 decisions where the facts of those decisions have a  
resemblance to the case under trial. We, on our part, have  
not come across any past Court decisions where a sentence  
of 30(thirty) years imprisonment was imposed upon a  
convict of a defilement case.

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In **Court of Appeal Criminal Appeal No. 222 of 2003  
Bukenya Joseph vs Uganda**, the appellant aged about 65  
years and married with three wives, defiled a victim aged 6  
years. The Court of appeal confirmed the sentence of life  
15 imprisonment which at that time i.e. 23.07.2010 still meant  
20 years imprisonment according to the Prisons Act.

In **Kizito Senkula vs Uganda: Criminal Appeal No. 24 of  
2001 (SC)** the appellant, an adult male, defiled a victim of  
20 11 years. The Supreme Court found the sentence of 15  
years imprisonment appropriate, but had to reduce the  
same to 13 years because the trial Judge had been vague in  
his sentence, as to whether or not the 2 years remand  
period had been included or excluded from the said  
25 sentence. The Court resolved the doubt in favour of the  
appellant with the stated reduction in sentence.

The Supreme Court in **SAM BUTEERA VS UGANDA,  
Criminal Appeal No. 21/94** upheld a sentence of 12 years  
30 imprisonment as appropriate where an adult herdsman  
defiled a victim aged 11 years only.

As to the victim being infected with a venereal disease, being  
an aggravating factor, we observe that the Court record does  
35 not show that it was conclusively established that the victim  
had been infected with a venereal disease by the appellant.  
The medical report only indicated that the victim had a foul  
smelling, whitish/yellowish discharge from her private  
parts. The medical report on appellant did not show he had  
40 a venereal disease. It is not clear whether the victim was  
not medically treated of the discharge.

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Having thoroughly subjected the facts of this case to a fresh re-appraisal, and given the Court precedents we have considered above, we have come to the conclusion that the sentence of 30 years imprisonment that the trial Judge imposed upon the appellant was harsh and manifestly excessive. We accordingly set it aside.

The appellant being aged 29 years, a first offender, having spent 3 years and 4 months on remand, a person with family responsibilities and with dependants to support, we find that a sentence of 15 years imprisonment is appropriate and is in line with sentences passed by Courts in previous cases having a resemblance to this one.

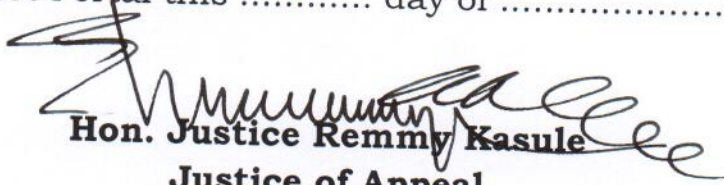
Accordingly we allow this appeal. We set aside the sentence of 30 years imprisonment imposed upon the appellant. We substitute the same with the sentence of 15 years imprisonment to be served by the appellant as from the date of his conviction, that is 05.09.2013.

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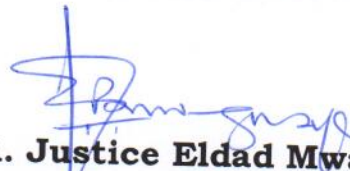
We so order.

Dated at Fort Portal this <sup>18<sup>th</sup></sup> day of <sup>December</sup> 2014

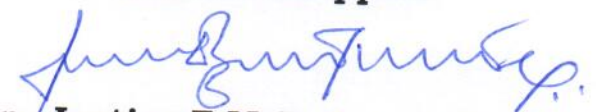
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**Hon. Justice Remmy Kasule**  
**Justice of Appeal**

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**Hon. Justice Eldad Mwangusya**  
**Justice of Appeal**

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**Hon. Justice F.M.S. Egonda-Ntende**  
**Justice of Appeal**