

**THE REPUBLIC OF UGANDA  
IN TH COURT OF APPEAL OF UGANDA  
AT KAMPALA**

5 **CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA.  
HON. JUSTICE C.N.B. KITUMBA, JA.  
HON. JUSTICE C.K. BYAMUGISHA, JA.**

**CRIMINAL APPEAL NO. 190 OF 2004**

10

**ABOT RICHARD::: APPELLANT**

**VERSUS**

**UGANDA::: RESPONDENT**

*[An appeal from the sentence of the High Court sitting at Lira*

15

*(Opio Weri, J.) dated 14-6-2004 in Criminal Session Case*

*No. 19 of 2004]*

**JUDGEMENT OF THE COURT**

20

This is an appeal against the sentence of 5 years imprisonment that was imposed upon Abot Richard, the appellant, who pleaded guilty to the offence of defilement, contrary to section 129(1) of the Penal Code Act.

25

The following are the facts that gave rise to this appeal. On 30-5-2001 at Awiem village, Borabora Parish, Adekekwol sub-county in Lira District the appellant was found in the bush having sex with the victim who was aged 13 years. The appellant was chased and arrested. He was handed to the parents of the victim who took him to the police. Medical examination of the victim confirmed that she had been defiled.

30

When the appellant appeared before the High Court, he pleaded guilty to the indictment that charged him with defilement. He was convicted and sentenced to eight years imprisonment.

His appeal to this Court is on the following ground.

**“That much as the sentence was legal, in view of the mitigating factors, it was excessive. Because of the above laid ground(s) there was a miscarriage of justice, wherefore it is prayed that the said sentence be reduced.”**

5

During the hearing of the appeal the appellant was presented by learned counsel, Mr. Seguya Samuel and Ms Sarah Kerwegi, learned Senior State Attorney, appeared for the respondent.

10 Mr. Seguya while conceding that the sentence was not illegal submitted that it was excessive. He argued that though a girl aged 13 years is not able to give valid consent to have sex but she is not too young. He submitted further that the appellant had pleaded guilt, was remorseful and had spent three years on remand before sentence. He argued that in view of all the above mitigating factors a sentence of 8 years  
15 imprisonment was excessive. He prayed court to reduce it to 6 years imprisonment.

The Senior State Attorney disagreed. She supported the sentence passed by the learned judge which in her view was lenient.

20 We have carefully listened to both counsel and perused the record of appeal. The learned judge considered the mitigating as well as the aggravating factors before sentencing the appellant. He considered the fact that the appellant was remorseful and had a family to look after. He took into account the seriousness of the offence and the maximum penalty of death which it attracts. The judge further considered the need to  
25 protect young girls from premature sex, which exposed them to medical and emotional impacts. After considering a period of three years spent on remand he sentenced the appellant to eight years imprisonment.

It is our considered view that the learned judge passed a lawful sentence and acted on the right principles of sentencing. We have no reason to interfere with his discretion  
30 any powers of sentencing.

The appeal lacks merit and is accordingly dismissed.

**Dated at Kampala this 6<sup>th</sup> day of February 2006.**

**A.E.N. Mpagi-Bahigeine**  
**JUSTICE OF APPEAL**

5

**C.N.B. Kitumba**  
**JUSTICE OF APPEAL**

10

**C.K. Byamugisha**  
**JUSTICE OF APPEAL**