

**THE REPUBLIC OF UGANDA
IN THE 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. 230 OF 2003

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AGABA JOB::: APPELLANT

VERSUS

UGANDA::: RESPONDENT

[An appeal from the sentence of the High Court at Fort Portal

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(Zahurikiza, J.) dated 26/11/2003 in Criminal Session Case

No. 59 of 2002]

JUDGEMENT OF THE COURT

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Agaba Job, the appellant, has appealed with leave of this court against the sentence of 10 years imprisonment.

The background to this appeal is that the appellant was a porter of the victim's parents and lived in their home at Kichwamba Technical College, Kihindo Parish, Kichwamba sub-county in Kabarole District. During the month of June 2001, the victim who was aged 6 years returned home from school for lunch. The parents were not at home. The victim went to the kitchen where the appellant followed and defiled her and told her not to tell any one. However, she told two small girls who reported to their mother. The mother asked the victim what had happened to her and she narrated the whole story. The victim was medically examined. She was found to be aged six years and her hymen had been ruptured.

The appellant was arrested and charged with defilement. When arraigned before the High Court, he pleaded guilty to the indictment and was sentenced to 10 years imprisonment. He has appealed to this court on the following ground.

5 **“That the sentence of 10 years in such circumstances where the appellant committed the offence under the influence of alcohol, and where he showed remorse/repentance during trial and saved court’s time was harsh.”**

10 Submitting on the above ground, Mr. Seguya Samuel, learned counsel for the appellant, contended that the sentence was excessive. He argued that since the appellant had informed the court that when he committed the offence he was under the influence of alcohol that should have been taken as a mitigating factor when passing sentence. He argued further that as the appellant was remorseful and had
15 pleaded guilty, a lesser sentence should have been imposed on him. He prayed court to reduce the sentence to 6 years imprisonment.

Ms Sarah Kerwagi learned Senior State Attorney, who appeared for the respondent, supported the sentence and prayed this court to dismiss the appeal for lack of merit.

20 Sentencing power is when the discretion of the judge. In the instant appeal, before passing sentence the learned judge took into account all relevant mitigating and aggravating circumstances. He considered the facts that the appellant was a first offender, was repentant and had pleaded guilty. He also took into account the age of
25 the victim which was only 6 years and the maximum penalty for the offence which is death. He passed a lenient sentence of 10 years imprisonment.

With due respect to counsel for the appellant, the leaned judge did not fail to take into account intoxication as a mitigating factor. The appellant might have had more
30 carriage to commit the offence because of some intoxication, but that is not in law a mitigating factor in sentencing for the offence of defilement. In our view, it would be very unfortunate if it were. This appeal lacks merit it is accordingly dismissed.

Dated at Kampala this 8th day of February 2006.

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

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C.N.B. Kitumba
JUSTICE OF APPEAL

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C.K. Byamugisha
JUSTICE OF APPEAL