

**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 A. TWINOMUJUNI, JA.
HON. JUSTICE C.N.B. KITUMBA, JA.**

CRIMINAL APPEAL NO. 294 OF 2003

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BARASA SAMUEL:::::::::::::::::::::::::::: APPELLANT

VERSUS

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

*[An appeal against sentence by the High Court of Uganda held at
15 Tororo (Mwondha, J.) dated 3-3-2003 in Criminal Session Case
No. 269 of 2002]*

JUDGEMENT OF THE COURT

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Barasa Samuel, the appellant, was charged and convicted on his own plea of guilt of defilement contrary to section 129 (1) of the Penal Code Act. He was sentenced to 8 years imprisonment.

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The following are the facts leading to the appeal. On 29/3/2001, the victim and her brother were returning home from school when they met one Awino Jennifer, the appellant's wife. She persuaded the victim to go with her to her home to help her with housework. The victim accepted and went with Awino.. Awino told the victim to sleep with the appellant in the same house at night but she refused. The victim and
30 Awino shared the same bedroom. In the middle of the night the victim and Awino went outside to ease themselves. The victim returned to the house first and found the appellant in the bedroom. The appellant grabbed the victim and defiled her. The victim made an alarm which was answered by the appellant's brother who kicked the door and rescued her. The matter was reported to the victim's parents who in turn

reported to the police. The victim was medically examined and found to be thirteen years old. Her hymen had been ruptured and there were injuries and inflammation on her private parts. The injuries were consistent with force having been used. She also had a bruise on her left knee. The appellant was also medically examined. He was
5 found to be mentally normal and was aged 29 years.

When the case came up for trial before the High Court, the appellant pleaded guilty to the charge of defilement. He was convicted and sentenced to 8 years imprisonment. He now appeals to this court with leave, against the sentence on the following ground:
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“The sentence of eight years passed by the trial judge on the appellant was harsh and excessive in the circumstances of the case considering that the appellant as a first offender who pleaded guilty, saving the court’s time and expenses of a protracted trial.”

15 Mr. Mark Bwengye, learned counsel for the appellant, contended that the sentence of 8 years imprisonment was harsh and excessive. He submitted that the appellant was remorseful, had a family to look after and had been on remand for two years. In passing sentence on the appellant the learned trial judge did not take into account the
20 fact that he had been on remand for two years. He prayed this court to reduce the sentence to four years as the appellant had been on remand for two years.

Ms Alice Komuhangi, leaned Senior State Attorney, did not agree. She supported the sentence of 8 years that was imposed by the trial court. She argued that the sentence
25 was neither harsh nor excessive. She submitted that the learned trial judge took into account all relevant matters before passing the sentence. She prayed court to dismiss the appeal and to uphold the sentence.

It is trite law that this Court would only interfere with the sentence passed if it is
30 illegal or manifestly excessive as to amount to a miscarriage of justice.

In the instant case, appellant’s counsel has attacked the learned trial judge for failure to take into account the period of two years which the appellant spent on remand. With due respect, his criticism on the leaned trial judge has no basis. The record of

appeal shows that before passing sentence the learned trial judge took into account all relevant factors including the period spent on remand. Hence the record reads:

5 **“Court: Though the convict is a first offender who has pleaded guilty, I
take serious view of this offence since it carried a maximum sentence of
death. There was no justification whatsoever for the convict to which to
have sexual intercourse with a minor of only 13 years when he had a wife.
He was aged 29 years more than twice the age of his victim. I shall pass a
detering sentence and he is therefore sentenced to 8 years imprisonment
10 taking into account the period he has been on remand.” (Underlining ours)**

The sentence of 8 years imprisonment was neither illegal nor excessive. The appeal is devoid of merit. It is accordingly dismissed.

15 **Dated at Kampala this 13th day of January 2006.**

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

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**A. Twinomujuni
JUSTICE OF APPEAL**

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

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