

**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. 229 OF 2003**

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**ENOCK KATOMA ::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**UGANDA ::::::::::::::::::::::::::::::: RESPONDENT**

15 *[Appeal from the sentence of the High of Uganda sitting at Fort Portal  
(Zehurikize, J.) dated 27/11/2002 in Criminal Session Case No. 40 of 2002]*

**JUDGEMENT OF THE COURT**

20 This is an appeal with leave of this court, against the sentence of 10 years imprisonment which was imposed on Enock Katoma, the appellant after pleading guilty to the offence of indictment contrary to section 129 (1) of the Penal Code Act.

The following is the background to the appeal. On 7/9/2001 the appellant went to  
25 Musinguzi Stephen, the victim's father and requested him to allow his two daughters to assist him collect his potatoes. The father obliged and the victim together with her sister went to the garden to help the appellant. When the three were in the garden the appellant led the victim to the bush and defiled her. The victim made an alarm but nobody came to her help. The victim reported the matter to her father who in turn  
30 reported to the local authorities. The appellant was arrested and taken to the police.

On 13/9/2001 the victim was medically examined. She was found to be 11 years old, and her hymen had been ruptured more than a week back. There was a vaginal yellowish pus discharge suggestive of gonorrhoea. The appellant was examined on  
35 19/9/2001 and was found mentally normal and was aged 40 years.

On indictment for defilement the appellant pleaded guilty and was sentenced to 10 years imprisonment. His appeal to this court is on one ground which reads thus:-

5                   **“That the sentence of 10 years for such an appellant who had shown remorse and pleaded guilty was harsh.”**

During the trial the appellant was represented by learned counsel Mr. Samuel Seguya. Ms Sarah Kerwegi, learned Senior State attorney appeared for the respondent. Arguing the sole ground of appeal the Mr. Seguya submitted that the sentence of 10 years imprisonment was excessive in view of the fact that the appellant had pleaded guilty and was remorseful. He prayed court to reduce the sentence to 5 years imprisonment.

The learned Senior State Attorney did not agree. She contended that the appellant committed a grave offence. The circumstances of the offence had also to be considered. The appellant aged 40 years requested for the assistance by the victim and her sister from their father but instead defiled a small girl of only 11 years. She prayed court to dismiss the appeal.

20 Sentencing is within the discretion of the trial judge. The appellate court would only interfere with the sentence if it is illegal manifestly law, harsh or excessive as to occasion a miscarriage of justice.

In the instant appeal the learned trial judge took into account all relevant factors before passing the sentence. The record reads thus:

30                   **“It is true that the convict has pleaded guilty thereby saving court’s time. But he committed a serious offence which carries maximum sentence of death. He betrayed his friend the father of victim and also abused the good behaviour of that child who innocently thought she was going to render help to a man whom she regarded as a father. It appears he infected her with venereal disease after tricking and forcing her into sex.**

**I have considered the fact that the convict is a first offender and have also taken into account the time he has been on remand. I consider the term of ten years imprisonment appropriate. He is thus sentenced to serve a term of 10 years imprisonment.”**

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We see no good reason to interfere with the sentence passed, which we too consider was very lenient. The appeal is dismissed.

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

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**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**