

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

**CRIMINAL APPEAL NO. 46 OF 2008**

**BARIGYE SAMUEL .....**

**.....APPELLANT**

**VERSUS**

**UGANDA .....**

**RESPONDENT**

**CORAM: HON MR. JUSTICE REMMY KASULE, JA**  
**HON MR. JUSTICE RUBBY AWERI OPIO, JA**  
**HON. MR. JUSTICE KENNETH KAKURU, JA**

*[Appeal against conviction by Judgment in criminal session case 189 of 2005  
High Court Nakawa sitting at Mubende Judgment delivered on 3<sup>rd</sup> July 2001  
by Hon. Justice Gideon Tinyinondi]*

**JUDGEMENT OF THE COURT**

This is an appeal against conviction only by Hon. Justice Gideon Tinyinondi (J) in **High Court Criminal Session No. 189 of the 2005** Nakawa, sitting at Mubende.

At the hearing of this appeal **Mr. Henry Rukundo** appeared for the appellant and **Mr. Kulu Idambi** Principal State Attorney appeared for respondent.

Mr. Rukundo informed court that the appellant was not in court as he had already served his sentence and had been discharged from prison.

He prayed for leave to withdraw the appeal. Mr. Idambi had no objection.

The appellant was on 29<sup>th</sup> of August 2005 indicted with offence of defilement contrary to Section 129(1) of the Penal Code Act. He was accused of defiling a 13 year old girl in October 2004. He pleaded guilty to the offence. He was convicted on his own plea of guilt and sentenced to 10 years imprisonment on 03 /07/2007.

He had appealed against conviction only.

The memorandum of appeal sets out only one ground as follows;-

***The learned trial Judge erred in law and fact when he failed to adequately subject evidence adduced to adequate scrutiny, evaluation occasioning a miscarriage of Justice wrongly found appellant guilty thereby convicted appellant of offence of defilement.***

In this appeal the appellant pleaded guilty and was convicted on his own plea. Accordingly no evidence was adduced. The sole

ground of the appeal set out above is misconceived and has no merit whatsoever, as there is no evidence on record to be re-evaluated.

Even if there was evidence to be re-evaluated, the sole ground of appeal is too general and offends the provisions of Rule 66 of the Rules of this Court which require a memorandum of appeal to set forth concisely the grounds of the objection to the decision appealed against.

An appeal is a creature of statute. See ***Attorney General vs Shah No. 4 [1971] EA 50 and Baku Raphael Obudra and Obinga Kania vs Attorney General (Constitutional Petition No. 1 of 2005) (SC)*** unreported.

We have not found any law that grants the appellant a right of appeal against conviction, when he pleaded guilty in his trial at the High Court and was convicted on his own plea of guilt. The appellant is not challenging the legality of the sentence as Mr. Rukundo wanted us to believe, at least the memorandum of appeal did not specify so.

We appreciate the challenges Advocates on state brief have to go through in a short period between receipt of instruction from the Registrar and the hearing of an appeal.

However advocates must ensure the Memorandum of appeal conforms with the law. They must also properly advise their clients on the strength of their appeal.

This appeal was misconceived and would most probably have been dismissed had it not been abandoned.

Since counsel has applied to have it withdrawn and the respondent has no objection, we accordingly dismiss it under Rule 70 (1) of the Rules of this Court.

**Dated at Kampala** this 11<sup>th</sup> day of September 2014

.....  
**HON MR. JUSTICE REMMY KASULE, JA**  
**JUSTICE OF APPEAL**

.....  
**HON MR. JUSTICE RUBBY AWERI OPIO, JA**  
**JUSTICE OF APPEAL**

.....  
**HON. MR. JUSTICE KENNETH KAKURU, JA**  
**JUSTICE OF APPEAL**