THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT ARUA

CRIMINAL APPEAL NO. 66 OF 2010

CORAM: (Kakuru, Muhanguzi, Madrama, JJA)

CHANDIA JAMES.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

(Appeal against sentence of the High Court of Uganda at Arua in High Court Criminal Case No. 0009 of 2010 decided by Justice John Wilson Kwesiga dated 24/4/2010)

JUDGMENT OF THE COURT

Introduction.

The appellant was indicted, tried and convicted of the offence of aggravated defilement contrary to sections 129(3) of the Penal Code Act. The particulars of the offence were that on the 6th day of July, 2008 at Eleku Primary School Teacher's quarters in the Arua District, the appellant had unlawful sexual intercourse with A.H, a girl under the age of 18 years when he was a person in authority over the victim. He was sentenced to life imprisonment.

He appealed against sentence only on the following ground:

"The learned trial judge erred in law and fact when he deliberately refused to totally consider the accused's mitigating factors after conviction and harshly sentenced him to life imprisonment."

Representation.

At the hearing of this appeal, Mr. Ondoma Samuel learned counsel, appeared for the appellant while Mr. David Ndamurani Ateenyi Senior Assistant Director of Public Prosecutions appeared for the respondent.

Counsel for the appellant sought and was granted leave under section 132 (1) (b) of the Trial on Indictment Act to appeal against sentence only.

Submissions by the appellant.

Counsel submitted that, the trial judge imposed a harsh and excessive sentence of life imprisonment on the appellant and he failed to consider the period spent on remand prior to conviction/sentence by the appellant of one and a half years.

Further that, the trial judge disregarded the fact that the appellant was remorseful as he later pleaded guilty to the offence charged. Counsel prayed that this sentence be reduced to 15 years imprisonment.

Submissions by the respondent.

Counsel submitted that, the sentence of life imprisonment imposed by the trial judge was appropriate in the circumstances of the case. He submitted that the trial judge alluded to the fact that the appellant was a first offender and the fact that the appellant pleaded guilty.

Counsel relied on ***Livingstone Kakooza V Uganda***, *Supreme Court Criminal Appeal No. 17 of 1993* and submitted that an appellate court will only alter a sentence imposed by the trial court if it is evident that it acted on wrong principles or a wrong principle.

Counsel prayed to court to confirm the sentence imposed by the trial court.

Consideration by court.

It is the duty of the first appellate court to review and re-evaluate the evidence before the trial court and reach its own conclusions, taking into account the fact that the appellate court did not have the opportunity to hear and see the witnesses testify. See Rule 30(1) (a) of the Court Of Appeal Rules and Pandya v R (1957) EA 336; Ruwala v R (1957) EA 570; Bogere Moses v Uganda Cr. App No. 1 of 1997(SC).

The appellant was sentenced on his own plea of guilty. The trial judge noted that the appellant was a first offender and he had pleaded guilty. He also noted that he was a school teacher who had authority over the victim.

Where an accused person pleads guilty to the charge, it is a valid consideration in his or her favour. A plea of guilt indicates acceptance of blame and in most cases reflects remorse on behalf of the accused. It is an indication that the accused realizes his or her fault and may reform in future.

This court in ***Lubanga Emmanuel V Uganda***, *Criminal Appeal No. 124 of 2009*, maintained a sentence of 15 years imprisonment against an appellant who had pleaded guilty to a charge of aggravated defilement of a child of one year who may have also been exposed to HIV.

In ***Okello Geoffrey v Uganda***, *Supreme Court Criminal Appeal No. 34 of 2014*, the victim was 16 years old and the only aggravating factor was that the appellant in that case was a teacher in the victim's school. A sentence of 22 years was confirmed.

In the instant case, both aggravating and mitigating factors were spelt out by two counsel and the appellant on page 14 of the record of appeal. The aggravating factors were that the

appellant was a teacher at the victim's school who had authority over the girl.

The mitigating factors were that the appellant had spent one and a half years on remand prior to his conviction; he was a first offender who had pleaded guilty, capable of reform and remorseful. Nevertheless he committed a serious offence whose maximum sentence is death.

We note that the reduction of sentence where an accused has pleaded guilty is at the discretion of court but with all due respect to the trial judge, we observe that he did not consider this factor to the benefit of the accused. This coupled with the period the appellant had spent on remand which the trial judge did not allude to, could have reduced the sentence of life imprisonment to a lesser sentence.

We consider that a sentence of life imprisonment was harsh and excessive in the circumstances of this case especially since the trial court did not take into account all the mitigating factors in favour of the appellant. This appeal therefore succeeds to that extent. The sentence of life imprisonment is hereby set aside and substituted with a sentence of 14 years imprisonment which we consider to be more appropriate in

the circumstances. The sentence shall run from 27/4/2010, the date the appellant was convicted. We so order.

Dated at Arua this 28th day of November 2018

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Kenneth Kakuru
JUSTICE OF APPEAL

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Ezekiel Muhanguzi
JUSTICE OF APPEAL

.....
Christopher Madrama
JUSTICE OF APPEAL.