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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT MASAKA**  
**CRIMINAL APPEAL NO. 37 OF 2014**

(CORAM: F.M.S Egonda-Ntende, JA, Hellen Obura, JA and Stephen Musota, JA)

10 **KAVUMA EDWARD :::APPELLANT**

**VERSUS**

**UGANDA :::RESPONDENT**

*(Appeal from the decision of Hon. Justice V. F Musoke Kibuuka holden at Masaka High Court in Criminal Session Case No.025 of 2011 delivered on 29/1/2014)*

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**JUDGMENT OF THE COURT**

The appellant was indicted, tried and convicted by the High Court at Masaka (Musoke Kibuuka, J) of the offence of aggravated defilement contrary to section 129(3) and (4) (c) of the Penal Code Act. He was sentenced to 18 years imprisonment, which he appeals against.

20 The facts as found by the trial Judge are that the victim Nakidde Joan aged 7 years and five of her siblings lived together at the home of the appellant (their paternal uncle) having lost both their parents. On the 22<sup>nd</sup> August 2010, at about 10:00 am, the appellant in the absence of four of the victim's elder siblings took her to his bedroom and performed a sexual act with her. After the act, he gave her a Shs. 500 coin and told her not reveal to anyone the  
25 performance of the sexual act upon her. Later however, the victim revealed to her elder sisters who returned, two days afterwards from a visit to some place in Kooki. The appellant was arrested and charged with the offence of aggravated defilement. He was medically examined and found to suffer from mental demensia. The victim was also examined and found to be 7 years old with a ruptured hymen and signs of penetration. During trial, the appellant pleaded  
30 not guilty and gave unsworn evidence. The prosecution adduced evidence of 5 witnesses

5 which the trial Judge believed and convicted the appellant of the offence of aggravated defilement subsequent of which he sentenced him to 18 years imprisonment. Being dissatisfied with the decision of the trial court, the appellant appealed to this court on 4 grounds namely that;

- 10 1. *“The learned trial Judge erred in law and fact when he failed to properly evaluate the defence of insanity available to the appellant, thus arriving at a wrong decision occasioning a miscarriage of justice.*
2. *The learned trial Judge erred in law when he failed to direct himself on the standard of proof in cases of insanity thus occasioning a miscarriage of justice.*
- 15 3. *The learned trial Judge erred in law and fact when he sentenced the appellant to a period of 18 years which was manifestly harsh and excessive in the circumstances, and occasioned a failure of justice.*
4. *The learned trial Judge erred in law when he failed to deduct from the sentence the period the appellant had spent on remand.”*

At the hearing of this appeal, Mr. Innocent Wanambugo represented the appellant on state 20 brief while Ms. Akasa Aminah, learned State Attorney from the Office of the Director Public Prosecutions represented the respondent.

Mr. Wanambugo abandoned grounds 1, 2 and 4 and sought leave of court to only argue ground 3 on sentence only, which was granted.

He submitted that the sentence of 18 years imprisonment imposed upon the appellant is harsh 25 and excessive in the circumstances as the appellant was a first offender with no previous criminal record and this factor ought to be taken into consideration while sentencing. He added that the appellant was 28 years old at the time when he committed the offence and at such a tender age, he had the capacity to reform and contribute positively to society. He was a family man with 6 dependants whom he was looking after. Counsel contended that the 30 sentence of 18 years imprisonment is inconsistent with sentences imposed by courts in cases

5 of a similar nature. He referred to the cases of ***Ninsiima Gilbert vs Uganda, CACA No. 0180 of 2010*** and ***Komakech Samuel vs Uganda, CACA No. 440 of 2014*** where this Court substituted a sentence of 30 years with 15 years imprisonment and upheld a sentence of 16 years imprisonment respectively. Counsel prayed that this Court reduces the sentence of the appellant to 15 years imprisonment taking into consideration the mitigating factors.

10 Ms. Akasa opposed the appeal and submitted that the trial Judge arrived at a proper sentence of 18 years imprisonment after taking into consideration both the mitigating and aggravating factors. She pointed out the aggravating factors, namely that; the victim was only 7 years, she was an orphan who only had the appellant for a guardian having lost both her parents, the appellant was the maternal uncle to the victim and instead of taking care of her like he ought  
15 to have done, he opted to abuse her, and the victim sustained very serious injuries in her private parts having been introduced to sexual intercourse at such a tender age in a gruesome manner.

Counsel prayed that the sentence of 18 years imprisonment be upheld by this Court since it is not so out of range from the sentences imposed in cases of similar nature and also because  
20 the appellant was a person in authority over the victim.

An appellate court will not interfere with the sentence of the lower court unless there has been a failure to exercise discretion or to take into account a material consideration, or where an error in principle was made. ***See: Kanya Johnson Wavamuno vs Uganda, SCCA No. 16 of 2000***

25 We note that during sentencing the trial Judge stated as follows;

*"This convict's case is seriously aggravated by two elements: the fact that he performed a sexual act upon a girl aged 7 year. The fact that the girl was his niece and under his care and guardianship. Court has also considered several mitigating factors in favour of this convict; being first offender, being young at 28 years so giving him a capacity to reform,  
30 having spent a period of over 3 years on remand. However, even after taking all those*

5            *mitigating factors into account, court still squarely sees the gravity of this offence staring into*  
*its face. The convict not only committed a serious offence of defiling a child of 7 years, he*  
*also committed an abomination within the African tradition and may be all traditions of*  
*humanity whereby it is a taboo to perform a sexual act between uncle and niece. He gave all*  
10           *those children under his care a very bad example which forced them to report him to the*  
*Police inspite of their age (all of them were below 14 at the time). The convict in court's view*  
*deserves a very serious punishment. He does not appear to be penitent. He is the kind of*  
*person who would do it again if given the opportunity. He needs a very long custodial*  
*sentence which not only deters others from following his bad example but also one that will*  
15           *provide him with space to reform and subsequently come out as a reformed and more*  
*premised and useful member of his community and society as a whole. He is sentenced to*  
*imprisonment for 18 years."*

From the above sentencing ruling, the trial Judge gave detailed reasons for the sentence and also considered the mitigating and aggravating factors presented and the period the appellant spent on remand. We have also considered the range of sentences in similar offences so as  
20 to determine whether the sentence of 18 years was manifestly harsh and excessive in the circumstances as contended by the appellant.

In ***Anyolitho Robert vs Uganda, CACA No.22 of 2012*** the appellant who was the paternal uncle of the victim, a girl aged 14 years was convicted of the offence of aggravated defilement and sentenced to 18 years imprisonment. This Court confirmed the sentence on appeal.

25 In ***Candia Akim vs Uganda, CACA No. 0181 of 2009***, this Court confirmed a sentence of 17 years imprisonment for the offence of aggravated defilement. The appellant in that case was a step-father of the 8 year old victim.

In ***Kitambuzi Ramathan vs Uganda, CACA No. 197 of 2009*** the appellant was convicted of the offence of aggravated defilement of his 12 year old daughter and was sentenced to 15  
30 years imprisonment. He appealed to this Court which confirmed his sentence and dismissed the appeal.

5 Considering the range of sentences for aggravated defilement in the above decided cases  
which is between 15-18 years imprisonment, and the mitigating as well as the aggravating  
factors in this appeal, we are of the view that the sentence of 18 years imprisonment imposed  
by the trial Judge on the appellant was not harsh and excessive as argued by counsel for the  
appellant. We agree with the reasoning of the trial Judge that the appellant was a person in  
10 authority of his 7 year old niece whom he was expected to protect instead of sexually  
molesting her.

In the result, we find no merit in this appeal and we accordingly dismiss it and confirm the  
sentence.

We so order.

15 Dated at **Masaka** this...<sup>30<sup>th</sup></sup> day of...<sup>July</sup>.....2018

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**Hon. Justice F.M.S Egonda-Ntende**


**JUSTICE OF APPEAL**

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**Hon. Lady Justice Hellen Obura**

**JUSTICE OF APPEAL**

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**Hon. Justice Stephen Musota**

**JUSTICE OF APPEAL**