THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Hellen Obura, Stephen Musota, Percy Tuhaise, JJA)

CRIMINAL APPEAL NO. 855 OF 2014

(Arising from ICD Criminal Session Case No.003 of 2014)

UMUTONI ANNET ::APPELLANT

VERSUS

UGANDA ::: RESPONDENT

JUDGMENT OF COURT

This is an appeal against the decision of the High Court, International Crimes Division (Ezekiel Muhanguzi, J) (as he then was) delivered on the 16/10/2014 in which the appellant was convicted of the offence of trafficking in persons and aggravated child trafficking contrary to sections 3(a) and 5 (a) respectively, of the Prevention of Trafficking in Persons Act (PTPA) and sentenced to 5years and 8years imprisonment respectively. The sentences were to run concurrently.

Background to the Appeal

The facts as ascertained from the court record are that during the month of October, 2011 the appellant, Umutoni Annet by means of abduction and deception, transported and transferred the victims, Phiona Umubyeyi and Mahirwe Angela from Rwanda to Rwentobo in Ntugamo District then later to Kampala for purposes of exploiting them. While in Kampala, Mahirwe Angella was assigned work as a house maid doing domestic work for the appellant for two months without being paid. Umumbeyi Phiona worked in the appellant's home as a baby sitter for one week without pay and the appellant took her to the home of Kyobutungi Jennifer where she worked as a house maid for a week and a half without pay. She was then transferred to

the home of a one Batamuliza Diana in Mbuya, Kampala District where she worked as a maid for a period of one month without pay.

When Furaha Miriam (PW3) noticed the disappearance of her daughter, as well as that of her neighbor, she contacted the Rwandese police who in turn contacted Interpol in Uganda leading to the arrest of the appellant and the discovery of the two victims. The appellant was charged with two counts of aggravated child trafficking contrary to sections 3 (a) and 5(a) of the PTPA, which charges she pleaded not guilty to. The prosecution led evidence of nine witnesses and at the close of its case, counsel for the appellant made a submission of no case to answer and contended that the indictment was incurably defective as it did not have the consent of the Attorney General pursuant to the proviso to section 19 of the PTPM. On 17/06/2014, the trial Judge Muhanguzi,J (as he then was) ruled in favor of the appellant, struck out the indictment and discharged the appellant.

In September, 2014, the appellant was indicted de novo with the same offences of aggravated Child Trafficking of a child Muhirwe Angella aged 14 and in the 2nd count of aggravated Trafficking of a child Umbyeyi Phiona aged 16 years before the same trial Judge, Muhanguzi, J (as he then was). The prosecution called the same witnesses as in the earlier aborted trial and upon a prima-facie case being found, the appellant adduced her evidence and that of her husband, Mr. Alex Akishure in defence. She was found to be guilty and convicted on the 1st count of aggravated child trafficking c/s 3 (a), 4 (a) and 5 (a) of the PTPM. On the 2nd count the trial Judge found one ingredient relating to the age of the victim was not proved and so he acquitted the appellant of the offence of aggravated child trafficking and instead found her guilty of the offence of trafficking in persons. He then sentenced the appellant to 8 years imprisonment on the 1st count and 5 years imprisonment on the 2nd count. The sentences were to run concurrently. Being dissatisfied with the decision of the High Court, the appellant appealed to this Court against both conviction and sentence on the following grounds:

1. *The learned trial Judge erred in law and fact when he held that the indictment was not bad for duplicity.*
2. *The learned trial Judge erred in law and fact to convict the appellant when the charges against her in the indictment had not been proved to the required standard.*
3. *The learned trial Judge's re-hearing of the fresh case against the appellant based on the same facts and evidence was not without bias on his part when he was already privy to the evidence and demeanor of the witnesses which was an error in law and fact.*
4. *The learned trial Judge erred in law and fact to pass a sentence of eight (8) years in count 1 and five (5) years on a charge under Section 3(a) of the prevention of Trafficking in Persons Act which sentences were excessive in the circumstances.*

Representation

At the hearing of this appeal, Mr. Mcdusman Kabega represented the appellant while Ms. Racheal Bikhole Principle State Attorney represented the respondent. At the commencement of the hearing, counsel for the appellant made an application under rule 67 (1) of the Judicature (Court of Appeal Rules) Directions to put in a supplementary memorandum of appeal, which was granted as there was no objection from counsel for the respondent. Counsel further sought leave of court to file written submissions, which was also granted.

Case for the appellant

On ground 1, counsel submitted that the learned trial Judge erred in law to hold that the indictment was not bad for duplicity. He contended that the indictment was framed contrary to section 3(a) and 5(a) of the PTPA. Section 3(1) (a) of the PTPA creates the offence of trafficking in persons. Counsel submitted further that the offence of trafficking in persons is completed if you engage in any one of the several acts listed in section 3 (a) of the PTPA which is the import of section 5(a) read together with section 3(a) in relation to a child, then the offence is complete.

In counsel's view when you transport by either means of abduction or deception, the offence is completed. He pointed out that under the PTPA, abduction is not defined but under section 241 of the Penal Code Act, it is defined thus;

> *"Any person who by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person."*

Counsel submitted that section 25 of the Trial on Indictment Act (TIA) spells out rules for framing of an indictment. The principle law that governs drafting of the charges is that the offence charged should be disclosed and stated in clear and unambiguous manner so that the accused may be able to plead to a specific charge that can be understood. Counsel referred to the authorities of ***Yozefu vs Uganda (1969) EA 236*** and ***Saini vs R (1974) EA 83*** to support his submission. He added that when a charge/indictment is duplex like in this case and an accused goes through a trial, the fairness of the process is fundamentally compromised because it will not be clear what the exact particulars are and as a result an accused person is not able to prepare his or her defense adequately. In his view, the learned trial Judge erred in finding that the indictment was not duplex simply because counsel for the appellant was willing to proceed with it as it was. Counsel prayed that this ground should succeed.

On the 2nd ground of appeal, counsel submitted that the trial Judge rightly spelt out the law relating to proof beyond reasonable doubt and the ingredients of the charges to be proved by the prosecution. However, he argued that in the instant case, there was no evidence of any threat or force or fraud, coercion or deception that was proved before court but instead there was evidence that the girls left their homes voluntarily. Counsel submitted that had the trial Judge considered all the evidence, he would have come to the conclusion that the victims

had not been abducted and that the evidence established doubt in the prosecution case which was never explained away. He urged this Court to allow this ground.

On ground 3, the appellant faults the trial Judge for re-hearing the case afresh based on the same facts and evidence which according to her counsel's arguments, comprised of bias as it compromised the principal of a fair trial. Counsel argued that in 2011, the appellant had been initially charged with the offences of trafficking in persons before Ezekiel Muhanguzi, J who heard all the prosecution witnesses and upon closure of the prosecution case also heard the a submission of no case to answer in which a preliminary point of law regarding the legality of the indictment and competence of the trial was raised. The trial Judge had allowed the prayer by counsel for the appellant to strike out the indictment and he subsequently discharged the appellant. However, the appellant was re-arrested and charged afresh with the same offences and tried before the same Judge and the same witnesses that had testified before him in the first trial were called and based on their evidence, the appellant was subsequently convicted after a full trial.

Counsel contended that it was wrong for the trial Judge to sit in judgment where he was already privy to the full prosecution evidence. He added that the Judge should have disqualified himself and his failure to do so was a fundamental constitutional breach of a right to a fair trial for which the proceedings must be declared an illegality and the appellant acquitted.

Ground 4 is on excessiveness of the sentences. Counsel submitted that under section 9 and the second schedule of, 'The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013' the court is required to ascertain whether there was brutality in the commission of the offence, what the motive of the offence was and whether the offender is remorseful. Counsel argued that the trial Judge did not make any reference to these three

important aspects of the sentencing process and neither was there a reference to the ordeal of the first trial which the appellant underwent. He added that during sentencing, the Judge only stated that he was considering the 20 months which the appellant had spent on remand, but he did not reflect that in the sentences. He submitted that had the trial Judge considered the above important aspects, he would have imposed lesser sentences.

In conclusion, counsel prayed that this Court allows the appeal and in the event, that it is disallowed, the sentences be reduced.

Case for the respondent

In response to ground one, counsel submitted that there was no duplicity whatsoever and without prejudice, to the foregoing, if at all there was any duplicity, it did not occasion a miscarriage of justice. She referred to the authority of ***Laban Koti vs R (1962) EA*** where court held that in deciding whether there is duplicity in a charge, the test is whether a failure of justice has occurred or the accused has been prejudiced. Counsel contended that counsel for the appellant did not show how, if at all, there was any failure of justice or how the appellant was prejudiced. She added that before taking plea, the appellant and her counsel were given ample time to examine the indictment and her counsel said she was ready to plead to it. She referred to the case of ***Uganda vs Amis (1970) EA 291***, where a submission that the charge was bad for duplicity was over ruled by the trial Judge and the appellant was convicted.

Counsel submitted that the acts of abduction and deception, transportation and transfer of victims in both counts 1 and 2 were all done in one transaction and related to a single incident and as such it is permissible to charge an appellant in one count in respect of those acts which ordinarily would each constitute an offence. She prayed that this ground fails.

On ground 2, counsel submitted that this ground of appeal is ambiguous and offends rule 66 of the Judicature (Court of Appeal Rules) Directions in as far as it is not concise and specific

and it should therefore be struck out. Without prejudice to the afore going, she submitted that the prosecution proved all the ingredients of the first and second count beyond reasonable doubt and the trial Judge properly evaluated the evidence on record and came to the correct decision.

On ground 3, counsel submitted that the trial Judge's re-hearing of the case afresh based on the same evidence was without bias. She argued that the issue of consent by the Attorney General relates to section 19 of the PTPA which makes it mandatory for proceedings involving extra-territorial jurisdiction to be instituted after obtaining the written consent of the Attorney General. She added that the trial Judge rightly found that prior to receiving that consent, he had no jurisdiction in the matter. Further that since the trial Judge had neither decided the case on merit nor delivered any ruling on a case to answer, it cannot be said that he was biased when handling this matter and that this did not take away his independence and impartiality. She relied on the case of ***Uganda Polybags Ltd vs Development Finance Co. (Ltd) and 3 others; SC Misc. Application No. 2/2000*** to support her submission. She contended that the appellant failed to prove beyond the required standard that the trial Judge acted with bias.

Regarding ground 4, counsel submitted that the sentences were appropriate and lenient given the fact that the offence of trafficking children is grave and attracts a maximum sentence of 15 years imprisonment with no option of a fine. She added that one of the victims was only 14 years at the time of commission of the offence and she even lost her chastity as a result of being forced into sexual intercourse and thereby got infected with a sexually transmitted disease. Further that the victims were also exploited by not being paid for the house chores they had performed and having been school going children, they dropped out of formal education as a result of trafficking. In counsel's view, basing on all these factors, the sentences imposed on the appellant were lenient.

In conclusion, she prayed that the appeal be dismissed for lack of merit, the conviction be upheld and the sentences confirmed.

Court's Consideration

The duty of the first appellate court is to evaluate and scrutinize the evidence afresh to enable it to come to its own independent conclusion/decision. *See: section 30 of the Judicature (Court of Appeal Rules) Directions;* ***Kifamunte Henry vs Uganda, SCCA 10/1997.***

On ground 1, the appellant faults the trial Judge for holding that the indictment was not bad for duplicity. 'Black's Law Dictionary 2nd Edition' defines duplicity as *"the technical fault, in pleading, of uniting two or more causes of action in one count in a writ, or two or more grounds of defense in one plea, or two or more breaches in a replication, or two or more offenses in the same count, of an indictment"*

Section 22 of the TIA provides for contents of indictment as follows;

> *"Every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."*

Section 23 (1) of the TIA provides for joinder of counts as follows;

> *"1. Any offences, whether felonies or misdemeanors, may be charged together in the same indictment if the offences charged are founded on the same facts or form or are a part of a series of offences of the same or a similar character.*
> *2. Where more than one offence is charged in an indictment, a description of each offence so charged shall be set out in a separate paragraph of the indictment called a count."*

The indictment against the appellant consisted of two counts, the first count was in respect of Mahirwe Angella aged 14 years and the offence was aggravated child trafficking contrary to

sections 3 (1) (a), 4 (a) and 5 (a) of the PTPA. The particulars were that the appellant during the month of October 2011 by means of abduction and deception, transported and transferred a child Mahirwe Angella aged 14 years from Kicukiro, Kigali, Rwanda to Rwentobo, Ntungamo District and Kampala District in Uganda for the purpose of exploiting her. The second count was in respect of Umbyeyi Phiona aged 16 years and the offence was also aggravated child trafficking contrary to sections 3 (1) (a), 4 (a) and 5 (a) of the PTPA. The particulars were that the appellant during the month of October 2011 by means of abduction and deception, transported and transferred a child Umbyeyi Phiona aged 16 years from Kicukiro, Kigali, Rwanda to Bweyogerere, Kampala, Uganda for the purpose of exploiting her.

Section 3 provides for offence of trafficking in persons and so far as it is relevant to this appeal, it states;

1. *A person who;*

   (a) recruits, transports, transfers, harbours or receives a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

   (b) .....

   commits an offence and is liable to imprisonment for fifteen years.

Meanwhile section 4 provides for aggravated trafficking in persons and in so far as it is relevant to this appeal, it states thus;

"A person commits the offence of aggravated trafficking where-

(a) the victim of trafficking is a child;

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) .....

And shall be liable to imprisonment for life."

Section 5 provides for trafficking in children and it is subsection (a) which is relevant. It provides thus:

"A person who—

a. does any act referred to under Section 3 in relation to a child;

b. .....

c. .....

d. .....

e. .....

f. .....

commits an offence of aggravated trafficking in children and may be liable to suffer death.

We must observe that there was a slight error in the statement of offence on both counts which should have read 'aggravated trafficking in children' as it is referred to in section 5 (a) and not 'aggravated child trafficking'. We say it is minor because the import of the two are the same and in our view no miscarriage of justice was occasioned to the appellant by that error.

Turning back to ground 1, at the trial court, counsel for the appellant in his final submission raised a preliminary point of law challenging the inclusion of the words, "abduction, and

deception and transported and transferred" in each count, contending that it was not permitted by law since each is and forms and should have formed a separate count as they all amounted to separate offences. He argued that under section 3 (1) (a) of the PTPA the use of the word "or" is an indication that more than one offence was created and therefore the words "abduction" and "deception", "transported" and "transferred" were four separate offences which should have been in four separate counts.

Counsel for the respondent in reply submitted that there was no duplicity in the indictment. He pointed out that the test to be applied in deciding whether there is duplicity in a charge sheet is whether a failure of justice has occurred or the accused has been prejudiced. She then relied on the decision in ***Uganda vs Amis [1970] E.A. 291*** where the objection by the defence that the charge was bad for duplicity was overruled by the trial Judge to support her argument that in this case the "abduction" and "deception", "transportation" and "transferring" all related to one single incident and therefore it was in order to include them in one count. As such, counsel added, there was no duplicity. The trial Judge considered the arguments of both counsel and ruled that there was no duplicity.

In arriving at that decision, the trial Judge at page 30 of his judgment found as follows;

> *I have carefully considered the submissions of both parties on this issue. It is true that when the case was called on for hearing in the morning of 10/9/2014 counsel for the defence had not had an opportunity to look at the indictment. Quite rightly, in my view, he sought and was granted an adjournment to be availed a copy of the indictment and seek instructions from the accused. Court directed the prosecution to avail defence counsel a copy of the indictment and evidence intended to be used at the trial. Court, in those circumstances, adjourned plea taking to the afternoon of that day at 2:30 pm. At 3:45 pm of that day and before the accused pleaded to the indictment Mr. Senkeezi; counsel for the accused then, stated:-*
>
> *"We are ready and willing to proceed with the indictment as it is."*

That was in response to court's prompting as to whether counsel had any issues relating to the indictment before his client, the accused, would be arraigned on the indictment. Counsel's response did not raise any issues such as duplicity or any others. That point in time was, in my view, the appropriate time to raise the issue of duplicity. He did not raise that or any other issue relating to the indictment.

Secondly, as submitted by counsel for the prosecution the test in determining duplicity in the charge is whether there was a failure of justice or the accused was prejudiced. Counsel for the accused has not shown how, if at all, there was any failure of justice or the accused was prejudiced. The accused was afforded, through defence counsel, an opportunity to look at and raise any issues or objections in relation to the charge (indictment) prior to taking plea by way of an adjournment from the morning to the afternoon on 10/9/2014. In the afternoon, prior to taking plea, court prompted defense counsel to raise, if he wished to, any issue or objections. Instead he stated that he was ready and willing to proceed with the indictment as it was. In such a situation I find and hold that there was no failure of justice and the accused was not in any way prejudiced. Following the case of ***Uganda V. Amis (supra)*** *it is permissible to charge an accused in one count in respect of acts which are stated in a way that shows separate actions done separately in one single transaction which constitutes an offence. For that reason the indictment would not be bad for duplicity. Accordingly, I find and hold that in the indictment before me there was no duplicity as the actions of abduction and deception, transportation and transfer of the victims in both count no.1 and no. 2 were all done in one transaction in this case as shown in the evidence on record."*

In this appeal, counsel contended that the finding by the trial Judge that the indictment was not duplex was erroneous. He added that the appellant needed to know whether she was accused of abduction using deceitful means or whether she was to defend herself against transferring by means of deception. Conversely, counsel for the respondent, submitted that the acts of abduction and deception, transportation and transfer of victims in both

counts 1 and 2 were all done in one transaction and related to a single incident and as such there was no duplicity.

We have perused the indictment and addressed our minds to the facts of this case as found by the trial Judge. We have also considered the evidence on record. We agree with the trial Judge that indeed the evidence on record showed that the actions of abduction and deception, transportation and transfer of the victims in both counts1 and 2 were all done in one transaction in this case. It therefore follows that all these elements needed to appear in the same count since they relate to the same offence. In the premises, we find no reason to fault the trail Judge for finding that there was no duplicity and we are not persuaded by the arguments of counsel for the appellant that the fairness of the trial process was fundamentally compromised by the alleged duplex indictment. On the contrary we find that no prejudice was occasioned to the appellant as it is clear from her evidence in defence that she understood the ingredients of the offence she was charged with and she defended herself on each of them.

We also note from the court record, just like the trial Judge did, that prior to taking plea, the appellant's counsel was given an opportunity to raise any objection regarding the indictment, if he wished to do so, but he opted to forfeit this opportunity and proceed with the indictment as it was. We are by no means suggesting that the appellant cannot raise an issue of illegality on appeal if his counsel did not do so at the trial because regardless of the views of defence counsel, court is duty bound to satisfy itself of the correctness or legality of the indictment before proceeding.

Be that as it may, we find that in the circumstances of this appeal, we cannot fault the trial Judge for reaching a conclusion based on the indictment on record, which as we have already found, was not duplex since the offence in both counts arose from the same chain of events. In the result, we do not find merit in this ground, it therefore fails.

On the second ground, the appellant faults the trial Judge for convicting the appellant when the charges against her in the indictment had not been proved to the required standard. The appellant was indicted for offences contrary to sections 3 (1) (a), 4 (a) and 5 (a) of the PTPA which provide for trafficking in persons, aggravated trafficking in persons and trafficking in children. The ingredients of the offence of trafficking in persons has 4 major aspects which the prosecution has to prove. These include:

1. *There should be recruiting, transporting, transferring, harboring or receiving of the victim.*
2. *It should be done by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.*
3. *For the purposes of exploitation.*
4. *The accused person participated in commission of the offence.*

On the other hand, the ingredients for the offence of trafficking in children comprises of all the above ingredients in addition to the fact that the victim must be a child.

To prove the first ingredient the prosecution adduced the evidence of PW5 Mahirwe Angella aged 14 years (the victim in count 1) who testified that she left home on 4/11/2011 and came with the appellant to Uganda. They used a car to Remera and a bus to Nyagatare where they used motorcycles through the jungles. They found a swamp which they crossed on foot and reached Uganda with motorcycles to Rwentobo. The prosecution also adduced the evidence of PW6 Umubyeyi Phiona who said she was aged 16 years (the victim in count 2) who also testified that the appellant took her from her home in Kigali to Rwentobo where they found PW5 and they were both brought to Kampala. Similarly, in her testimony at page 39 of the court record, the appellant admits to meeting the victims in Kigali and bringing them to Uganda

through Rwamatunguru in Ntugamo district but added that it was them who requested to visit her in Uganda during their holiday and as such they came voluntarily.

To prove the 2nd ingredient, the prosecution adduced the evidence of both PW5 and PW6 (the victims) who both testified that the appellant had promised them jobs in the supermarket where they would work and each earn Ushs. 100,000/= as salary but when they reached Uganda that was not the case. This, according to the prosecution, amounted to deception. Regarding the aspect of abduction, the prosecution adduced evidence of PW3, PW4, PW5, and PW6 to show that the victims left their homes without the consent of their parents.

To prove the ingredient of exploitation, the prosecution still adduced the evidence of the victims. PW5 testified that when she reached Uganda, she was engaged in babysitting the appellant's baby as well as doing other household chores without pay. PW6 testified that she moved from home to home doing household chores without pay. Both victims also testified that they were sexually abused which amounted to exploitation of their innocence.

To prove the ingredient of the victims being children, the prosecution adduced the evidence of PW1 Dr. Ndiwalana Benard, a pathologist working as a surgeon with the police who testified that on 22/12/2011 the two victims were taken to him by Corporal Kainza Beatrice for medical examination. From history, secondary characteristics and the dental formula of Muhaire Angella, he concluded that she was 14 years old. He tendered in medical examination report (P. Exhibit 1) which indicated that the victim was below 18 years. PW4 Mukamugarura Olivia, the victim's mother also testified that she was 14 years old. However, regarding Umubyeyi Phiona, PW1 indicated that she was possibly 16 years or above and she herself testified that she was 16 years at the time she was brought to Uganda. Her mother, Furaha Mirriam (PW3) on the other hand testified that she gave birth to Umubyeyi Phiona in 1992 which means in 2011 when the offence is alleged to have been committed she was 19 years old and as such not a child.

Based on the above pieces of evidence, the trial Judge found that the prosecution had proved beyond reasonable doubt that Muhaire Angella was a child but had failed to do so with Umubyeyi Phiona who he found not to be below 18 years old.

Regarding the appellant's participation, the appellant herself conceded to the fact that she brought the victims to Uganda. She however contended that the victims were the ones who had said they would call her and come to Uganda to visit her during their holiday and it was actually them who kept calling and telling her that they were ready to come and that is why she told them to come and meet her in Kigali from where they would travel to Uganda. She said she took both victims straight to her home in Bweyogerere where they stayed for 2 to 3 weeks then she was arrested and they were taken away by the police. In other words, it was the appellant's case that both victims initiated their coming to Uganda with her and they willingly did so. She also denied promising the girls any job or even making any payment arrangement with them just as she denied knowledge of their sexual exploitation. In effect, apart from transporting the victims from Kigali to her home in Bweyogerere, Uganda which she conceded, the appellant denied the rest of the ingredients of the offence.

In his evaluation of the evidence, the trial Judge found that all the ingredients of the offence of aggravated trafficking of children had been proved by the prosecution beyond reasonable doubt in count 1. However, in count 2, the trial Judge found that the ingredient of age had not been proved and as such he acquitted the appellant of the offence of aggravated child trafficking in that count and instead found her guilty of the offence of trafficking in persons contrary to section 3 (a) of the PTPM, whose ingredients he found to have all been proved.

Having re-evaluated the evidence on record ourselves, we agree with the trial Judge's findings and conclusion. As regards the arguments that there was no evidence of any threat or force or fraud, coercion or deception that was proved before court but instead there was

evidence that the girls left their homes voluntarily, we wish to refer to section 3 (3) of the PTPM as relates to count 1 in respect of Muhaire Angella. It provides thus;

> (3): *"The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall constitute "trafficking in person" even if this does not involve any of the means set forth in subsection 1 of this section."*

To our minds the import of this provision is that there need not be any threat or use of force or other form of coercion or any of the other means listed in section 3 (1) for the offence of trafficking in person to be proved against a person who is alleged to have trafficked a child. All that needs to be shown is that the person recruited, transported, transferred, harboured or received a child for the purpose of exploitation and that would constitute the offence of trafficking in person.

In the instant appeal, recruitment, transportation, transfer and harbouring of both victims was proved beyond reasonable doubt and in addition it was also proved beyond reasonable doubt that it was by means of deception of providing them with a salaried job in a supermarket. For the case of the victim in count 1 who was a child this additional proof of the means used was not even necessary under section 3 (3) of the PTPM.

We wish to observe that the contention that both victims left their homes voluntarily is not helpful to the appellant in light of section 3 (4) which provides that the consent of the victim of trafficking or if a child, the consent of his or her parents or guardian to the act of exploitation shall not be relevant.

For the above reasons, we do not find merit in the arguments of counsel for the appellant on this ground and it thus fails.

The 3rd ground relates to the learned trial Judge's re-hearing of the fresh case against the appellant based on the same facts and evidence when he was already privy to the evidence and demeanor of the witnesses, which, according to the appellant was done with bias on his part and was an error in law and fact.

We note from the court record that after the prosecution had led evidence of nine witnesses and closed its case, counsel for the appellant then, Mr. Kunya Henry made submissions on a no case to answer in which he also raised an issue in the form of a preliminary point of law. The issue was based on section 19 of the PTPM which requires the prosecution to secure written consent of the Attorney General to institute proceedings under it. The trial Judge accepted his submission and discontinued the then ongoing proceedings. He directed that if the State was still interested in pursuing the case, it had to secure the necessary consent from the Attorney General so as to institute proceedings de novo.

On 10/9/2014, the prosecution availed on record an indictment with the consent of the Attorney General and fresh proceedings were commenced before the same trial Judge, Muhanguzi J (as he then was) and a full trial was conducted.

With this background, we observe that in the first proceedings, the trial Judge had only heard the evidence of the 9 prosecution witnesses and he had neither delivered a ruling on a case to answer nor heard the defence case. In the subsequent proceedings, the same prosecution evidence was adduced and the trial Judge made a finding that a prima-facie case had been made against the appellant whereupon she gave her evidence in defence and also called her husband as the 2nd defence witness. Having evaluated the evidence of both the prosecution and defence, the trial Judge reached a conclusion that is already discussed above and he convicted the appellant.

The appellant contends that the trial Judge's hearing of the case afresh after he had already heard all the 9 prosecution witnesses in the ill-fated trial was not without bias on his part.

Article 28(1) of the Constitution enjoins courts of law to administer justice with impartiality, that is, without bias.

Black's law dictionary 2nd edition defines bias as a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction.

In the case of ***GM Combined Ltd vs AK Detergents (U) Ltd; Supreme Court Civil Appeal No. 19 of 1998*** in which the case of ***Exparte Barnsley and District Licensed Valuers Association (1960) 2 QBJ 169***, was cited with approval, Oder JSC (RIP) set out the test to be applied in determining whether a Judicial Officer is biased as follows:

> *"In considering whether there was a real likelihood of bias; the court does not look at the mind of the justice himself or at the mind of the Chairman of the tribunal or whoever it may be who sits in a judicial capacity, it does not look to see if there was a real likelihood that he would or did, in fact favor one side at the expense of the other. The court looks at the impression which he would give to other people. Even if he was impartial as could be, on his part, then he should not sit. And if he does sit, his decision cannot stand. Never the less there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable man would think it likely or probable that the justice or chairman as the case may be would think it likely or probable that the court will not inquire whether he did in fact favor one side unfairly. Suffice is that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right minded people go away thinking: The Judge was biased."*

The Constitutional Court of South Africa in the case of ***The President of the Republic & 2 Others vs South African Rugby Football Union & 3 Others,*** **(Case CCT 16/98)** cited in ***Meera Investments Ltd vs Commissioner General, URA; CACA No. 15 of 2007*** held as follows;

"There is unfortunate tendency for decisions of court with which there is disagreement to be attacked by impugning the integrity of the judges, rather than by examining the reasons for the judgment. Decisions of our courts are not immune from criticism. ....Judicial officers are nonetheless required to administer justice to all persons alike without fear, favour or prejudice in accordance with the constitution and the law. To this end they must resist all manner of pressure, regardless of where it comes. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the judiciary would be undermined and in turn the constitution itself."

We note from the court record that the appellant's counsel proceeded with the subsequent proceedings before the same Judge without raising the issue of a likelihood of bias. In our view, had this been an issue, the appellant's counsel should have requested the trial Judge to recuse himself from hearing the matter, at the earliest opportunity before commencement. This view is fortified by the decision of the East African Court of Justice in ***Attorney General of the Republic of Kenya vs Prof Anyang' Nyogo & 10 Others, Application No.5 of 2007,*** in which the court held as follows:

"From the authorities we have consulted, the prevalent view, with which we agree, is that a litigant seeking disqualification of a judge from sitting on the ground of appearance of bias must raise the objection at the earliest opportunity. The Court of Appeal of Kenya in Ole Keiwua vs Chief Justice of Kenya & 6 Others, 2006 KLR, expressed the same view thus:-

> *'We appreciate the fact that a party to any judicial proceedings has a right to object to any judge or judicial officer sitting if he or she has a good reason for raising such objection. However, whoever intends to raise such objection is obliged to raise his objection at the earliest opportunity.'*

We respectfully agree that a litigant who has knowledge of the facts that give rise to apprehension of possibility of bias ought not to be permitted to keep his objection up the sleeve until he finds out that he has not succeeded. The court must guard against litigants who all too often blame their losses in court cases to bias on the part of the judge."

As we have earlier noted, the matter had not yet been finally decided by the trial Judge in the first proceedings. We have failed to appreciate how the trial Judge could have been biased against the appellant merely by the fact that he had earlier heard the same prosecution evidence in the first trial that was ended prematurely due to the failure by the prosecution to comply with a mandatory statutory requirement. The fact that the trial Judge had already heard the prosecution evidence, in our view, did not propagate any preconceived negativity against the appellant and neither did it affect his impartiality in deciding the case. To our minds, we find that the allegations of a likelihood of bias was belatedly raised as an afterthought, the appellant having lost the case. We therefore do not accept the submission of the appellant's counsel on this ground and in the premises, this ground fails.

On the last ground regarding the sentences imposed on the appellant, it is contended that the sentence of 5 years imprisonment for the offence of trafficking in persons and 8 years imprisonment for the offence of aggravated trafficking in children is manifestly excessive.

It is trite law that an appellate court can only interfere with the sentence of the trial court if the sentence is either illegal, or is based upon a wrong principle, or the court has overlooked a material factor, or if the sentence is harsh or manifestly excessive. ***See Ogalo S/o Owora vs R (1954) 24 E.A.C.A 270; Jackson Zita vs Uganda Cr. App. No.19 of 1995; Kizito Senkula vs Uganda Cr. Appeal No. 24 of 2001 (SC); Kiwalabye Bernard vs Uganda Cr. App. No. 143 of 2003 and Nalongo Naziwa Josephine vs Uganda Cr. App. No. 088 of 2009 (CA).*** It should be noted that the offence of aggravated trafficking in children carries a maximum sentence of death whereas the offence of trafficking in persons carries a maximum sentence

of 15 years imprisonment. However, in the exercise of his discretion, having taken into consideration the period of 20 months which the appellant had spent on remand as well as the mitigating and aggravating factors, the trial Judge sentenced the appellant as we have indicated herein above. We find the sentences to be lenient in the circumstances of this case and not excessive as submitted by the appellant. In the premises, we do not find any reason to interfere with the trial Judge's discretion. This ground also fails.

On the whole, we do not find any merit in this appeal and we accordingly dismiss it.

We so order.

Dated at **Kampala** this .....13th.....day of .....June.....2019

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Hellen Obura

JUSTICE OF APPEAL

.....

Stephen Musota

JUSTICE OF APPEAL

.....

Percy Tuhaise

JUSTICE OF APPEAL