

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT MASAKA**  
**CRIMINAL APPEAL NO. 055 OF 2015**

**KAGGWA JOHN SENYONDO.....APPELLANT**

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**VERSUS**

**UGANDA.....RESPONDENT**

*(Appeal against sentence of the High Court at Masaka in Criminal Session Case No. 0112 of 2011 before Margaret Oguli Oumo, J dated 30/1/2015)*

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**Coram:     Hon. Lady Justice Elizabeth Musoke, JA**  
**Hon. Mr. Justice Ezekiel Muhanguzi, JA**  
**Hon. Mr. Justice Remmy Kasule, Ag. JA**

**JUDGMENT OF THE COURT**

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**Introduction**

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This is a first appeal against the decision of the High Court of Uganda at Masaka delivered on 30<sup>th</sup> January, 2015 wherein Oumo Oguli, J. convicted the appellant of the offence of Rape contrary to sections 123 & 124 of the Penal Code Act, Cap.120 and sentenced him to 35 years imprisonment.

**Brief background**

The facts giving rise to this appeal as accepted by the learned trial Judge are that the appellant and the victim were close neighbours and on the night of 28<sup>th</sup> April, 2011 at Kyesiiga Village in Masaka District the



25 appellant hit the victim's door until it broke. Upon gaining entry, the  
appellant demanded for sexual intercourse with the victim and  
threatened to strangle her if she made an alarm. At the time, it was  
raining and the victim who was weak let the appellant do whatever he  
wanted to her for almost an hour. He later warned her not to reveal it to  
30 anybody while brandishing a knife. Upon realizing that the appellant had  
left, the victim ran to the home of the chairman and reported the matter  
whereupon the matter was reported to police and the appellant was  
arrested and charged with rape. The appellant's defence was one of total  
denial. However, the learned trial Judge believed the prosecution case  
35 and accordingly convicted the appellant.

Being dissatisfied with the said decision of the High Court and having  
been granted leave under section 132 (1) (b) of the Trial on Indictments  
Act, Cap. 23 and Rule 43 (3) (a) of the Rules of this Court, the appellant  
appealed to this court against sentence only on the following grounds:-

- 40 **1. The learned trial Judge erred in law and fact when she sentenced the  
appellant without considering the mitigating factors.**
- 2. The sentence of 35 years was manifestly harsh and excessive in the  
circumstances of the case.**

### **Representation**

45 The appellant was represented by learned counsel Ms. Regina Tronera  
Babukiika, on state brief; while the respondent was represented by Mr.  
Ivan Nkwasiwe, learned Senior State Attorney. The appellant was in  
court.

### **Submissions for the appellant**

50 At the commencement of this appeal, with leave of court, counsel  
abandoned ground one and submitted only on the second ground.

55 Counsel argued that the sentence of 35 years imprisonment meted out to the appellant was harsh for the offence of rape considering the sentencing range of the same offence in similar cases decided by this Court and the Supreme Court.

She relied on **Otema David v Uganda**, Court of Appeal Criminal Appeal No. 155 of 2008 and **Bizimana Jean Claude v Uganda**, Court of Appeal Criminal Appeal No. 143 of 2010 and asked court to reduce the sentence of 35 years imprisonment to 18 years imprisonment.

#### 60 **Submissions for the respondent**

The learned Senior State Attorney did not oppose the appeal. He conceded that the sentence of 35 years imprisonment was harsh considering the range of sentences by this Court for the same offence.

65 He also agreed to the prayer made by counsel for the appellant that the sentence of 35 years imprisonment be reduced to 18 years imprisonment.

#### **Consideration by court**

70 We have considered the submissions of counsel on each side, perused the court record and considered the law and authorities cited to us, and those not cited, but relevant to the resolution of this appeal.

We are alive to the duty of this court as a first appellate court to re-appraise all the evidence and to come up with our own inferences. See: **Rule 30(1) of the Rules of this Court** and **Kifamunte Henry v Uganda, Supreme Court Criminal Appeal No. 10 of 1997**, where the Supreme  
75 Court stated that:-

***“The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it.”***



80 The principles upon which an appellate court should interfere with the sentence imposed by the trial court were considered in ***Kiwalabye Bernard v Uganda, Supreme Court Criminal Appeal No. 143 of 2001***, the court had this to say:-

85 ***“The appellate court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle.”***  
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See also: ***Livingstone Kakooza v Uganda, Supreme Court Criminal Appeal No. 17 of 1993*** and ***Kyalimpa Edward v Uganda, Supreme Court Criminal Appeal No. 10 of 1995***.

95 While passing sentence on pages 78, 79 and 80 of the record of appeal, the learned trial Judge stated as follows:-

***“The convict is a repeated (sic) offender, having previously been convicted of attempted defilement of his own daughter in 2005, whereby he was sentenced to 6 months imprisonment and was released on 21/3/2006.***

100 ***The offence with which he was convicted now carries a maximum sentence of death on conviction.***

***Sexual offences are rampant in this jurisdiction and affects the women psychologically, as it violated their privacy and bodily integrity and their ability to enjoy their status in society. They also suffered trauma. More over which affects them throughout their lives.***

105 ***In mitigation the accused asked for forgiveness and pledged not to do it again.***

*Although he claimed he was remorseful, after it is suspected that after serving a serious sentence for another sexual offence, the accused seems not to have learnt a lesson.*

110 *The last time, he attempted to defile his own daughter and this time, his own relative who is supposed to be his aunt; which act is despicable in culture and civilized societies.*

*The accused needs a deterrent sentence that will enable him to be rehabilitated so that, he can come and be able to fit into society.*

115 *Since the offence he committed is a capital offence which carries a maximum sentence of death,*

*I sentence him to thirty five (35) years imprisonment taking into account the 3 years he has so far spent on remand."*

We bear in mind the need to maintain consistency and uniformity in  
120 sentencing. The sentencing range for the offence of rape under the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, is stated to be 30 years up to death. This Court and the Supreme Court have imposed lesser sentences for the offence of rape in cases of similar circumstances as in the instant case.

125 In ***Umar Sebidde v. Uganda, Supreme Court Criminal Appeal No. 23 of 2001***, the Supreme Court reduced a sentence of 11 years for the offence of rape upheld by this court to a sentence of 8 years.

In ***Kalibobo Jackson v. Uganda, Criminal Appeal No. 45 of 2001***, this  
130 court allowed the appeal against sentence in respect of the offence of rape for being manifestly harsh and excessive. The sentence of 17 years was reduced to 7 years imprisonment.

This court in ***Ssebandeke Ronald v Uganda, Criminal Appeal No. 128 of 2013***, upheld a sentence of 13 years imprisonment for the offence of

135 rape and stated that it was within the range of sentences for the offence of rape.

In ***Naturinda Thampson V. Uganda, Supreme Court Criminal Appeal No. 025 of 2015***, a sentence of 18 years imprisonment for the offence of rape was substituted with a sentence of 10 years imprisonment by this court and confirmed by the Supreme Court.

140 In the circumstances, we find 35 years imprisonment harsh and excessive in this case considering the sentencing range of the offence of rape in the above cited cases decided by this Court and the Supreme Court. Both counsel proposed a sentence of 18 years imprisonment given the fact that the appellant was a repeat offender.

145 We therefore invoke section 11 of the Judicature Act, and substitute the same with a sentence of 18 years imprisonment.

In line with article 23(8) of the constitution, we deduct a period of 3 years, the appellant spent in pre-trial detention. He shall now serve a term of 15 years imprisonment to run from 30/1/2015 when he was  
150 convicted. It is so ordered.

Dated at Masaka this.....9<sup>th</sup>.....day of.....Dec.....2019.



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**Elizabeth Musoke**  
**Justice of Appeal**

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**Ezekiel Muhanguzi**  
**Justice of Appeal**

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**Remmy Kasule**  
**Ag. Justice of Appeal**