

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA, AT JINJA**  
**CRIMINAL APPEAL NO. 63 OF 2013**

5 **MUTEKANGA MEDI:..... APPELLANT**

**VERSUS**

**UGANDA :..... RESPONDENT**

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**CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA**  
**HON. JUSTICE STEPHEN MUSOTA, JA**  
**HON. LADY JUSTICE PERCY NIGHT TUHAISE, JA**

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**JUDGMENT OF COURT**

The appellant was indicted, tried and convicted of the offence of Rape contrary to sections 123 and 124 of the Penal Code Act and sentenced to 25 years imprisonment.

**Background**

20 On the 3<sup>rd</sup> day of March, 2010, the victim together with her husband went to the appellant, a traditional healer who had earlier informed them that they were bewitched. When they reached there, the appellant asked her husband to bring one goat, a sheep and cash shs, 100,000/= (One hundred thousand shillings) but instructed him  
25 to leave the victim behind. Soon after her husband had left for the said items, the appellant took the victim to the shrine. In that shrine, there was a curtain and something talked from behind that curtain that the victim should have sex with the appellant. The appellant then told the victim that that was the *Mayembe* insisting that she  
30 must have sex with him.

Later, the appellant took the victim behind the curtain and forcefully removed her nicker which got torn in the process and they had sexual intercourse with the victim.

5 The following day the victim's husband came back but he had failed to get the items asked of him. The appellant asked the husband to leave the phone in lieu.

10 When the victim reached home, she developed stomach pain. Her husband took her for treatment and it was from the hospital that she revealed to the nurses that she had been raped by the appellant but had feared to inform her husband.

The appellant filed this appeal against sentence only on a sole ground that;

1. The sentence of 25 years meted onto the appellant by the trial Judge was harsh and excessive in the circumstances.

## 15 **Representation**

At the hearing of the appeal, Mr. Chris Munyamasoko appeared for the appellant on state brief while Mr. David Ndamurani Ateenyi (Senior Assistant DPP) appeared for the respondent.

## **Submissions of the appellant**

20 Counsel submitted that the appellant, in mitigation, apologized for what he had done and was remorseful. He was 39 years at the time he was convicted and still has time to reform. Counsel prayed for a sentence of 15 years considering the 3 years spent on remand. Counsel relied on the case of **Ogwal Alberto vs. Uganda Criminal**  
25 **Appeal No. 46 of 2010** in which court reduced the life sentence to 16 years in a conviction of murder.

## **Submissions of the respondent**

In reply, counsel submitted that the offense of rape for which the appellant was convicted attracts a maximum sentence of death and

as such, the 25 year sentence meted on the appellant was lenient in the circumstances. The victim in this case was a patient and had gone to seek for a cure for her illness from the appellant. That the victim went through further trauma when she actually lost her marriage as a result of the rape incident.

### **Consideration of the appeal**

Whereas this appeal is against sentence only, we must note that this is a first appeal and the duty of this Court as a first appellate court is to re-evaluate the evidence, weighing conflicting evidence, and reach its own conclusion on the evidence, bearing in mind that it did not see the witnesses testify. (See **Pandya v R [1957] EA p.336 and Kifamunte v Uganda Supreme Court Criminal Appeal No. 10 of 1997 and COA Criminal Appeal No. 39 of 1996**. In the latter case, the Supreme Court held that;

*“We agree that on a first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court’s own consideration and views of the evidence as a whole and its own decision thereon. 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.”*

We have kept these principles and the submissions of both counsel in mind in resolving this appeal.

### **Review of sentence**

An appellate court should not interfere with the discretion of a trial court in the determination of a sentence imposed by that trial court unless that trial court acted on a wrong principle or overlooked a material factor or the sentence is illegal or manifestly excessive. (See

**Kyalimpa Edward v. Uganda SCCA No. 10 of 1995 and Kyewalabye Bernard v. Uganda Criminal Appeal No. 143 of 2001(S.C).**

5 The appellant's Counsel submitted that the sentence was harsh and excessive in the circumstances. The appellant was found guilty of Rape. The maximum penalty for this offence is death. It is established law and practice that punishment for an offence is meant to be retribution as well as a deterrent. It is also meant to rehabilitate the offender. The sentencing Judge should ideally take into account  
10 the aggravating factors and the mitigating factors before sentencing. The trial Judge, while sentencing the appellant, considered the mitigating factors that the appellant was a first offender who had been on remand for a long time and was sorry for what he did. On aggravating side, the trial Judge considered that the offence of raping  
15 a woman who had put trust in him as a traditional healer was a serious offence. Instead of giving her drugs to heal her, he had sex with her. After thinking that he had softened her, the appellant went for a second round and such tricks are common with traditional healers. As such, these crude behaviours must be discouraged and a  
20 deterrent sentence imposed.

The appellant was apologetic for what he had done. He was a youth who was capable of reforming. Having taken into account both mitigating and aggravating factors, and having considered the period  
25 spent on remand, we are of the considered view that the sentence of 25 years was harsh and excessive. We therefore set aside the 25 year sentence and substitute it with a sentence of 15 year's imprisonment from the date of conviction of 25<sup>th</sup> May, 2013. This is after we have taken into account the 3 years spent on remand. The appeal is therefore allowed.

30 We so order

Dated this 17<sup>th</sup> Day of July, 2019

