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The appellant, Musisi John was indicted with the offence of Aggravated Defilement contrary to **Section 129 (3) and (4) of the Penal Code Act**. He pleaded guilty to the charge and was convicted on his own plea of guilty. He was sentenced to 20 years imprisonment by Justice Faith Mwendha, J, as she then was.

The facts as accepted by the trial Judge were that on the 11<sup>th</sup> day of June 2009, the appellant had unlawful sexual intercourse with Namukwaya Agnes, a girl aged 2 years and 6 months. On the fateful day, the victim's mother, Namagembe Getrude, left her 2 children at home when she went to visit her neighbour, who had passed on. Before she reached home, she found the appellant carrying the victim on his thighs while naked.

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5 Being aggrieved by the decision of the trial Court, the appellant, with leave of Court under **section 132 (1) (b) of the Trial on Indictments Act** appealed against sentence only on the following ground: -

10 “The learned trial Judge erred in law and fact when she subjected the appellant to a sentence that was harsh and manifestly excessive in the circumstances of the case.”

### **Legal Representation**

At the hearing, Mr. Mutange Ian Derrick represented the appellant on State brief while the respondent was represented by Ms. Sharifah Nalwanga, a Chief State Attorney. Due to the COVID-19 pandemic restrictions, the appellant was not physically present in Court but attended the proceedings via video link using Zoom technology from Prisons. The written submissions filed by both counsel were adopted.

### **Submissions of Counsel**

20 Counsel for the appellant submitted that the learned trial Judge erred in law and fact when she subjected the appellant to a sentence that was harsh and manifestly excessive in the circumstances of the case. He relied on the case of *Owinyi William vs. Uganda, Criminal Appeal No. 142 of 2010*.

Counsel argued that the trial Judge ought to have considered previous cases and precedents in imposing a sentence in order to ensure consistency in sentencing of cases with similar circumstances following **Paragraph 6 (c) of the Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013**. He contended that the trial Judge in the instant case merely imposed a sentence of 20 years without considering any previous judicial precedents. He cited the case of *Mbunya Godfrey vs. Uganda, Supreme Court Criminal Appeal No.004 of 2011*.

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5 Counsel further referred Court to the cases of *Owinyi William (Supra)*, *Jackson Zita vs. Uganda*, *Jackson Zita vs. Uganda, Supreme Court Criminal Appeal No. 19 of 1995*, *P. Akol vs. Uganda, Supreme Court Criminal Appeal No. 023 of 1994*, *German Benjamin vs. Uganda, Court of Appeal Criminal Appeal No. 142 of 2010*, in which  
10 Court sentenced the appellants to sentences ranging between 7 to 15 years imprisonment. He added that the above precedents observed that the offence of aggravated defilement attracts a sentence usually not exceeding 15 years subject to the peculiar facts of the case.

Counsel prayed that Court considers that the appellant was at a youthful age, a first offender, pleaded guilty, was remorseful and had family responsibilities. He prayed that  
15 Court applies the principle of uniformity of sentences and finds that the sentence of 20 years imprisonment was harsh and excessive in the circumstances. He prayed that the sentence be reduced to a sentence of 15 years imprisonment.

On the other hand, counsel for the respondent submitted that the trial Judge was right in both law and fact when she sentenced the appellant to a sentence of 20 years. She argued  
20 that the said sentence was not harsh or excessive.

Counsel noted that the trial Judge considered the fact that the appellant was a first offender who had been on remand since 2009 and rightly used her discretion to sentence the appellant to 20 years imprisonment. She argued that Court in consideration of the mitigating factors, did not leave out any material factor while sentencing.

25 She contended that, considering the fact that the starting point in sentencing for the offence of aggravated defilement is 35 years and the maximum penalty being death, the trial Judge exercised leniency when she sentenced the appellant to only 20 years imprisonment.

Counsel relied on the cases of *Opio Moses vs. Uganda, Court of Appeal Criminal Appeal No. 118 of 2010*, *Kobusheshe vs. Uganda, Court of Appeal Criminal Appeal*  
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5 *No. 110 of 2008 and Kavuma George vs. Uganda, Court of Appeal Criminal Appeal No. 900 of 2014*, to support her arguments.

She prayed that Court upholds the sentence of 20 years imprisonment.

### Consideration by the Court

10 The appeal is in respect of sentence. We have considered the Law governing interference with Sentence by an appellate Court as set down by the Supreme Court in the case of *Kyalimpa Edward versus Uganda, Criminal Appeal No. 10 of 1995* where Court referred to *R v Haviland (1983) 5 Cr. App. R(s) 109* and held as follows:

15 *“An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice: Ogalo s/o Owoura Vs R. (1954) 21 E.A.C.A 126.” 21 EAC.A.270 And R.V Mohamedali Jamal (1948) 20 15 E.A.C.A 126.”*

We are also guided by the case of *Kamya Johnson Wavamuno vs Uganda, Supreme Court Criminal Appeal No. 16/2000* in which court held:-

25 *“It is well settled that the Court of Appeal will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or failure to take into account a material consideration, or an error in principle was made. It is not sufficient that the members of the Court would have exercised their discretion differently.”*

In the instant case, the trial Judge while sentencing stated as follows:-

30 *“The convict is a first offender who pleaded guilty at his own initiative. He has been on remand since 2009. Taking the above into account, he is sentenced to 20 years imprisonment, taking into account the fact the maximum sentence is death.”*



5 From the above, it is clear that the trial Judge took into account both the aggravating and mitigating factors while sentencing.

The trial Judge rightly used her discretion and sentenced the appellant to 20 years imprisonment upon consideration of the period the appellant spent on remand.

10 This Court in *Criminal Appeal No.341 of 2010, Okunyu Tom vs. Uganda*, sentenced the appellant, who defiled his biological daughter to 20 years imprisonment for the offence of aggravated defilement and only reduced it to 18 years upon consideration of the period spent on remand.

15 Similarly, in the case of *Apiku Ensio vs. Uganda, Court of Appeal Criminal Appeal No. 751 of 2015*, the appellant was sentenced to 25 years imprisonment by the trial Court for the offence of aggravated defilement. The Court of Appeal set aside the sentence and substituted it with a sentence of 20 years imprisonment from which the period spent on remand was deducted and the appellant was left with 17 years to serve.

20 As a result, we find that the 20 years imprisonment sentence was not illegal nor based on wrong principles and neither was it manifestly harsh nor excessive given the circumstances of this case.

We find no reason to interfere with it. The sentence was given in accordance with the law and due consideration of the circumstances of the case.

We therefore uphold the sentence and dismiss the appeal.

25 Dated at Kampala this .....22<sup>nd</sup>..... day of.....Dec.....2021

.....*Richard Buteera*.....

**RICHARD BUTEERA**  
DEPUTY CHIEF JUSTICE

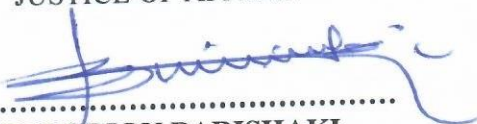
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**ELIZABETH MUSOKE**  
JUSTICE OF APPEAL

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**CHEBORION BARISHAKI**  
JUSTICE OF APPEAL

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