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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
*[Coram: Richard Buteera, DCJ; Cheborion Barishaki, JA and Muzamiru*  
*Mutangula Kibeedi, JA]*

**CRIMINAL APPEAL NO. 074 OF 2010**

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**SENOGA FRANK:.....APPELLANT**  
**VERSUS**

**UGANDA:.....RESPONDENT**  
*(Arising from the decision of the High Court by Elizabeth Ibanda Nahamya, J in High Court*  
*Criminal case No.83 of 2010, dated the 7<sup>th</sup> day of May 2010)*

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**JUDGMENT OF THE COURT**

20 **Introduction**

The appellant, Senoga Frank was indicted with the offence of Aggravated Defilement contrary to **Section 129 (3) and (4) (a) of the Penal Code Act**. He was convicted and sentenced to **30 years imprisonment** by Elizabeth Ibanda Nahamya, J.

25 **Background**

The facts as ascertained from the Court record are that during the month of January 2009, at Buzaami village in Mpigi District, the appellant performed unlawful sexual intercourse with Nalubwama Nakigozi, a girl under the age of 14 years. The victim was 10 years old and the appellant was 40 years old.

30 Nalubwama Nakigozi (the victim) was living with his uncle (the appellant). The victim was seen limping and had a foul smell which prompted Terulaga Edith (PW2) and Jjemba Emmanuel (PW3) to interrogate the victim. The victim revealed that the appellant was sexually abusing her every night and that he threatened to kill her if she told anyone.

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5 PW2 and PW3 reported the matter to the Police who arrested the appellant on 29<sup>th</sup> January 2009. When the victim was examined, it was confirmed that she had been defiled as there was inflammation around her vagina and a ruptured hymen.

The appellant was charged, tried and convicted for the offence of Aggravated Defilement. He was sentenced to 30 years imprisonment.

10 Being aggrieved by the decision of the trial Court, the appellant with leave of Court appealed against sentence only on the following ground:-

**The learned trial Judge erred in law and fact when she subjected the appellant to a sentence that was harsh, manifestly excessive and inconsistent with previous judicial precedents.**

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#### **Legal representation**

At the hearing, Mr. Hamza Sewankambo appeared for the appellant on State brief while Mr. Edward Muhumuza, Chief State Attorney appeared for the respondent. Due to the COVID-19 pandemic restrictions, the appellant was not physically present in Court but  
20 attended the proceedings via video link using Zoom technology from Prisons.

Both counsel filed and adopted their written submissions.

#### **Submissions of Counsel**

Counsel for the appellant submitted that the learned trial Judge erred in law and fact  
25 when she subjected the appellant to a sentence that was harsh, manifestly excessive and inconsistent with previous judicial precedents.

Counsel contended that there is need for Court to consider previous cases and precedents to ensure consistency in sentencing of cases with similar circumstances. He argued that the trial Judge did not consider previous Judicial precedents the while sentencing the  
30 appellant. He relied on *Mbunya Godfrey vs. Uganda, Supreme Court Criminal Appeal*





5 *No. 004 of 2011, and 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.*

He argued that the cited precedents consistently observed that the offence of aggravated defilement attracts a sentence usually not exceeding 15 years subject to the  
10 circumstances of each case.

Counsel prayed that Court considers the fact that the appellant was a youthful first offender with a family of 7 children and a wife and finds that the sentence of 30 years' imprisonment was harsh and excessive and inconsistent with the previous precedents. He prayed that the sentence be reduced to a sentence of 15 years.

15 Counsel for the respondent, on the other hand, submitted that the sentence of 30 years was justifiable considering the circumstances of this case. He averred that the it is trite law that the trial Judge enjoys sentencing discretion and an appellate Court will not interfere with such sentence unless it is evident that the trial Judge has acted upon some wrong principle or over looked some material factor or that the sentence is harsh and  
20 manifestly excessive in view of the circumstances of the case.

He submitted that interfering with the sentence is not a matter of emotions but rather one of law. Counsel argued that unless it can be proved that the trial Judge flouted any of the principles in sentencing, the appellate Court would not set aside a sentence even though the Justices think they would have given a different sentence. See: *Ogalo s/o*  
25 *Owousa v. R [1959] 24 EACA 270.*

Counsel noted that the sentencing range for cases of aggravated defilement is 30 years upto death. He submitted that the trial Judge while sentencing considered both the aggravating and mitigating factors while sentencing the appellant. That the trial Judge, however, found that the appellant's actions deserved a deterrent sentence which would  
30 keep him away from defiling other young girls.

5 He relied on the case of *Musajjawaza Vincent vs. Uganda, Court of Appeal Criminal Appeal No. 366 of 2014*, where a victim aged 13 years was repeatedly defiled by her father and was sentenced to life imprisonment by the trial Court but the sentence was substituted with 27 years imprisonment by the Court of Appeal. Counsel argued that if the victim in *Musajjawaza (Supra)* was 10 years old, like in the instant case, this Court  
10 would have confirmed the sentence of 30 years' imprisonment.

As regards the issue on consistency in sentencing, counsel relied on the cases of *Katureebe Boaz & anor vs. Uganda, Supreme Court Criminal Appeal No. 066 of 2011* and *Biryomumisho Alex vs. Uganda, Court of Appeal Criminal Appeal No. 464 of 2016* and noted that there are no identical crimes as each crime presents its own unique  
15 facts. Counsel averred that the appellant in the instant case was an uncle and guardian to the victim who repeatedly defiled the victim. That the victim sustained serious injuries, she was limping with difficulty in movement, had a ruptured hymen and with a foul smell. He noted that the appellant was 40 years old while the victim was only 10 years old at the time the offence was committed. Counsel, therefore, argued that the  
20 above mentioned facts are unique and different from the cases cited by counsel for the appellant.

He prayed that the 30 years imprisonment sentence be upheld and the appeal be dismissed.

## 25 **Consideration by the Court**

This is an appeal on sentence only. The Supreme Court in *Kyalimpa Edward vs. Uganda, Criminal Appeal No. 10 of 1995*, laid down the principles that govern an appellate Court's powers to interfere with sentence as follows:-

30 *"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*



5 *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 Owura v. R [1954] 21 E.A.C.A. 126, R v. Mohamedali Jamal [1948] 15 E.A.C.A. 126"*

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

10 *"The offence of Aggravated Defilement for which Frank Ssenoga has been convicted of is a very serious one. Upon conviction, a person is liable to suffer death. Ms, Peace Bbira stated that though the convict has no previous history, the victim involved was very young as she was only aged 10 years at the time the offence was committed. The manner in which the convict treated her was*  
15 *bad. He threatened to cut her up if she revealed that he had defiled her. She also submitted that the convict robbed her of her innocence and that such cases are very rampant. She called for a deterrent sentence. This Court has taken into account these aggravating factors.*

20 *I have also given regard to the mitigating factors as advanced by counsel Ringaketch Keddy and what Ssenoga has stated, to wit, that he spent one year and four months on remand; that he is a first offender and has a large family of seven children and a wife to cater and other dependants. The convict, a 42 years old man, prayed Court to use the period he has spent on remand as the ultimate sentence.*

25 *I note that aggravated defilement is on the rise in Mpigi District and many young girls similar to Nalubwama are defiled. Hence, unless stringent action is taken, this conduct will not abate. Nakigozi Nalubwama was sexually abused to the extent of making her limp and smell foul like a dust bin. This is inhumane and scandalous that a mature man can wantonly do this to a girl of tender years*  
30 *who calls him an uncle. An uncle is expected to be a father figure to his niece and a loving parent but he did the opposite. He took advantage of her. Such men should be kept far from society as a lesson to others who might impose a death sentence but must ensure that you are given a chance to reform.*

35 *I, therefore, hereby, sentence you to a term of imprisonment of thirty (30) years. The period you have spent on remand has been considered and should be computed against this term of imprisonment."*

From the above, it is clear that the trial Judge thoroughly considered both the aggravating factors and the mitigating factors while sentencing and found that the aggravating factors outweighed the mitigating factors.

5 The trial rightly used her discretion to sentence the appellant to 30 years imprisonment from which the 1 year and four month's spent on remand were to be deducted, which leaves the appellant with 28 years and 8 months imprisonment to serve.

In the recent decision of *Othieno John vs Uganda, Court of Appeal Criminal Appeal No.174 of 2010*, this Court confirmed a sentence of 29 years' imprisonment for aggravated defilement of a victim aged 14 years, as the Justices found no reason to interfere with the sentence.

In the case of *Opio Moses vs. Uganda, Court of Appeal Criminal Appeal No.118 of 2010*, Court confirmed a 27 years' imprisonment sentence for aggravated defilement for an appellant who was a biological father to the 9 years old victim.

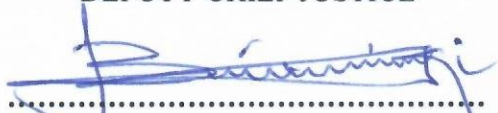
15 For the reasons and authorities above stated, we find that the sentence of 28 years and 4 months' imprisonment was not illegal nor based on wrong principles and neither was it manifestly harsh nor excessive given the circumstances of this case. We find no reason to interfere with it. The sentence was given in accordance with the law and due consideration of the circumstances of the case.

20 We accordingly uphold the decision of the trial Court and dismiss this appeal.

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



RICHARD BUTEERA  
DEPUTY CHIEF JUSTICE



CHEBORION BARISHAKI  
JUSTICE OF APPEAL



MUZAMIRU MUTANGULA KIBEEDI  
JUSTICE OF APPEAL