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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT MASAKA**  
**CRIMINAL APPEAL NO. 56 OF 2015**

*(Arising from High Court Criminal Session Case No. 042 of 2011)*

10 **KASINGYE PAUL:..... APPELLANT**

**VERSUS**

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

**CORAM: HON. JUSTICE CHEBORIUON BARISHAKI, JA**

15 **HON. JUSTICE STEPEHEN MUSOTA, JA**

**HON. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA**

**JUDGMENT OF THE COURT**

The appellant was indicted, tried and convicted of the offence of  
20 Aggravated Defilement contrary to section 129 (3) (4) (a) and (c) of  
the Penal Code Act and sentenced to 36 years` imprisonment. The  
appellant was dissatisfied with the sentence and filed this appeal  
against sentence on a sole ground that;

*The learned trial judge erred in law and fact when she did not take  
25 into account the mitigating factors in the appellants sentence  
thereby sentencing the appellant to imprisonment for 36 (thirty*

*six) years on the count of aggravated defilement which is illegal and harsh leading to a miscarriage of justice.*

Under S. 132 (1) (b) of the Trial on Indictments Act leave to appeal against sentence only was granted by this court.

## 5 **Background**

The victim is the biological daughter of the appellant. On 16<sup>th</sup> January 2011 she was sick. While the victim lay down in their court yard, the suspect called her inside the house and closed the door and told her to climb the bed. When the victim tried to refuse, the  
10 appellant slapped her and got hold of her mouth to stop her from shouting. The appellant removed the victim's underwear, undressed himself and went ahead to defile his own daughter. The appellant defiled the victim 5 times that day and night which caused her a lot of pain. On 22/01/2011, the appellant sent the victim to one  
15 Lusagi to collect fresh cassava leaves and she revealed to him that the appellant had been defiling her. The appellant was later arrested and charged with aggravated defilement.

## **Representation**

At the hearing of the appeal, Mr. Lule appeared for the appellant  
20 while Mr. Baine Stanely, Chief State Attorney, appeared for the respondent.

The appellant's counsel sought and was granted leave to appeal against sentence only.

### **Appellant's submissions**

Counsel for the appellant submitted that the learned trial Judge failed to consider the mitigating factors of the case and passed a harsh sentence on the appellant. Counsel submitted that the  
5 appellant was a first time offender who appeared remorseful at the beginning of the trial. That this court has the powers to interfere with sentence if it is evident that the trial court acted on a wrong principle or overlooked some material factor or if the sentence is manifestly excessive and harsh.

10 Counsel submitted further that there is need to maintain uniformity or consistency when sentencing in cases of similar nature. Counsel relied on the decision in **Biringi Moses Vs Uganda C.A.C.A No. 177 of 2014** where this court overturned the sentence of 30 years imprisonment for aggravated defilement and sentenced the  
15 appellant to 12 years imprisonment on grounds that the earlier sentence was out of range of sentences in cases of a similar nature. Counsel prayed that this appeal be allowed and the sentence be reduced accordingly.

### **Respondent's submissions**

20 It was contended for the respondent that the trial court considered both the aggravating and mitigating factors of the case before justifiably arriving at the sentence of 36 years' imprisonment. The learned trial Judge clearly stated that the statement of the appellant in mitigation had been put into consideration. Failure to  
25 re-produce all the factors did not affect the legitimacy of the

sentence. The circumstances of this case warranted a severe sentence because the appellant defiled his own biological daughter instead of protecting and guiding her.

5 The appellant argues that the trial Judge did not consider that he had young children however, the appellant committed a grave offence against the same young child who was the eldest among her siblings. Counsel prayed that this appeal be dismissed and the sentence be upheld accordingly.

### **Consideration of the appeal**

10 It is trite law that 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. 15 10 of 1995 and Kyewalabye Bernard v. Uganda Criminal Appeal No. 143 of 2001(S.C).**)

The case of **Livingstone Kakooza v Uganda SC Criminal Appeal No. 17 of 1993** [unreported] held that:

20 *‘An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration: See Ogalo S/O Owoura v R (1954) 21 E.A.C.A. 270.’*

The sentencing order of the learned trial Judge is as follows;

5 *“...the offence with which he is convicted carries a maximum of death on conviction. The convict actions in repeatedly defiling his own daughter, is not only shameful but also despicable and shameful and incestuous. It is alleged that, he was remorseful but the convict was defiant, up to the time of passing his sentence. It has affected her psychologically and traumatized for life. This crime has become common in the community and court needs to impose additional sentence to deter other would be offenders and to punish those who do so.*

10 *In view of the above, court sentences him to thirty six (36) years imprisonment taking into account the years he has spent on remand.”*

The learned trial Judge’s sentencing order considered the  
15 aggravating factors in isolation of the mitigating factors and passed a harsh sentence on the appellant. We therefore have no option but to set it aside. We have also considered the criteria for interference with sentence by an Appellate Court as stated by the Supreme Court of Uganda in the case of **Kiwalabye Bernard Vs Uganda**  
20 **(supra)**

This court has the same powers as the High Court, pursuant to **Section 11** of the **Judicature Act**. It states,

***‘11. Court of Appeal to have powers of the court of original jurisdiction.***

For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated'

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In this case, we have considered the four year period the appellant spent on remand, the fact that the Appellant was a first offender. He was a relatively young man and had other children to look after. But, as rightly pointed out by the trial Judge, the appellant committed a despicable act when he defiled his own biological daughter on a number of occasions. This act is barbaric and very disgraceful to the girl child and attracts a severe sentence.

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Therefore, we are satisfied that a sentence of 30 years imprisonment from the date of conviction will meet the ends of justice in this case. This appeal succeeds and the appellant is sentenced to 30 year's imprisonment from the date of conviction of 2<sup>nd</sup> February, 2015.

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We so order.

20 Dated this 12<sup>th</sup> day of August 2021



**Hon. Justice Cheborion Barishaki, JA**



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**Hon. Justice Stephen Musota, JA**

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**Hon. Justice Muzamiru Mutangula Kibeedi, JA**

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