

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT FORT-POTRAL**  
**CRIMINAL APPEAL NO. 0187 OF 2014**  
**(Arising from Criminal Session Case No. 259 of 2011)**

**MATOVU YUSUF ::::::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

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

*(Arising from the decision of the High Court of Mubende, (E. Ibanda-Nahamya, J, dated 02<sup>nd</sup> October 2013)*

**CORAM:   Hon. Mr. Justice Richard Buteera, DCJ**  
**Hon. Lady Justice Irene Mulyagonja, JA**  
**Hon. Lady Justice Eva K. Luswata, JA**

**JUDGMENT OF COURT**

**Introduction**

The appellant was convicted on a plea of guilty to the count of Aggravated Defilement c/ ss 129 (3), (4) (a) of the Penal Code Act, Cap 120, and sentenced to 20 years' imprisonment.

**Brief facts**

It was the prosecution case that KIRABO KYOMUKAMA, the victim, was aged 1 and a half years old. She was staying with her mother, one MUKESHIMANA SHARON, at Kyakakadde LC.1 Makokoyo sub-county in Mubende District. That on the 16th day of June 2011, at about 9:00am, MATOVU YUSUF SWAIB, the appellant, a neighbour to the victim's mother, came to borrow a basin from her but since she was still washing, the appellant left and the victim followed him.

A short while later, the victim's mother heard the victim crying from the house of the appellant which was only 60 feet from hers. The victim's mother rushed to the appellant's house. The appellant brought the victim outside the house and placed her down. He told the victim's mother that she had defecated in his house and when she went inside to clean up the mess, she saw that it was mixed with blood.

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The victim's mother took the child outside and when she checked her, she found that she was bleeding from her private parts. The victim's mother made an alarm which attracted neighbours who came and when one Nalongo checked the victim, she advised the victim's mother to take her to a clinic for treatment. The victim was examined on PF.3 and it was found that she had been penetrated sexually.

The appellant was arrested and charged with defilement. When the charge was read to him, he pleaded guilty. He was sentenced to 20 years' imprisonment and now seeks to appeal against the same.

### **Ground of Appeal**

That the learned trial Judge erred in law and fact when she dispensed a harsh and excessive sentence to the appellant of 22 years' imprisonment hence occasioning a miscarriage of justice.

### **Representation**

At the hearing of the Appeal, the appellant was represented by Mr. Masereka Geoffrey, while the respondent was represented by Ms Immaculate Angutoko, a Chief State Attorney.

### **Case for the appellant**

Counsel for the appellant argued that the trial Judge, in sentencing the appellant, did not give much attention to the mitigating factors raised by the appellant. He stated that these factors were that the appellant was a young man with family responsibility, he had pleaded guilty and was a first time offender with no previous record.

He implored this Court to find it fit and proper to reduce the sentence like it was done in *Rwabugande Moses v Uganda; SCCA No. 25 of 2014*.





### Case for the respondent

Counsel for the respondent submitted that in passing sentence, the learned trial Judge considered all the aggravating factors, to wit; that the appellant's behaviour was bad, beastly and that he was a danger to society and to children in particular. He stated that the learned Judge had equally considered the mitigating factors and noted that in the circumstances she would not sentence the appellant to death but would give him a long deterrent sentence to serve as an example to him and other like-minded people.

Counsel further submitted that the argument that the sentence was harsh and excessive was baseless given the circumstances under which the offence was committed. The abuse left the child with a ruptured hymen as well as bruises and lacerations in her private parts.

Counsel cited the case of *Biryomumisho Alex v Uganda; CACA No. 464 of 2016*, where this Court held:

**"We must note that interfering with the sentence is not a matter of emotions but rather one of law. Unless it can be proved that the trial Judge flouted any of the principles of sentencing, then it does not matter whether the members of this Court would have given a different sentence if they had been the one trying the appellant."**

Counsel stated that the 20 years' sentence passed by the learned trial Judge was within the sentencing range set by this Court for the offence of aggravated defilement. He thus submitted that the trial Judge did not act on a wrong principle; never overlooked any material factor and judiciously exercised her discretion in deciding that the sentence of 22 years' imprisonment was appropriate.



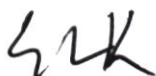
### Court's consideration

The appellant's appeal is for this Court to revise the sentence imposed by the trial court on ground that it was harsh. The law as to when an appellate court will interfere with the sentence imposed by a lower court is well settled. In *Kyalimpa Edward v Uganda; Supreme Court Criminal Appeal No. 10 of 1995*, the Court considered the principles upon which an appellate court should interfere with a sentence. It referred to *R v Haviland (1983) 5 Cr. App. R (s) 109*, and held that:

“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* and *R vs. MOHAMEDALI JAMAL (1984) 15 E.A.C.A. 126*. (Emphasis ours)”

In *Kamya Johnson v Uganda; SCCA No. 16 of 2000*, the Supreme Court held:

“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. (Emphasis ours)”





In the instant Appeal, counsel for the appellant alleged that the learned trial Judge had not taken into account the mitigating factors. However, the learned trial Judge did in fact consider the aggravating and mitigating factors. She considered that the appellant was a first offender with no previous record, but decided to give the appellant 20 years' imprisonment to serve as a long deterrent sentence. She also took into consideration the time he had spent on remand.

We will look at similar offences of aggravated defilement and the sentences that were meted by court. In *Baruku Asuman v Uganda; CACA No. 387 of 2014*, this Court, while emphasising the importance of consistency, cited the case of *Naturinda Tamson v Ugadna; SCCA No. 025 of 2015* where the Supreme Court upheld a sentence of 16 years' imprisonment for the offence of Aggravated Defilement of a 16-year-old victim. It also referred to the case of *Ederema Tomasi v Uganda; CACA No. 554 of 2014*; the Court of Appeal imposed a sentence of 18 years' imprisonment deeming the same fit because the appellant was HIV positive.

In *Tiboruhanga Emmanuel v Uganda; CACA No. 655 of 2014*, the Court of Appeal after reviewing the sentences approved in previously decided cases of aggravated defilement by the Supreme Court and the Court of Appeal, stated that the sentences imposed by the Court of Appeal for aggravated defilement in previous cases fell within the range of between 11 years to 15 years. It, however, sentenced the appellant therein to 25 years for aggravated defilement reasoning that the appellant who was HIV-positive had exposed the victim to the risk of contracting HIV/ AIDS.

In *Kamugisha Asan v Uganda; CACA No. 212 of 2017*, this Court sentenced an appellant who had defiled a three-year-old girl to 23 years of imprisonment. These were reduced to 22 years upon deducting the one year that the appellant had spent on remand.

In this case, we would see no reason whatsoever to interfere with the trial Judge's sentence of 20 years' imprisonment. We do not find the sentence

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to be unusual in any way or manifestly high or even harsh as alleged by counsel for the appellant. We are particularly cognisant of the fact that the victim herein was only one and a half years old. We accordingly uphold the sentence and dismiss the Appeal for lack of merit.

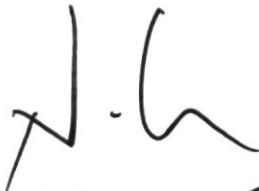
Dated at Fort Portal this .....<sup>14<sup>th</sup></sup>..... day of .....<sup>October</sup>..... 2022



Richard Buteera  
Deputy Chief Justice



Irene Mulyagonja  
Justice of Appeal



Eva K. Luswata  
Justice of Appeal