

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA HOLDEN AT MBALE
CRIMINAL APPEAL NO.139 OF 2018
(CORAM: Obura, Bamugemereire & Madrama, JJA)

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PETER LOGWEE.....APPELLANT

VERSUS

UGANDA..... RESPONDENT

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[Appeal from the Decision of Henrietta Wolayo J, dated 13th July 2016 in High Court Criminal Session No.58 of 2015 Holden at Moroto)

JUDGMENT OF THE COURT

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The appellant, Peter Logwee, was indicted for the offence of Aggravated Defilement contrary to sections 129 (3) and (4) (a) of the Penal Code Act. It was alleged that the Appellant on the 18th day of October 2014, at Tulianyang Ward, Kumet Parish, Kapedo Sub-County in Kaabong District had unlawful sexual intercourse with Scholar Napeyok a girl below the age of 14 years.

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Background

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The background to this appeal is that on the 18th October 2014, the victim had gone for a traditional dance known as Edonga with other people and when she felt thirsty she walked back home to take water. Unknown to her the appellant had followed her and hid himself in the banana plantation. After assuaging her thirst, the victim returned to the dance. It was at that point that the appellant emerged from the banana plantation, grabbed her, threw her down and forcefully had sex with her. The victim felt a lot of pain as result of the sexual act and she made

an alarm which attracted John Epuri. On seeing him, the appellant ran away. The appellant was arrested on 28th October 2014 but managed to escape with handcuffs and was rearrested in November 2014. The appellant pleaded not guilty and upon a full trial was convicted and sentenced to 13 years and 3 months imprisonment. Dissatisfied, the appellant lodged this appeal with two grounds contained in his memorandum of appeal below:

Grounds of Appeal

1. That the learned trial Judge erred in law when she ignored some of the mitigating factors in favor of the prosecution hence causing a miscarriage of justice to the appellant.
2. That without prejudice to the former, the sentence of 17 years was deemed harsh and excessive in the circumstances given the remorsefulness of the appellant.

Representation

At the hearing of the appeal, Mr. Allan Mooli represented the appellant on state brief while Mr Alex Michael Ojok Assistant from the Office of the Director of Public Prosecutions represented the respondent.

Mr Allan Mooli submitted that the appellant filed his Notice of appeal and Memorandum of appeal out of time. He sought leave of this court to enlarge the time under rules 5 and 43 of the Court of Appeal rules. Counsel Mooli also sought leave of court to appeal against sentence only. Counsel for the respondent had no objection to the prayers sought by counsel for the appellant. Both counsel filed their written submissions.

This court allowed for the enlargement of time as sought by counsel for the appellant and validated the Notice of appeal and Memorandum of appeal, which were filed out of time. This court granted the appellant leave to appeal against sentence only. We have relied on the written submissions of both counsel and we thank them for the thoughtful deliberations.

The Legal Arguments

Counsel for the appellant brought to the attention of this court that the appellant filed two notices of appeal; the first on the 2nd November 2018 and the other on the 6th November 2018. He submitted that in the first Notice of appeal, the appellant intimated that he intended to appeal against conviction only while in the second notice of appeal; he was desirous of appealing against both sentence and conviction. Counsel also pointed out that the two Notices of appeal and the Memorandum of appeal state that the accused person was sentenced to 17 years imprisonment yet the judgment stated that a sentence of 15 years was appropriate in the circumstances. Upon deducting the time spent on remand, the trial Judge sentenced the appellant to 13 years and 3 months imprisonment. Counsel added that the warrant of commitment on sentence signed by the Trial Judge reflected that the convict is to serve 15 years and 3 months imprisonment.

Basing on the above obscurity, counsel for the appellant submitted that the trial Judge took into consideration the mitigating factors and she pointed out that a sentence of 15 years was appropriate and she deducted the period spent on remand thus sentencing the appellant to 13 years and 3 months imprisonment. Counsel contended that the

commitment warrant reads that the appellant was to serve a sentence of 15 years and 3 months contrary to the judgment and sentence pronounced by court.

5 It was counsel's averment, having carefully consulted his client, that although the appellant had proposed in the Memorandum of appeal that the sentence of 17 years was harsh and had proposed 7 years imprisonment, he contended that upon this court rectifying the anomaly captured in the warrant of commitment, the sentence passed by the trial Judge was appropriate and reasonable in the circumstances.

10 Counsel prayed that this court aligns the sentence of 13 years and 3 months passed by the trial court with the one of 15 years and 3 months in the warrant of commitment.

15 Counsel for the respondent conceded that there was an error apparent on the face of the record. He submitted that he was in agreement with the appellant's submissions and prayers that this court should align the sentences passed by the trial court; one of 13 years and 3 months imprisonment pronounced in court and the one of 15 years and 3 months imprisonment stated in the warrant of commitment.

Decision of the Court

20 We have taken note of the prayers sought by counsel for the appellant. We observed that counsel for the appellant during the hearing of the appeal sought leave to appeal against sentence only despite what was earlier sought in the Notice of appeal and Memorandum of appeal. This court granted leave to appeal against sentence only.

The concern raised by counsel for the appellant to which counsel for the respondent does not object is the fact that there was an anomaly in capturing the sentences meted out by the trial judge during the sentencing process and on the warrant of commitment. The judgment
5 contained a sentence of 13 years and 3 months while the warrant of commitment read a sentence of 15 years and 3 months.

The sentencing notes of the trial judge as ascertained from the court record are noted below;

10 *“...Defilement of young girls will attract a stiff penalty to deter would be offenders. That the accused is a young man aged approx. 26 years is a mitigating factor... in addition, I find 15 years’ imprisonment an appropriate sentence. As the accused person has been on remand since November 2014, he is sentenced to thirteen years and three months’ imprisonment.”*

15 We have also looked at the warrant of commitment and it indeed indicated that the convict is sentenced to 15 years and 3 months’ imprisonment.

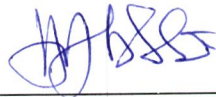
20 We wish to note that such an anomaly ought to have been brought to the attention of the court administratively and not by filing an appeal, seeking to rectify the mistake by way of appeal.

The appeal is dismissed.

However, this matter is therefore remanded to the lower court to have the error rectified. This error should be rectified as soon as the file returns to the court.

We so order

5 Dated at Kampala this.....^{18th}.....day of ^{June}~~December~~ 2022 ²⁰²³



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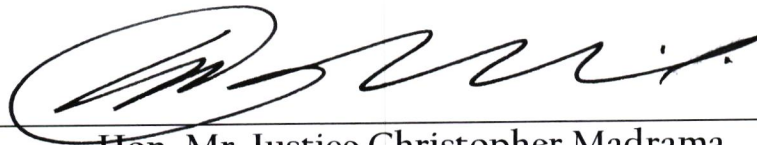
Hon. Lady Justice Hellen Obura
Justice of Appeal



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Hon. Lady Justice Catherine Bamugemereire
Justice of Appeal

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Hon. Mr. Justice Christopher Madrama
Justice of Appeal