THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

Coram: Egonda Ntende, Bamugemereire & Mulyagonja, JJA

CRIMINAL APPEAL NO. 008 OF 2016

OUMA PETER aka OKECH :::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA :: RESPONDENT

(An Appeal from the decision of Ibanda Nahamya, J delivered on 18th December 2015, in Lira High Court Criminal Session Case No. 158 of 2012)

JUDGMENT OF THE COURT

Introduction

The appellant was indicted with the offence of rape contrary to sections 123 and 124 of the Penal Code Act. He was convicted after a full trial and sentenced to 24 years, 8 months and 9 days' imprisonment.

Background

The facts that were accepted by the trial judge were that the victim, Lalam Kelementina, was 56 years old. In the night of 22 July 2012, at about 11:00 pm, the victim, who was resident of Gunya A Village, Okidi Parish, Atiak Sub-County, Kilak County in Amuru District, was attacked by a person whom she recognized during the attack as Ouma Peter, her village mate. The incident occurred while she was going back to her home from a ceremony at her nephew's home, Peter Okia. The victim was attacked from

behind by her assailant who threw on the ground, pulled up her clothes and had sexual intercourse with her. The incident occurred at a place between two homes that was busy.

During the rape, the assailant restrained the victim in a stranglehold but the victim was able to identify him as Ouma Peter, the appellant. When the victim made an alarm and indicated that she had identified him, the assailant let go of her and fled from the scene of the crime. However, one Kilara Richard responded to the alarm and came to the rescue. He chased the assailant but he disappeared into the bush aided by darkness of the night. The following day, the assailant was apprehended, taken to the Police, examined and later indicted with the offence of rape, as stated above. At his trial he pleaded not guilty and was tried for the offence. He was found guilty and sentenced as it is stated above. Dissatisfied with both conviction and sentence he appealed to this court on the following grounds:

1. That the learned trial judge erred in law and fact in holding that the appellant was properly identified when the circumstances at the time did not favour correct identification.

2. That the learned judge erred in law and fact in sentencing the appellant to 24 years, 8 months which was manifestly harsh in the circumstance.

The respondent opposed the appeal.

Representation

At the hearing of the appeal on 29th March 2023, Ms. Harriet Otto represented the appellant on State Brief. The respondent was represented by Mr. Sam Oola, Senior Assistant Director of Public Prosecutions (DPP)

and Ms. Basuuta Cate, Senior State Attorney, both from the Office of the DPP.

Ms Otto prayed that the notice of appeal and memorandum of appeal which were filed out of time be validated and her prayers was granted. Counsel for both parties prayed that court considers their written submissions filed before the hearing in the appeal and their prayers were granted. The appeal was therefore disposed of on that basis.

Duty of the Court

The duty of this Court as a first appellate court, is stated in rule 30 (1) of the Rules of this Court (SI 10-13). It is to re-appraise the whole of the evidence adduced before the trial court and reach its own conclusions on the facts and the law. But in so doing the court should be cautious that it did not observe the witnesses testify.

We have therefore considered the evidence in the record of appeal that was set before us, the submissions of both counsel, the authorities cited and those not cited that were relevant to the appeal in order to reach our decision in the appeal. We reviewed the submissions on each ground of appeal immediately before disposing or it.

Ground 1

Submissions of Counsel

Ms. Otto, for the appellant conceded that the first two elements of the offence of rape, that the victim was subjected to unlawful carnal knowledge and that she did not consent to it, were proved by the prosecution in the lower court. She then proceeded to challenge the findings about the third ingredient, that it was the appellant that committed the offence.

She pointed out that the victim testified that it was around 11:00 pm as she was returning from her brother's house that the appellant grabbed her from behind, threw her on the ground and then raped her. Further that PW3 came to her rescue after she made an alarm. Counsel also noted that according to the testimony of PW3, he arrived at the scene when the appellant had already left. She contended that it was dark and PW3 could not have ably identified the assailant. She further submitted that PW3's police statement was totally different from his testimony in court; she pointed out some areas in which the two differed. She asserted that the identification of the appellant remained in issue and that the contradictions in the evidence ought to be resolved in his favour.

Ms. Otto went on to submit that the Appellant put up a defence of *alibi* which was not rebutted by the prosecution. That in his statement before court, the appellant stated that on the day he was arrested, he had gone to the garden to plant simsim but the seeds got finished. He therefore left the garden to go to the market to buy more, but as he got to the road, a person he did not know before stopped him, slapped him and kicked him and he lost consciousness. The assailant left him on the ground from whence he was rescued and taken to hospital but after he recovered, he was taken directly to the Police Station.

Counsel further drew the attention of the court to the appellant's assertion that on the day he was alleged to have committed the offence, he did not go to any party but stayed at his home for the whole evening. Counsel concluded that the appellant's defence of *alibi* was never rebutted by the prosecution. That the appellant was never placed at the scene of the crime and the testimony of PW3, Kilara Richard, confirmed this because he testified that he did not find the assailant at the scene of the crime.

In reply, counsel for the respondent submitted that the trial judge did not make any error when she found that the appellant was properly identified by the victim because she had known him for two years, and recognised him as he raped her. Counsel further submitted that the victim was with the appellant at the same party from 3:00 pm till 11:00pm when she left. That she was sober and on seeing the appellant, she called out his name and begged him not to harm her. That the victim was also able to recognise the clothes that her assailant wore at the trial as the same ones that he was wearing when he committed the offence.

Counsel for the respondent further submitted that PW3 corroborated the evidence of the victim, because according to him the appellant left the party to buy a cigarette at the same time that the victim left. That he did not return to the party but he (PW3) heard the victim calling for help and during which she identified the appellant as her assailant.

Counsel further submitted that the trial judge was alive to the requirements of the law as she considered the evidence of a single identifying witness. She was cognisant of the fact that the prosecution case was based on the evidence of such evidence and that the offence took place at night. She therefore relied upon the principles in **Abdallah Nabulere and Others v Uganda; Criminal Appeal No. 9 of 1975,** which indicates that she observed the need for caution before basing a conviction on such evidence. Counsel then asserted that the conditions at the scene of the crime were favourable for the proper identification of the appellant and that there was no possibility of mistaken identity.

It was also counsel's submission that the trial judge took into consideration the fact that the appellant run away and was hiding in a bush before he was arrested. That this was inconsistent with the conduct

of an innocent man as it was held in **Bahemuka William and Another v Uganda; Criminal Appeal No. 4 of 2003.** That the conduct of the appellant thus corroborated the other evidence that was adduced by the prosecution against him.

Resolution of Ground 1

Counsel for the appellant raised two points of law based on the evidence to be considered by court: i) whether the appellant was properly identified and placed at the scene of the crime, and ii) whether the court considered the appellant's *alibi.* We will start the re-appraisal of the evidence by considering whether the appellant indeed raised an *alibi*, and if so, whether the court failed in its duty to consider it. The identification of the appellant as Kelementina's assailant will follow.

The alibi

According to counsel for the appellant, the *alibi* was that on the day that Kelementina was raped, he was at his home because he did not attend the party from whence she was coming when she was grabbed and by her assailant. In the appellant's own words, at page 30 of the record, he stated thus:

> *"In 2012, I was still in Okidi. On 22/7/2012, I was still in Okidi at my home. It was the month of July so we were planting Simsim. After planting Simsim, I didn't move anywhere. On that day in the village I didn't hear about any party. I don't move about in the village in Okidi so I don't know the people in the area. My brothers who were born there are the one (sic) who know them. I know one of my neighbours called Oryem Francis. I don't know Kelementina Lalam."*

On the other hand, evidence was adduced by the prosecution through PW2, the victim and PW3, Kilara, on the basis of which the trial judge found that the appellant was the assailant and that he raped Kelementina.

The trial judge evaluated this evidence extensively. She also evaluated the evidence that was adduced by the appellant on oath about what transpired the following day, 23rd July 2012, when he was arrested by PW3, and it seems, beaten up by a mob. He sustained injuries that led to his admission in hospital for treatment after which he was taken away by Police, arraigned and tried for the offence.

In her judgment, the trial judge repeated counsel's submission that the appellant's *alibi* was not discredited by the prosecution. She also referred to the part of the appellant's testimony where he claimed to have been at his home at the time that the offence was committed. However, with due respect, she did not seriously consider the appellant's defence of *alibi.* Instead, at page 92 of the record, she concluded thus:

> *"In this case, I believe that the evidence of PW2 and PW3 is cogent enough to prove the existence of a rape. The Accused, on the other hand, made up a fanciful story to extricate himself from the scene of crime. I did not believe his defence.*
>
> ...
>
> *For the foregoing reasons, having considered all the evidence, I find that Prosecution managed to squarely place the accused person at the scene of crime."*

The Supreme Court **in Bogere Moses & Another v Uganda, SCCA No. 001 of 1997,** observed that though the trial judge was conscious of the law that places the burden on the prosecution to disprove the defence of *alibi*, there was no indication that he was similarly conscious of the requirement to consider the evidence as a whole. The court then considered what it meant to put the suspect at the scene of crime and set it out in the following passage:

"What then amounts to putting an accused person at the scene of crime? We think that the expression must mean proof to the required standard that the accused was at the scene of crime at the material time. To hold that such proof has been achieved, the court must not base itself on the isolated evaluation of the prosecution evidence alone, but must base itself upon the evaluation of the evidence as a whole. Where the prosecution adduces, evidence showing that the accused person was at the scene of crime, and the defence not only denies it but also adduces evidence showing that the accused person was elsewhere at the material time, it is incumbent on the court to evaluate both versions judicially (and) give reasons why one and not the other version is accepted."

In view of the dictum above, the trial judge ought to have shown that she considered the appellant's *alibi*. However, in order for us to determine whether the omission to do so had any impact on the result as a whole, we must go on to consider whether the evidence that she relied upon to come to the finding that it was indeed the appellant that committed the offence was sufficient to prove the participation of the appellant in the offence, beyond reasonable doubt.

Identification

The principles that guide the courts in the evaluation of the evidence of identification by a single witness were re-stated by the Court of Appeal in **Abdallah Nabulere** (supra) as follows:

"A conviction based solely on visual identification evidence invariably causes a degree of uneasiness because such evidence can give rise to miscarriages of justice. There is always the possibility that a witness though honest may be mistaken. For this reason, the courts have over the years evolved rules of practice to minimise the danger that innocent people may be wrongly convicted. The leading case in East Africa is the decision of the former Court of Appeal in Abdalla Bin Wendo and Another v. R. (1953), 20 EACA 166 cited with approval in Roria v. R. (1967) EA 583. The paragraph which has often been quoted from Wendo (supra) is at page 168. The ratio decidendi discernible from that case is that: —

(a) The testimony of a single witness regarding identification must be tested with the greatest care.

(b) The need for caution is even greater when it is known that the conditions favouring a correct identification were difficult.

(c) Where the conditions were difficult, what is needed before convicting is 'other evidence' pointing to guilt.

(d) Otherwise, subject to certain well known exceptions, it is lawful to convict on the identification of a single witness so long as the judge adverts to the danger of basing a conviction on such evidence alone."

On the basis of the principles above, we reappraised the evidence on the record that was set before us. We observed that the offence was committed at around 11:00 pm and the victim admitted that it was dark. Further, that as is often the case in sexual assaults, the only person who saw the assailant as he committed the offence was PW2, the victim. PW3 who came to her rescue gave chase to the assailant but did not see him, though, according to him, he had seen him a few minutes before pass by following the victim. In order to aid understanding of our analysis and decision on this point, it is pertinent that we lay down the testimony of PW2 in that regard, verbatim. At page 12 of the record, Kelementina Lalam stated thus:

"After the meeting, I left to go and check on my grandchildren whom I had left at home. It was at 11 pm. The meeting started at 3pm. Since it was a day for paying dowry for one Acayo and there was a Disco etc, the meeting was still continuing. As I left to go, I had left my son's house just a few meters away but before I could branch to go to my home, at a junction I felt someone grabbing me at my back. I turned and saw the person and I realized that it was Okech and I called his name and said ***"Don't do anything wrong to me"****. But at that junction, he carried me and threw me in the bush.*

...

I was able to recognize Okech Peter since I was sober. Moreover, the accused followed me immediately I left the function at my nephew's place. I had seen him at the function and I also managed to see him grabbing me. My eyes were okay. The accused wore the very cloth he is wearing now. I managed to see him at the time he was grabbing me. He hadn't spoken to me.

...

Before I left the venue, Okech was there but as I moved on, I realized someone had grabbed me from the back. It was Okech grabbing me.

When she was cross examined by counsel for the appellant, she maintained her testimony when she stated thus:

*"From the junction to my home, there is a bush so I only realized it was Okech when he had grabbed me from the back. I can't tell exactly where Okech emerged from and whether he was on the same path with me. Okech grabbed and threw me in the bush. Yes, when he threw me down I said "**Okech don't do anything wrong to me**". I raised an alarm after the sexual intercourse. After the sexual intercourse, I told him **"Okech why are you sleeping with me? You are my son and I am your mother."** At this time Okech had held my throat with his hand. I had known Okech (accused) after one year. I established that on material day at 11 pm, that it was Okech grabbing me because I was sober.*

In proving the participation of the appellant, the trial judge stated that she was cognizant of the fact that the prosecution case was based upon a single identifying witness and that the offence occurred at night with no mention of the availability or absence of light. She referred to **Uganda v John Okong [1974] HCB 249,** where it was held that in a case which rests mainly on evidence of a single witness, the court has to satisfy itself that the witness was not mistaken in her identification and that in all circumstances it was safe to act on such identification. She also relied on the principles in **Nabulere (supra)** that in a case which rests entirely on the evidence of identification, court has the duty to satisfy itself that in all circumstances of the case, it is safe to act on such evidence which must be free from mistakes or error on the part of the identifying witness. That the evidence of such a witness must be tested as to its truthfulness and any possibility of mistake excluded.

We observed that the trial judge also relied heavily on the testimony of Kilara Richard, PW3, that pointed to the appellant as the assailant. PW3 testified that he too was at the bride price party with the victim and the appellant, but he stated the wrong date, 27/12/2012. According to PW3, the chronology of events was as follows:

> *"Okech and Okia were drinking local waragi. I don't take any alcohol. Okech and Okia had started drinking from 10 pm to 11 pm. Okech was seated next to me. He requested me for a cigarette I told him that I had no money on me. So Okech left at almost 11:00 pm and went to search for cigarette. (sic) At the same time Okia said he wanted to go and buy cigarette that was also the time that, Kelementina wanted to go and check on her grandchildren. Kelementina was the first to leave but they seem to have left at the same time. At this juncture, I was receiving a call on my mobile I saw them moving. Kelementina was ahead followed by Okech in less than 3 minutes; I could hear an alarm being made by Kelementina. She made the alarm twice saying* ***"Richard help me Okech is killing me****". I could hear the alarm despite the music since I was at the road receiving a call. This was the first alarm.*
>
> *I went and switched off the radio to hear whether someone was making an alarm in my name* ***"Richard".*** *After establishing that it was an alarm calling my name, I ran to Kelementina Lalam's home I reached the scene of crime i.e. at the junction and along Kelementina's path next to the path. I came and stood for about 5 seconds at the scene of crime. I heard a voice say "I" and I turned and saw the victim lying on her back, with legs spread out and gomesi had pulled up to her chest.*
>
> *I asked Kelementina why she was in that state, Kelementina told me that as they have passed me, Okech said he would help her to take her home but then Okech threw Kelementina down and had sexual intercourse with her.*

The trial judge asked PW3 some questions about his testimony above. The answer that was most relevant for the identification of the appellant and the chronology of events that led to his discovering the victim in the bush was as follows:

"Whilst I was answering my phone call, I could tell that it was Kelementina walking and that accused was following her because the disco and road were near. I gave Kelementina and Okech way for them to pass. It's like from here to tarmac road."

The testimony of PW3 was intended to corroborate that of the victim, PW2. However, we observed that counsel for the appellant in cross examination referred PW3 to the statement that he made to the Police on 24th July 2012, only two days after the crime was committed. The statement was admitted in evidence as **Exh D1.** In that regard, section 154 of the Evidence Act provides as follows:

> **154. Impeaching credit of witness.**
>
> **The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him or her—**
>
> **(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him or her to be unworthy of credit;**
>
> **(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his or her evidence;**
>
> ***(c) by proof of former statements inconsistent with any part of his or her evidence which is liable to be contradicted;***
>
> **(d) when a man is prosecuted for rape or an attempt to ravish, by evidence that the prosecutrix was of generally immoral character.**
>
> *{Emphasis supplied}*

Counsel for the appellant therefore sought to discredit the testimony of PW3 using the police statement. On being confronted with its contents in cross examination, PW3 stated that some of the contents in the statement were incorrect. He insisted that what he stated in his testimony in court was the correct version of the events that took place that night. That thought he signed the statement, he did not read through it because he was in a hurry; he was going back to Masaka.

We examined the police statement, **Exh D1**, in order to establish whether the contradictions in it went to the root of the allegations made against the appellant by PW3. The material facts, at page 1 thereof were stated thus:

> *"That I know LALAM KELEMENTINA the victim in this case as my Aunt. She is the elder sister to my biological mother. On the 22nd day of July 2012 at around 11.00 pm in the night, I heard an alarm being raised loudly. I walked out of my house and heard the person raising the alarm call the name of SANTINA ABALO. It was my Aunt raising the alarm. I heard her state in her speech within the alarm that "SANTINA, I am being killed here, can't you come and rescue me?" She further continued by saying "OKECH is killing me here!" After these two statements of the victim, her voice vanished. I later heard the voice of ACHEN say "OKECH it is you, I will not walk out to you." ACEN talked to OKECH (accused) shortly after OKECH had abandoned the victim on having sexual intercourse with her and came to her door, where he called her by name twice. The alarm of the victim rose again. She began to cry again that "OKECH why do you kill me on no reasons?" (sic) "You are my son. Why spread my thighs apart?" I rushed to the scene where I found the victim lying helpless down on her back. He Gomas was rolled up upon her thighs. I had a torch in my hand and saw the grass where the accused wrestled the victim to forcefully have sex with her bent completely. I left the victim at the scene and rushed to persuade (sic) the accused. I searched for him following the path he fled through but in vain. ..."*

There were indeed contradictions between the statement above and what PW3 stated in court. First and foremost, the statement shows that PW3 was not at the bride price party as he stated in court, at least not at 11.00 pm. If he was there, it was at a different time. Therefore, he could not have seen Kelementina leave the party with the appellant following close behind her. Secondly, the victim did not call out PW3's name at the scene of the crime; she instead called out to one Abalo.

However, it is true, according to the police statement and the testimony of PW3 in court, that the victim cried out asking Okech why he forced her to have sexual intercourse with him. Though PW3 described the manner in

which the victim referred to the act of sexual intercourse in the police statement using euphemisms, it is clear from both the police statement and PW3's testimony in court that he did hear the victim question her assailant in agony and embarrassment about the unjustified illegal act that he inflicted upon her. The victim was a 58-year-old woman. We thus take judicial notice of the fact that the use of euphemisms is common amongst persons of her age in a rural setting. They are known to avoid talking about sexual intercourse directly and are more comfortable describing the act using words that are indirect and less embarrassing to them.

We also observed that what followed PW3's discovery that his aunt was raped, as it was stated in the police statement, was similar to what the witness stated in court. Therefore, though the witness tried to fabricate a different story that he thought would be more convincing to the trial judge to pin the appellant down about what happened at the party, it was not necessary for him to do so. He could have stated exactly what happened with the same result. We therefore find that the inconsistencies between the testimony in court and the police statement did not change the fact that PW3 heard the victim cry out against the appellant during or immediately after he forced her into sexual intercourse. And that though PW3 told a lie about having been at the bride price party, the same did not change the material facts that were required to convict and upon which the appellant was convicted of rape. The inconsistencies in the two statements were therefore not sufficient to discredit PW3's testimony, though the trial judge did not consider them in her judgment.

We therefore find that the trial judge made no error that went to the root of the conviction and that it is safe to conclude that the appellant was properly identified by the victim. Ground one of this appeal therefore fails.

Ground two

The appellant's complaint in ground two was that the trial judge erred in law and fact when she sentenced him to 24 years and eight months' imprisonment for it was manifestly harsh and excessive in the circumstances of the case.

Submissions of Counsel

Ms. Otto for the Appellant submitted that the sentence of 24 years and 8 months was manifestly harsh and excessive because the appellant was a first time offender. Further, that the trial judge did not take into consideration the period that the appellant spent on remand before he was convicted. She referred to the case of **Kalibobo Jackson v Uganda CACA No. 45 of 2001,** in which this court reduced the sentence of 17 years' imprisonment that was imposed upon the appellant who was convicted for the rape of an old woman after a full trial. She prayed that court applies the rule of consistency in sentencing in similar offences and reduces the sentence that was imposed on the appellant.

In reply, counsel for the respondent submitted that the sentencing notes were missing from the record but the Commitment Warrant indicates that the appellant was sentenced to 24 years, 8 months and 9 days' imprisonment. Counsel further opined that the sentence imposed was neither harsh nor excessive and so did not warrant the interference of this court. Counsel referred to the principles upon which appellate courts rely upon when they interfere with sentences imposed by the trial court as they were restated in **Kiwalabye Bernard v Uganda; SCCA No. 143 of 2001.**

Counsel went on to point out that the maximum sentence for rape is death. That the appellant was 25 years old when he committed the offence against a 56-year-old woman fit to be his mother. Further, that he physically

assaulted her as he raped her, causing her injuries in the neck. Counsel further insisted that the judge considered the aggravating and mitigating factors before she imposed her sentence. That as a result, the sentence was appropriate in the circumstances of the case. They referred to the decision in **Mubangizi Alex v Uganda SCCA No. 07 of 2015,** where the Supreme Court upheld a sentence of 30 years' imprisonment for a 23-year-old who raped a 60-year-old woman. Counsel then invited this court to invoke its powers under section 11 of the Judicature Act to determine the appropriate sentence in the circumstances, in case it is found that the trial court did not consider the period that the appellant spent on remand. In conclusion, counsel for the respondent maintained that the sentence of 24 years, 8 months and 9 days imprisonment was appropriate and the appeal should be dismissed.

Resolution of Ground 2

The principles upon which this court may interfere with a sentence imposed by the trial court are settled. They are that the appellate court is not to interfere with a sentence imposed by the trial court which has exercised its discretion unless the exercise of discretion is manifestly excessive or so low as to amount to a miscarriage of justice, or where a trial court ignores to consider an important circumstance which ought to be considered in passing the sentence, or where the sentence imposed is wrong in principle. [See **Kiwalabye Bernard v Uganda** (supra)]

We reviewed the proceedings and established that indeed the sentencing notes, as well as the rest of the process of sentencing the appellant were absent. We tasked the Registrar of this court to get the original record from the trial court but the notes were missing from it as well. She made no inquiry of the trial judge, who was deceased by the time we heard the

appeal, about the possibility of the notes having been retained on her personal computer. Therefore, all we are left with on the record is the Commitment Warrant wherein it is stated that Ibanda Nahamya, J (as she then was) sentenced the appellant to a term of imprisonment of 24 years, 8 months and 9 days. It is therefore not possible for us to establish whether the trial judge erred as it was contended by counsel for the appellant. There being no record about how the trial judge arrived at the sentence that was imposed, we have no other alternative but to set it aside.

In the circumstances, we must now invoke the powers of this court that are conferred on it by section 11 of the Judicature Act and sentence the appellant fresh. We did not deem it necessary to call upon the appellant to address us again on the mitigating factors. We considered it sufficient to deduce them from the record of appea. We have therefore taken it into consideration that the appellant was 24 years old on 27th July 2012, as it was stated in the charge sheet at page 5 of the record and Police Form 24, **ExhP2** at page 107. He was therefore still young and had just become an adult when he committed the offence. We also take into account that the appellant raped an old woman who was then 56 years old and in the course of the rape, he held her neck and strangled her to cause not to make an alarm.

Further to that, by paragraph 6 (c) of the Sentencing Guidelines, we are duty bound to take into account the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances. We will therefore consider sentences that have been imposed for rape in this court and the Supreme Court before we pronounce an appropriate sentence for the appellant.

In **Adiga Adinani** (Consolidated Criminal Appeal No. 637 of 2014) [2021] UGCA 13, the appellant committed the offence of rape when he was 33 years old. He was a relative of the victim who was married and pregnant at the time. The trial judge sentenced the appellant to 36 ½ years' imprisonment after a full trial. On appeal, this court considered sentences previously imposed upon offenders for similar offences and instead imposed a sentence of 18 years' imprisonment.

In **Mubogi Twairu Siraji v Uganda, Criminal Appeal No. 20 of 2006**, the appellant was sentenced to 18 years' imprisonment for the offence of rape, after a full trial. The appellant was 27 years old at the time he committed the offence. Having considered that the trial judge did not take the period that he spent on remand into account, this court set aside the sentence that had been imposed, took into account the time spent on remand and imposed a sentence of 17 years' imprisonment.

In **Otema David v Uganda, Criminal Appeal No. 155 of 2008**, the appellant was convicted of the offence of rape and sentenced to 13 years' imprisonment. He was 36 years old when he committed the offence but the trial judge did not take the period that he spent on remand into account. On appeal this court considered that there was inordinate delay in concluding his trial which resulted in his stay on remand for 7 years before conviction. The court considered the 7 years spent in lawful custody before conviction and set aside the sentence of 13 years as excessive in the circumstances. Court then imposed a sentence of 7 years' imprisonment from the date of conviction, having taken into account that the appellant spent 7 years on remand. The total sentence in that case, after a full trial, was therefore 14 years' imprisonment.

In the more recent decision of this court in **Asiimwe Maliboro Moses v Uganda, Criminal Appeal No. 141 of 2010; [2022] UGCA 269**, the appellant was convicted of the offence of rape after a full trial and sentenced to 18 years' imprisonment. On appeal, the sentence of 18 years' imprisonment was confirmed by this court.

And finally, in **Kakembo Joseph v Uganda, Criminal Appeal No. 188 of 2014,** the appellant who was 27 years old at the time he committed the offence was convicted of the rape of his stepmother who was 44 years old at the time of the offence. His sentence of 25 years' imprisonment by the trial court was reduced to 18 years' imprisonment on appeal. After subtracting the period of 3 years that he spent on remand before conviction, the appellant was sentenced to 15 years' imprisonment.

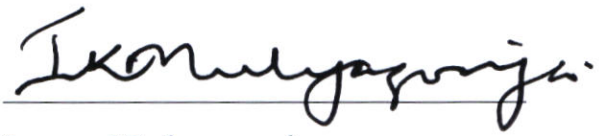
Having reviewed the sentences imposed on offenders in similar cases, we think that a sentence of 18 years' imprisonment in the circumstances of this case would serve the cause of justice. We deduct the period of 3 years and 4 months that the appellant spent on remand before he was convicted with the result that we sentence him to serve a term of imprisonment of 14 years and 7 months. The term shall begin to run on 18th December 2012, the date on which he was convicted.

Dated at Gulu this 16th of June 2023

Fredrick Egonda Ntende
JUSTICE OF APPEAL

Catherine Bamugemereire

JUSTICE OF APPEAL



Irene Mulyagonja

JUSTICE OF APPEAL