THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 070 OF 2012

DDUMBA FRED::APPELLANT

VERSUS

UGANDA::RESPONDENT

(Arising from the decision of the High Court by Faith Mwondha, J, in High Court Criminal Case No.0381 of 2012, dated the 16th day of March 2012)

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ
HON. JUSTICE ELIZABETH MUSOKE, JA
HON. JUSTICE CHEBORION BARISHAKI, JA

JUDGMENT OF THE COURT

Introduction

The appellant, Ddumba Fred 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 25 years imprisonment by Faith Mwondha, J on the 16th day of March 2012.

Background

It was alleged that during the month of July 2010 at Bandawe village in Wakiso District, the appellant performed a sexual act on N.E (the victim), a girl below the age of 14 years. The victim was only 8 years old by the time the offence was committed.

The case for the prosecution was that the appellant went into the victim's bed when her grandmother was away. He closed the door, attacked the victim and threatened to kill her with a panga if she shouted. The appellant removed his trousers, first pushed his fingers into the victim's vagina and thereafter pushed in his penis. When the appellant saw blood coming out of the victim's vagina, he pushed a sponge inside her vagina. The victim felt a lot of pain and the appellant closed the victim's mouth with a cloth and he left.

Several days later, the victim felt a lot pain in the vagina and it was releasing a smelly discharge. The victim was very scared and did not reveal this to anyone until in October 2010 when the victim's grandfather, Captain Martin Kaye (PW2) sensed a foul smell on her. PW2 directed the victim's sisters to examine her and found a smelly discharge coming out of her vagina. The victim was taken to different hospitals for medical examination but the doctors initially did not find anything and simply gave her some injections. When the victim was taken to Mengo Hospital it was discovered that there was a sponge inside her vagina and it was surgically removed.

The victim told her doctors that it was the appellant that defiled her and inserted the sponge inside her vagina. The matter was reported to Police, who arrested the appellant.

The appellant was charged, tried and convicted of aggravated defilement. He was sentenced to 25 years imprisonment.

Being aggrieved by the decision of the trial Court, the appellant now appeals before this Court against conviction and sentence on the following grounds:-

1. **"The learned trial Judge erred in law and fact when she failed to evaluate the evidence on record regarding identification of the appellant.**
2. **The learned trial Judge erred in law and fact when she relied on instead of rejecting the prosecution evidence that had wide discrepancies and inconsistences.**
3. **The learned trial Judge erred in law and fact when she found out *(sic)* that the evidence of the prosecution witnesses was corroborating.**
4. **Without prejudice to the above, the learned trial Judge gave a very harsh and heavy punishment to the appellant.**

Legal Representation

At the hearing of the appeal, the appellant was represented by Ms. Janet Nakakande on State brief while the respondent was represented by Ms. Margaret Nakigudde, Assistant Director of Public Prosecutions. Due to the COVID-19 pandemic restrictions, the appellant was not physically present in Court but attended the proceedings via video link using Zoom technology from Prison.

Submissions of Counsel

Both counsel submitted on grounds 1, 2 and 3 together while ground 4 was handled separately.

Grounds 1, 2 and 3

Submissions of counsel for the appellant

Counsel for the appellant submitted that the prosecution did not prove the fact that there was a sexual act as defined in **section 129 (7) of the Penal Code Act.** She argued that the facts adduced by the prosecution were tainted with a lot of inconsistences that would not warrant a conviction.

Counsel submitted that the victim's medical report from Dr. Jackson Kakembo showed that the victim's hymen was intact and therefore no defilement was suspected. That the learned trial Judge failed to properly evaluate the inconsistencies that arose from the fact that the same victim was examined in Mulago hospital by Dr. Kakembo and others and was found not to be having any signs of defilement and no smell in December 2010. This was months after the suspected date of the offence. He added that the same victim was examined in January 2011 and was found to be with a smelly discharge and a sponge removed by Dr. Bukenya, four months after the suspected date of the offence.

Counsel submitted that the learned trial Judge noted the above discrepancies but gave no reasons for having believed the prosecution evidence and rejected the evidence in favour of the appellant. According to counsel, the trial Judge ignored the said inconsistencies when she stated: ***"all the evidence of PW1, PW2 and PW3 show the victim was defiled and that the police report was made after the victim was defiled."*** Counsel submitted that this was not true as the findings from the medical report and the Police reports were all made about three or four months after the date of the alleged defilement in July, 2010.

Counsel also submitted that since the said evidence left reasonable doubt that the appellant did not commit the crime, Court ought to have found in favour of the appellant but not the prosecution.

It was further submitted for the appellant that the emphasis in evaluation of evidence by the first appellate Court should be on the strength of the prosecution's case and not the weakness of the defence.

Submissions of counsel for the respondent

Counsel for the respondent opposed the appeal and submitted that the learned trial Judge properly evaluated the evidence on record and correctly found that the prosecution had proved each and every ingredient of the offence of aggravated defilement beyond reasonable doubt.

On the element of participation, counsel submitted that PW1, stated that she knew the appellant as a person who was staying at their home. She added that the appellant went to her bed when her grandmother had gone out and he closed the door. He had a panga and warned her that if she shouted, he would kill her. That the appellant put something in her private parts and when he saw blood coming out, he put a sponge inside her vagina and she felt a lot of pain. To silence her, he got a cloth and he put it inside her mouth then he left.

Counsel submitted that during cross-examination, PW1 confirmed previous knowledge of the appellant as a person who was staying with her in the same house but they stayed in different rooms. That this evidence was confirmed by the appellant when he testified that he had stayed at the victim's home for 10 years. He also corroborated the victim's evidence that he used to wake up at about 5:00am in the morning to open for his aunt (the victim's grandmother) and shut the door. Counsel argued that the victim had previous Knowledge of the appellant and even described to Court his early morning routine i.e. that he would wake up to open the door for her grandmother and identified him correctly as the person who defiled her and put a sponge inside her private parts.

Counsel submitted that the appellant's conduct was inconsistent with his innocence since he ran away from home when he heard that the child was said to have been defiled.

Counsel submitted that the learned trial Judge thoroughly evaluated and considered the evidence of identification of the appellant in the performance of the unlawful sexual act on the

victim. That this evidence was sufficiently corroborated by the conduct of the accused when he ran away from home.

On the inconsistencies found in Police form 3 and the medical report from Mengo Hospital, counsel submitted that PW2 (the victim's grandfather) testified that the victim was initially taken to a Police surgeon and that he did not know that she had been defiled. That the victim testified that she was given medicine and examination was done in Mengo. That the victim confirmed that she was examined at Mengo Hospital and not by the Police surgeon on PF3, Exhibit P1. Counsel submitted that had the Police surgeon done a proper examination of the victim on 9th December 2010, there would have been no need for the victim to seek more medical assistance in Mulago Hospital where the doctor was not available and the victim ended up going to Mengo Hospital.

Counsel submitted that, in evaluation of the evidence, the trial Judge took all the discrepancies/contradictions into consideration.

Counsel prayed that Court finds that Exhibit P1 (Police Form 3) was not supported by any evidence especially since it was done about 4 to 5 months after the alleged defilement when the victim had received treatment from different hospitals.

Counsel further prayed that Court finds that the learned trial Judge properly evaluated the evidence and that all the ingredients of the offence were proved beyond reasonable doubt.

Alternatively, but without prejudice to the forgoing, counsel submitted that, if Court is inclined to hold that there are contradictions or inconsistencies in the evidence of any of the witnesses, the same be treated as minor but not deliberate attempts by the witnesses to lie against the appellant and that no miscarriage of justice was occasioned to the appellant.

Ground 4

Submissions of counsel for the appellant

Counsel submitted that the sentence of 25 years imprisonment is harsh and excessive considering the fact that the appellant was a first time offender and a high school student aged only 20 years. Counsel submitted that the appellant was not given a chance to reform and be groomed into a better person.

Counsel prayed that the period of over 10 years that the appellant has so far spent in prison be considered sufficient punishment by Court and set him free.

Submissions of counsel for the respondent

Counsel submitted that the trial Judge considered both the mitigating and aggravating factors as well as the 2 years spent on remand while sentencing the appellant.

She submitted that this Court in *Biryomunshi Alex vs. Uganda, Criminal Appeal No. 464 of 2016,* restated the position in *Katureebe Boaz and another vs. Uganda, Supreme Court Criminal Appeal No. 066 of 2011,* in which Court held: *"consistency in sentencing is neither a mitigating nor an aggravating factor, the sentence imposed lies in the discretion of the Court which in exercise thereof may consider sentences imposed in other cases of similar nature."*

Counsel cited the case of *Sentongo Latibu vs. Uganda, Court of Appeal Criminal Appeal No.73 and 111 of 2016,* where Court found a sentence of 25 years imprisonment appropriate for the appellant who had defiled his 5 year old daughter.

Counsel submitted that considering the fact that the appellant caused a lot of pain and fear to the victim when he defiled her and inserted a foreign object in her vagina which stayed there for 4 months, a sentence of 25 years imprisonment is appropriate in the circumstances of this case.

She prayed that Court upholds the conviction and sentence of 25 years and dismisses the appeal.

Consideration by the Court

This is a first appeal. The duty of this Court as a first appellate court is now well settled. This Court has a duty to re-appraise the evidence and draw its own inferences of fact. This duty is set out in **Rule 30** of the Rules of this Court which stipulates as follows:-

> **"30. Power to re-appraise evidence and to take additional evidence.**
>
> **1. On any appeal from the decision of the High Court acting in exercise of its original jurisdiction, the court may-**
>
> ***(a)* Re-appraise the evidence and draw inferences of fact."**

This duty was clearly set out in *Pandya v R [1957] EA 33* by the defunct ***Court of Appeal for Eastern Africa*** when it quoted with approval the decision of the Court of Appeal of England in *Coghlan v Cumberland [1898] 1 Ch. 704* which had put the matter in part as follows;-

> *"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the Judge with such other materials as it may have decided to admit. The court must then make up its own mind, not disregarding the Judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the Judgment is wrong... ..."*

We have carefully studied and considered the court record, the submissions of both counsel and the law cited. We are also alive to the standard of proof in criminal cases and the principle that an accused person should be convicted on the strength of the prosecution case and not on the weakness of the defence. see *Sekitoleko v. Uganda [1967] EA 531*. If there is any doubt created in the prosecution case, that doubt must be resolved in favour of the accused person. See the case of *Woolmington v. DPP [1935] AC 462*.

We shall therefore proceed to reappraise the evidence and draw our inferences.

We shall resolve grounds 1, 2 and 3 together and ground 4 separately, as submitted by both Counsel.

Resolution of grounds 1, 2 and 3

It was submitted for the appellant that the trial Judge failed to evaluate the evidence on record regarding identification of the appellant. According to counsel for the appellant, the prosecution did not prove that there was a sexual act as defined under **section 129 (7) of the Penal Code Act** as the prosecution evidence was uncorroborated and tainted with wide discrepancies and inconsistencies to warrant a conviction to have been committed.

The question arising from these grounds of appeal is whether a sexual act was committed by the appellant. The appellant also raised the issue of whether the appellant was properly identified to have committed this offence. We shall handle both of these issues together.

Sexual act is defined under **section 129 of the Penal Code Amendment Act 2007.**

Section 129 of the Penal Code Amendment Act 2007 defines a sexual act as follows:

> **"sexual act" means—**
>
> **(a)penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ;**
>
> **(b)the unlawful use of any object or organ by a person on another person's sexual organ;**
>
> **"sexual organ" means a vagina or a penis."**

The Supreme Court provided guidance in *Criminal Appeal No. 09 of 1978, Abdala Nabulere & Anor vs Uganda,* as to how identification of a suspect in criminal trial should be handled. The court held that a Judge should examine closely the circumstances in which the identification came to be made particularly the length of time, the distance, the light, the familiarity of the witness with the accused to avoid mistaken identity. Court added that when the quality of

identification is good, as for example, when the identification is made after a long period of observation or in satisfactory conditions by a person who knew the accused well before, a Court can safely convict even though there is no other evidence to support identification evidence, provided the Court warns itself of the special need for caution.

In the instant case, the learned trial Judge was alive to the above provisions in **Section 129 of the Penal Code Amendment Act 2007** and those provided in ***Abdala Nabulere & Anor vs Uganda*** *(Supra),* in evaluation of the prosecution evidence on whether a sexual act was committed by the appellant. We shall proceed to analyse the available evidence on the lower court record in regard to proof of the commission of the sexual act and the identification of the appellant in commission of the act.

The trial Judge evaluated the evidence from PW1, N.E (the victim), who was 10 years old at the trial, a voire dire was conducted and she gave a sworn testimony. PW1 testified that she knew the appellant as he was living in the same home as her. That the appellant had been living at the victim's home for 10 years. PW1 stated that, when the grandmother left the house, the appellant closed the main door and went into her bedroom. She testified that the appellant armed with a panga, warned her that he would kill her if she made an alarm. She stated that the appellant put something in her private parts (vagina) and when he saw blood coming, he put a sponge in her vagina to stop the bleeding. She felt a lot of pain. PW1 stated that the appellant closed her mouth with a cloth and left. PW1 further testified that, the following morning, a smelly discharge started coming out of her vagina and it was very painful. She told her auntie that the appellant had defiled her. She stated that she was taken to Mengo Hospital for treatment and the sponge was removed.

The victim's testimony was corroborated by the evidence from her grandfather, Captain Martin Kaye (PW2), who testified that he knew the appellant as he was a son to his brother in law and that he raised him. He stated that the appellant was in Court because he defiled his grandchild (the victim). He testified that in October 2010, he was seated in the sitting room and the victim by passed him and he sensed a foul smell coming from his grandchild. He stated that he directed

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the older girls (his daughters), Maureen and Rita, to check her who reported to him that there was a smelly discharge coming out of the victim's private parts. PW2 tried to ask the victim what happened but she refused to tell him.

PW2 stated that he directed his wife who worked at Ndeeba Joy Medical Centre to go with the child the following day for examination. He noted that the doctors at Ndeeba Joy Medical Centre never found anything and they gave the victim 5 injections for 5 days. PW2 ordered them to go to Lubaga and she was given another 5 injections. When all the treatment given failed, PW2 advised that the victim be taken to Mulago Hospital. At Mulago, they suspected that the child had been defiled.

PW2 further testified that the appellant stayed home until he heard that the victim could have been defiled and he ran away from home. He stated that he was advised to take the victim to Mulago Hospital where he took her and she was examined and a foreign object was found in her vagina which called for an operation. That the foreign object was a black piece about the size of his finger in thickness, in length maybe 3 inches.

PW2 stated that the doctors told him that, in the absence of the appellant, the victim told them that it was the appellant who defiled her and threatened to kill her if she shouted. According to PW2, the victim also told her friends in the neighbourhood and one of his daughters over heard them talking. He noted that the victim told him that she was in a lot of pain. That the appellant was arrested and the victim was taken to the Police surgeon.

During cross examination, PW2 testified that the Police got involved in the matter when the victim was taken to the Police surgeon. He stated that, at first, he did not know that the victim had been defiled. According to PW2, the victim was treated at Mengo Hospital where the piece of sponge was removed.

PW3, Rita Nakaye, a daughter to PW2, further corroborated the evidence of PW1 and PW2 when she testified that she knew the appellant as he used to live with them in their home. She also knew the victim as the brother's child. PW3 testified that when the victim started smelling, PW2

told her young sister, Maureen to check her and see why she was smelling. She stated that Maureen found a smelly discharge coming out of the victim's vagina and reported to their father, PW2. She testified that they started treating her. That she took her to Mulago Hospital but the doctor who was supposed to work on her did not come and they were advised to take the victim to Mengo Hospital where the sponge was removed.

PW3 further testified that the victim told her that when Pw3's mother (the victims grandmother) used to go out early, the appellant would go to her room and the bed. That the victim told her that the appellant woke her up and put his penis in her vagina and when blood came out of her vagina, the accused put there something which she did not understand. She stated that, at that time, the accused had run away from home and that's when the victim got the courage to tell them that the appellant defiled her.

During cross examination, PW3 stated that she played a part in taking her to hospital. She said that the doctor in Mengo told them that the foreign object had to be removed by operation or by force. She concluded that the victim talked about being defiled before the object was removed.

In his Defence, the appellant, Ddumba Fred, stated that he knew the victim as his grandchild and testified that in July 2010 he was at Upland High School. He stated that in December 2010, when he had just returned from School, he got a misunderstanding with his brother in law (PW2) when he was told not to go and watch football and he disobeyed his orders. The appellant stated that he was with them from July up to December and they never told him that he had sexual intercourse with the victim. He stated that on 6th December 2010, he moved away from their home and went at his friend's place at Mutundwe about 3 miles from PW2's home.

The appellant further stated that he was arrested on 7th December and was told that he ran away after defiling the victim. He argued that he knew that the victim was sick but he did not run away after hearing that she was defiled. He stated that he never asked for permission from PW2 because he threatened violence. He said that he continued to stay at PW2's home for about two months.

The appellant stated that he used to wake up in the morning to open and shut the door for his auntie when going to work and thereafter he would take his bath at around 5.00am. He stated that there was a worker called Berna, a lady, who used to sleep with the victim. He stated that he also had a misunderstanding with PW2 since 2007 because he thought that he could take her father's property.

During cross examination, the appellant testified that he had been living at PW2's home for 10 years and emphasised that he had a misunderstanding with PW2 yet he was like a son to him.

Our analysis of the evidence on record all points to the appellant's participation in the alleged offence. From the record, the victim was said to have been defiled in the month of July, 2010 but the victim's family only found out what happened to the little girl 3 months later in October, 2010 when her grandfather (PW2) sensed a foul smell coming from the victim. The victim was initially taken to Ndeeba Joy Medical Centre and Lubaga Hospital, where the doctor's simply prescribed 5 injections to the victim. The said injections did not heal the victim's condition and therefore she was taken to Mulago Hospital on 10th December, 2010 as seen from the Accident and Emergency Unit report. On 11th December 2012, a laboratory request form from Mulago indicates that the victim was examined and found to have been sexually assaulted with pus coming from her vagina. PW2 stated that since the doctor who was supposed to attend to the victim in Mulago was absent, they were advised to go to Mengo Hospital. This is corroborated by the victim who also stated that she was taken to Mengo Hospital where the sponge was found inside her vagina and it was surgically removed. That evidence was further supported by the medical report from Mengo Hospital dated 19th January 2011 which indicates that there was a smelly discharge coming out of the victim's vagina and upon thorough examination, a foreign object (the sponge) was found inside the victim's vagina and it was removed.

When the Police Surgeon medically examined the victim on 9th December 2010, on Exhibit.1, Police Form 3, she found that the victim was 8 years old, her hymen was intact and there were no signs of penetration, hence no defilement. The Police Surgeon's findings on penetration cannot be relied on as the victim was examined four months after she was defiled.

On the Police Surgeon's finding that the victim's hymen was intact, we find that even though the Surgeon found so, there was evidence from the victim that it was the appellant who pushed the sponge inside her vagina. According to **section 129 of the Penal Code Amendment Act 2007,** a sexual act is committed by mere touching in a sexual manner, the private parts of a girl under the age of 14 years with or without penetration. The Supreme Court in ***No.0875 PTE. Wepukhulu Nyuguli vs. Uganda, Criminal Appeal No.21 of 2001 (unreported)*** held: "*...whether or not sexual intercourse took place in a particular case is a matter of fact to be established by the evidence.....It is the law that however slight the penetration may be it will suffice to sustain a conviction for the offence of defilement. (See: Adamu Mubiru - V - Uganda (Cr. Appeal No. 47/97 Court of Anneal) (unreported).*" The Supreme Court Justices relied on the victim's evidence as the best evidence on the issue of penetration as well as identification and other cogent evidence which sufficed to prove the act of sexual intercourse.

In the instant case, the victim knew the appellant well as he lived in the same house with her for 10 years. The victim's evidence was to the effect that the appellant entered her bed, put something in her private parts (vagina) and when he saw blood coming, he put a sponge in her vagina to stop the bleeding. He threatened to kill her with a panga if she made any sound. The victim's evidence was corroborated by the evidence from her grandfather (PW2) and PW3 as well as the medical reports on record, most significantly the one from Mengo Hospital where the said sponge was found inside her vagina and was surgically removed. The trial Judge found the Prosecution witnesses to be truthful and so do we. When this evidence is considered as a whole, it suffices to prove that the appellant performed an unlawful sexual act with the victim.

As regards the inconsistency in Pw2's evidence where he stated that the sponge was found and removed at Mulago hospital instead of Mengo Hospital as stated by the victim and PW3, we find that this contradiction was later cleared by PW2 during Cross examination when he stated that the victim was treated at Mengo Hospital where the sponge was removed which corroborated the evidence from the victim and PW3. The said contradiction did not point to deliberate untruthfulness on the Prosecution witnesses' part.

As a result, we find that the trial Judge properly and rightly convicted the appellant for the offence of aggravated defilement.

Grounds 1,2 and 3 of the appeal are dismissed.

Resolution of ground 4

Counsel for the appellant submitted that the sentence of 25 years imprisonment is harsh and excessive considering the fact that the appellant was a first offender, student at high school aged 20 years with a chance to reform. Counsel prayed for a sentence of 10 years imprisonment.

We have considered the Law governing interference with sentence by an appellate Court as set down by the Supreme Court in the case of ***Kyalimpa Edward vs. Uganda, Criminal Appeal No. 10 of 1995*** where Court referred to ***R v Haviland (1983) 5 Cr. App. R(s) 109*** and held as follows:

> ***"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. v Mohamedali Jamal (1948) 15 E.A.C.A 126."***

We are also guided by the case of ***Kamya Johnson Wavamuno vs. Uganda, Supreme Court Criminal Appeal No. 16/2000*** in which 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."***

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

> ***"The convict is a first offender, who has been in prison for 2 years. This offence is rampant and he committed the offence in a very calm way wwhen he inserted the piece of sponge in the victims vagina. He does not appear repentant or remorseful. The offence he is convicted of carries a maximum sentence of death. Taking all the above into account, he is sentenced to 25 years imprisonment."***

It is clear that the learned trial Judge considered both the aggravating factors and the mitigating factors while sentencing the appellant. The trial Judge rightly used her discretion and sentenced the appellant to 25 years imprisonment upon consideration of the period the appellant spent on remand.

The trial Judge took into account the 2 years that the appellant spent on remand as required by the law then in ***Kizito Senkula vs. Uganda, Supreme Court Criminal Appeal No.24 of 2001; Kabuye Senvawo vs. Uganda, Supreme Court Criminal Appeal No.2 of 2002*** and ***Katende Ahamed vs. Uganda, Supreme Court Criminal Appeal No.6 of 2004,*** where Court then held: ***"taking into consideration of the time spent on remand does not necessitate a sentencing Court to apply a mathematical formula."***

The trial Judge was not bound to follow the arithmetic principle in ***Rwabugande Moses versus Uganda, Supreme Court Criminal Appeal No.25 of 2014,*** made on 03rd March 2017, 5 years after her decision was made on 16th March 2012. See: ***Abelle Asuman vs. Uganda, Supreme Court Criminal Appeal No.066 of 2016.***

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.

Taking into consideration the cases above cited, we find that the sentence of 25 years imprisonment was not illegal nor based on wrong principles and neither was it manifestly harsh nor excessive given the circumstances of this case. We therefore find no reason for Court to interfere with it. Ground 4 therefore fails.

In the result, we uphold the decision of the trial Court and dismiss this appeal.

Dated at Kampala this ..... day of.....2023

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RICHARD BUTEERA
DEPUTY CHIEF JUSTICE

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ELIZABETH MUSOKE
JUSTICE OF APPEAL

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CHEBORION BARISHAKI
JUSTICE OF APPEAL