



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT JINJA**

(Coram: Kiyabwire; Kibeedi & Mugenyi, JJA)

CRIMINAL APPEAL NO. 70 OF 2014

KIBIKYO PAUL APPELLANT

VERSUS

UGANDA RESPONDENT

(Appeal from High Court of Uganda at Mukono (Mukasa, J) in Criminal Case
No. 150 of 2011)

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15 years, while in Candia Akim vs Uganda, Criminal Appeal No. 181 of 2019, the Court upheld a sentence of 17 years imprisonment for the aggravated defilement of an 8 year old by her stepfather.

7. It is argued that the Appellant is a first offender; pleaded guilty and did not waste Court's time and Government resources, and is remorseful having sought forgiveness from the victim, her mother and grandmother. The fact that the medical report indicated that the victim's hymen had not been ruptured is also advanced as a mitigating factor that indicates that there was only attempted penetration. Furthermore, insofar as the victim's grandmother had proposed a sentence above ten (10) years, it is proposed that a 12 – 15-year sentence would suffice.
8. We consider it necessary to pause here to observe that non-rupture of a hymen is immaterial to the offence of aggravated defilement given the definition in section 129(7)(a) of the Penal Code Act of a '*sexual act*' as '**penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ.**' Therefore, the Appellant having pleaded guilty to the offence of aggravated robbery, it is presumed that there was some penetration however slight.
9. Conversely, the State supports the sentence imposed by the trial judge given the gravity of the offence and the tender age of the victim. Learned State Counsel relied on the Supreme Court case of Opolot Justine and Agamet Richard vs Uganda, Criminal Appeal No. 31 of 2014 for the proposition that non-imposition of the maximum penalty for an offence would negate connotations that a sentence was harsh and excessive, the maximum penalty in this case being the death penalty. It is argued that the 28-year sentence that is in issue presently was indeed a lenient sentence in comparison with the death sentence or life imprisonment, which are noted by the Supreme Court to be the most severe sentences. See Tigo Stephen vs Uganda Supreme Court Criminal Appeal No 08 of 2009 (2011) UGSC 7. State Counsel opines that inconsistency in sentencing is not a recognised ground of appeal, and the 28-year sentence imposed in this case was neither illegal nor harsh or excessive.
10. Deference is made to the principle of judicial independence in **Article 128 (1) and (2) of the Constitution** that portends that no person or authority may interfere with

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M. G. J.