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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO.287 OF 2021

(Arising from High Court Criminal Case No.105 of 2018)

KANAMWANJE EMMANUEL:.....APPELLANT

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VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda holden at Wakiso before Justice Joyce Kavuma dated 22nd November, 2021 in High Court Criminal Session Case No.105 of 2018)

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CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. LADY JUSTICE HELLEN OBURA, JA

HON. LADY JUSTICE EVA LUSWATA, JA

JUDGMENT OF THE COURT

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This is an appeal from the decision of Joyce Kavuma, J in High Court Criminal Session Case No.105 of 2018 at Wakiso delivered on 22nd November, 2021 in which the Appellant was convicted on his own plea of guilty on all the 3 counts of the offence of aggravated defilement contrary to section 129(3) (4) (a) and (b) of the Penal Code Act, Cap 120 and sentenced to 20 years' imprisonment less 4 years and 5 months' period of time spent on remand.

Background

Briefly, the facts as accepted by the learned trial Judge were that on 11th June, 2017, the victim N.F aged 5 years went to the public toilet to ease herself where the Appellant was employed as the attendant. The Appellant ordered the victim
10 to undress while he also undressed. The Appellant had unlawful sexual intercourse with the victim.

The victim took some time to return and the victim's mother sent one Rose to go check on her. Rose went to the public toilet and called out the victim's name. The Appellant who had locked himself inside the toilet with the victim
15 opened the door and his zip was open while the victim's dress was up. The victim narrated the incident to her mother who reported the matter to police. A medical examination was carried out on both the victim and the Appellant. The examination of the victim revealed that she was 5 years old with bruises on her labia while the examination of the Appellant revealed that he was of sound
20 mind.

The Appellant was indicted with the offence of aggravated defilement contrary to section 129(3) (4) (a) of the Penal Code Act. At trial, the Appellant pleaded guilty as charged. He was convicted and sentenced to 20 years' imprisonment less 4 the years and 5 months' time spent on remand.

25 The Appellant now appeals against sentence only having obtained leave of Court to do so. The sole ground states;

5 ***1. That the learned trial Judge erred in law and fact in sentencing the Appellant to 15 years' imprisonment on all the three counts to serve the sentence concurrently which sentence was deemed illegal, manifestly harsh and excessive in the circumstances.***

Representation

10 At the hearing of this appeal, Mr. Emma Muwonge appeared for the Appellant while Kyomuhendo Joseph, Chief State Attorney appeared for the Respondent.

Appellant's submissions

Counsel for the Appellant submitted that while sentencing the Appellant, the learned trial Judge considered the period of 4 years and 5 months that the Appellant had spent on remand but did not consider other factors as was submitted in mitigation, for example, that the Appellant was a first offender and aged 40 years old. He added that failure by the learned trial Judge to take into consideration the mitigating factors made the sentence of 20 years' imprisonment illegal in the circumstances. He relied on *Tamale Richard V Uganda, Court of Appeal, Criminal Appeal No.19 of 2012*, where this Court reduced a sentence of 25 years' imprisonment imposed on the Appellant to 18 years' imprisonment because the trial Court had not taken into account the mitigating factors.

Counsel further submitted that the trial Court failed to arithmetically handle the issue of the period the Appellant had spent on remand and did not deduct the same as required under Article 23(8) of the Constitution and the case of