

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA**  
**CRIMINAL APPEAL NO. 0238 OF 2019**

*[CORAM: Buteera, DCJ; Mulyagonja & Mugenyi, JJA]*

**ISUZU KANAKULYA ::: APPELLANT**

**VERSUS**

**UGANDA ::: RESPONDENT**

*(Appeal against the decision of the High Court of Uganda at Jinja, (Basaza Wasswa, J), in Criminal Session Case No.229 of 2015, dated 30<sup>th</sup> March 2015)*

**JUDGMENT OF THE COURT**

**Introduction**

The appellant was convicted of aggravated defilement contrary to Sections 129 (3), 4 (a) and (b) of the Penal Code Act, Cap 120, pursuant to a plea of guilty, and sentenced to 35 years' imprisonment.

**Brief Facts**

On the 14<sup>th</sup> day of June 2012 at Namabwere Village in Iganga District, Isuzu Kanakulya, the appellant, being HIV Positive, performed a sexual act with N. A., a girl aged 5 years. The appellant pleaded guilty to the charges and was duly convicted and sentenced. He now appeals against sentence only on the following ground:

**That the learned trial Judge erred in law and fact when she passed a sentence of 35 years which is illegal for failing to subtract the period spent on remand and is manifestly harsh and excessive in the circumstances.**

 *Mulyagonja*

*Isuzu*

## Representation

At the hearing of the Appeal, the appellant was represented by Miss Nalule Shamim Rukiyah, on State Brief, while the respondent was represented by Ms Tuhimbise Rose, Senior Assistant Director of Public Prosecutions. Both  
5 counsel applied to court to adopt their earlier-filed written submissions as their legal arguments. The application was allowed. This court shall rely on those submissions in resolving this appeal.

The appellant counsel also prayed for leave to appeal against sentence only.

## 10 Case for the appellant

Regarding the duty of the first appellate court, Counsel for the appellant cited the case of **Kifamute Henry Vs Uganda Criminal Appeal No.10/97**, where the Supreme Court Justices reiterated that it was the duty of the first appellate court to rehear the case on appeal by reconsidering all the  
15 materials which were before the trial court and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it.

Counsel for the appellant submitted that the learned trial Judge passed an illegal sentence when she did not deduct the period of 3 years 9 months  
20 and 21 days, that the appellant spent on remand as required by Article 23 of the Constitution, Guideline 15(1) and (2) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2003, and the Supreme Court decision in **Rwabugande Moses V Uganda; SCCA 25 of 2014**.

25 Counsel further referred to the case of **Ntambala Fred V Uganda; Criminal Appeal 34 of 2015** relied on in **Anguyo Robert V Uganda; Criminal**

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**Appeal 38 of 2014**, where the Supreme Court approved a sentence of 14 years' imprisonment imposed on the appellant by the trial court and confirmed by the Court of Appeal, considering it appropriate for aggravated defilement.

5 It was counsel's contention that this honorable court be pleased to allow the appeal and find that the sentence passed by the trial judge was illegal for failure to comply with Article 23(8) of the Constitution. He prayed that the sentence of 35 years be set aside and an appropriate sentence be passed by the court.

10 **Case for the respondent**

In opposing the appeal, counsel for the respondent submitted that the learned trial Judge considered the time the appellant had spent on remand and deducted it from the sentence she imposed. She stated that the trial Judge only failed to do the arithmetic. She submitted that the error could  
15 be cured under section 11 of the Judicature Act.

She observed that the record showed that the sentence was imposed on 30<sup>th</sup> March 2015 at 3:10pm. The appellant had been on remand since 9<sup>th</sup> June 2012, and that by a simple calculation, he had spent 2 years 9 months and 21 days on remand. She prayed that the period is deducted from the  
20 sentence of 35 years' imprisonment, bringing the final sentence to 32 years, 3 months and 7 days.

Regarding the contention that the sentence was harsh and excessive, counsel submitted that the sentence was not. She stated that the trial judge considered the mitigating and aggravating factors. She considered that the  
25 victim was 5 years old and that the appellant was HIV positive and exposed the victim to multiple risks of death, rapture of the uterus, HIV infection,

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