THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
CRIMINAL APPEAL No.096 OF 2018

(Coram: Obura, Bamugemereire & Madrama JJA)

JAMES KAMOTI :: APPELLANT

VERSUS

UGANDA :: RESPONDENT

(Appeal from the decision of Suzan Okalany J, in the High Court of Uganda dated 8th August 2018 at Mbale)

Criminal Law – 2 counts of Aggravated Defilement C/s 129(3), (4)(a) of The Penal Code Act- Harsh and Excessive Sentence
Evidence Law- Contradictions and Inconsistencies in Evidence, Alibi

JUDGMENT OF THE COURT

Introduction

The appellant **James Kamoti** was indicted on 3 Counts of Aggravated Defilement where he was alleged to have defiled 2-year-old **RM,** 5-year-old **IN** and 4-year-old **AKN**, contrary to section 129(3), (4)(a) of the Penal Code Act. He was subsequently acquitted of Count No. 2 but was convicted on Counts No.1 and No.3. He was sentenced to 45 years and 9 months imprisonment on each count to run concurrently. The reason for this appeal was that the appellant was dissatisfied with both the conviction and sentence.

Background

The facts as ascertained from the lower court record are that on 24th June 2013 at Bukitongo village in Bududa district the appellant performed sexual acts on 3 girls, aged 2,4 and 5 years old. The appellant pleaded not guilty, and a full trial was conducted. One of the victims, an infant of 2 years could by reason of age, not articulate what happened to her at the time of the defilement. Her evidence was expunged. The other victim, (PW5), aged 5 years at the time of the defilement, could remember what transpired. She testified about her defilement and that of her sister who was aged 4 years. The appellant was said to have pounced on PW5 first and defiled her. He then picked up the 4-year-old and defiled her while PW5 was watching. The appellant was found guilty of Count No.1 and Count No.3. He was sentenced to 45 years and 9 months in prison for each count. The sentences were to run concurrently. It is against this conviction and sentence that the appellant appeals on three grounds.

Grounds of appeal

1. The Learned Trial Judge erred in law and fact when he solely relied on the evidence of the prosecution which was marred by contradictions and inconsistencies hence causing a miscarriage of justice to the appellant.
2. The Learned Trial Judge erred in law and fact when he ignored the appellant's alibi defence which was plausible.
3. That the Learned Trial Judge erred in law and fact when he sentenced the appellant to 45 years and 9 months imprisonment which sentence was termed harsh and excessive given the mitigating factors which

were tendered by the appellant hence causing a miscarriage of justice to the appellant.

Representation

At the hearing, the Appellant was represented by Counsel Eddie Nangulu while the Respondent was represented by Assistant DPP Vicky Nabisenke, the appellant was in court. Both counsel for the respective parties filed written submissions, which this Court relied on in arriving at its decision.

Appellant's Submissions

In his submissions Counsel for the appellant jointly treated Grounds No.1 and 2 jointly and Ground No.3 separately. On the first 2 grounds, counsel for the appellant was critical of the Learned Trial Judge for relying on evidence flawed with inconsistencies and contradictions. Counsel contended that the single-identification witness contradicted herself in her testimonies. In her examination-in-chief, she testified that she knew the appellant very well since he usually visited their home. In cross-examination, when asked how she came to know the appellant, her testimony was that a while before the offence was committed, she was informed by PW2 that the assailant was called Kamoti. Counsel further contended that the eyewitness was a child of tender years whose mind could not appreciate the circumstances of the crime. He argued that the eyewitness neither specified how long the incident took nor did she point to any circumstances that

would enable the court to conclude on the fact that the identification was proper. The appellant also contended that the medical examination report indicated that the victims were defiled by a mad man while the appellant was not a mad man. He also added that the medical report was untruthful as the witnesses testified that they were taken for medical examination immediately after the incident but the medical report showed that the victims were examined 2 days after the incident. Regarding Ground No.3 counsel submitted that the Learned Trial Judge ignored the mitigating factors thus arriving at the sentence that was harsh and excessive. Counsel prayed that this court allows the appeal and sets aside sentence and conviction of the trial court in the interest of justice and fairness.

Respondent's Submission

The respondent opposed the appeal. He particularised all the grounds separately. The respondent contended that the evidence of PW5 was clear. PW5 had been familiar with the appellant as Kamoti in the past. PW2's grandmother had told her the appellant's name. This was before he defiled her. She knew the appellant prior to the incident. He further argued that the conditions for identification all favoured a correct identification. It happened in broad daylight. This was on or about1:00pm. The commission of the offence involved facing the witness's assailant at close proximity. Counsel submitted that there was no contradiction in the medical examination reports. The victims were referred to Bududa hospital on the

day of the attack that is on 24/06/2013. The said victims were examined on 25/06/2013. Their medical reports stamped on 26/06/2013. Counsel added that the victim's grandmother described Kamoti as "an allegedly madman called Kamoti". Counsel contended that the unsworn testimony of PW5 was corroborated by the fact that she immediately informed her grandmother PW2 of the sexual assault and named the appellant as her defiler. The fact that she was sexually abused was further corroborated by the medical report. Counsel prayed that court finds that the evidence was sufficient to prove that the appellant defiled the 2 young girls. Regarding Ground No.2 counsel contended that the appellant opted to keep quiet when it was time to give his defence. Counsel averred that the appellant did not raise the defence of alibi at the trial. As regards Ground No.3 counsel averred that the sentence the Learned Trial Judge passed on the appellant did not consider all the factors submitted in mitigation and aggravation. Counsel prayed that this court finds that acts of defilement are cruel, brutal, and barbaric and a sentence of not less than 30 years on each count would be appropriate. Counsel prayed that court upholds the conviction and issues a deserving and deterring sentence.

Consideration by Court

The duty of a first appellate court was well articulated by Sir Sinclair VP whose reasoning was that the first appellate court erred in law in that it had not treated the evidence as

a whole to that fresh and exhaustive scrutiny which the appellant was entitled to expect, and, as a result of its error, affirmed a conviction resting on evidence which, had it been duly reviewed, must have been seen to be so defective as to render the conviction manifestly unsafe. See **Dinkerrai Ramkrishan Pandya v R 1957 EA 336**

We agree that on first appeal, from a conviction by a Judge the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial Judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed over another and that question turns on body language and demeanour of the witness. The appellate Court must be guided by the impressions made on the trial judge who saw the witnesses, first hand. However, there may be other circumstances quite apart from body language and demeanour, which may show whether a witness is credible or not which may warrant a court in differing from the trial Judge even on a question of fact turning on credibility of witness which the appellate court has not seen.

Buttressed with the above considerations, we are alive to the duty of this court as a first appellate court to reappraise,

rehear and re-evaluate all the evidence at trial, with the handicap that we were not privy to the eye witness accounts of the witnesses as they testified, first hand. We are however, entitled to form our own inferences and arrive at our own conclusions of law and fact. **Rule 30(1) of the Judicature (Court of Appeal Rules) Directions, S.113-10, See also Kifamunte Henry v Uganda SCCA No. 10 of 1997.**

We shall handle the first and second grounds together and the last ground separately.

Ground No.1

1. The Learned Trial Judge erred in law and fact when he solely relied on the evidence of the prosecution which was marred by contradictions and inconsistencies hence causing a miscarriage of justice to the appellant.

Ground No.2

2. The Learned Trial Judge erred in law and fact when he ignored the appellant's alibi defence which was plausible.

It was the appellant's contention that the Learned Trial Judge erred when she relied on evidence in which contradictions and inconsistencies were ubiquitous. Firstly, the appellant contended that PW5 contradicted herself during her examination-in-chief and cross-examination. It was his contention that while PW5's testimony was that she knew the appellant, in cross-examination she contradicted herself when she stated that she was informed by her grandmother PW2 that the assailant was Kamoti.

It was the appellant's contention that the medical examination reports of the 2 victims Exhibit P2 and Exhibit

P3 had contradictions. He averred that the victim's grandmother PW2, indicated that the victims were raped by a mad man yet Exhibit P4 (the appellant's medical examination report) indicated that the appellant was of sound mind and therefore he could not have been the assailant described by the grandmother.

Counsel for the respondents argued that the victim's grandmother PW2 (Nadimbe) described the assailant as an allegedly mad man, she also specified that the alleged mad man's name was Kamoti. He relied on the description in the medical examination report which was as follows,

> "On 24/06/13 when Nadimbe had come back from the garden, Kekyila Angela a 4-year-old sister to the victim reported to her that they had been raped from the house by an allegedly mad man called Kamoti. Nadimbe noted bleeding from the vagina."

To clarify on the discrepancy in the dates on the Medical Examination Report Exhibit P1 and Exhibit P2, the respondent's case was that the grandmother reported the case immediately, but infants were examined the following day. He argued that the victims were referred to Bududa Hospital by the CID of Mbale on 24th June 2013 in a letter with the phrase, "..is a victim in a DEFILMENT case and has been sent to you on the 24th day of June 2013".

The respondent's case is that the children were then examined the following day on 25th June 2013 and their

medical reports were signed and stamped by the medical officers on the 26th day of June 2013.

We zoomed in on the PF3A which was exhibits P1 and P2, which were the medical documents. We have considered the disparity in the dates. We recognise that the reporting is a day later. The children were examined a day later, and the report was dated a day later. These in our view are minor clerical errors and depict sloppiness in the way the medical team handled their documentation. The discrepancy however, is too minor to upset the reality and does not discount the fact that the two victims were examined and a report produced which shows that the children were defiled. We did not find that this to be a contradiction. We believe that the child's a blow-by-blow account of events which transpired is corroborated by the medical proof on PF3A that they were defiled.

Before concluding, we must answer the question as to whether the child-witness should be believed. We shall take into consideration what this court has done in the past. Where a case such as this one rests on the eye witness account of the identity of the appellant, this court will subject it to thorough scrutiny. In **Bogere Moses & anor v Uganda SCCA No. 1 of 1997** the approach to be taken in dealing with evidence of identification by eyewitnesses in criminal cases was laid down. The Supreme Court held that,

"The starting point is that the court ought to satisfy itself from the evidence whether conditions under which the identification is claimed to have been were or were not difficult, and to warn itself of the possibility of mistaken identity. The court then should proceed to evaluate the evidence cautiously so that it does not convict or uphold a conviction, unless it is satisfied that mistaken identity is ruled out. In so doing the court must consider the evidence as a whole, namely the evidence of any factors favouring correct identification together with those rendering it difficult".

We have keenly studied the record of the trial court. In her examination-in-chief, PW5 testified that she had earlier been told the name of the appellant and who he was by the grandmother of PW2. It was her evidence that she knew the appellant prior to the commission of the offence. We can safely conclude that during cross she simply affirmed how she got to know the appellant. Her testimony was as follows.

"I know the person appearing on the screen. He is called Kamoti, I was told he is Kamoti. My grandmother told me that he is called Kamoti. She told me this before he did bad manners to me. She told us when he was passing at our home..."

The child did not falter when asked if she knew Kamoti. We agree with counsel for the respondent and find that there was no contradiction in the evidence of PW5. She knew the appellant prior to the day she was defiled by him. We

respectfully disagree with the appellant's claim that there was a contradiction. In regard to PW5, the criticism was that the Learned Trial Judge relied on the unsworn evidence of a child of tender years, who was 4 years old at the time the defilement happened and therefore she was incompetent and unreliable. We find that the criticism that a child witness could not give cogent evidence was one-dimensional and unfounded. Courts have always relied on evidence of children of tender years once the proper procedure is undertaken in procuring such evidence. From the record of court, it is evident that the Learned Trial Judge addressed her mind to the age of the victims and treated the evidence accordingly. It is also on record that the trial court fulfilled its duty. The court properly conducted a voire dire to confirm the ability to understand the nature of the oath and the duty to tell the truth. As a result, PW5 gave unsworn evidence. We find that the court adopted a proper procedure and the evidence of PW5, a child of tender years, was clear, unambiguous, and unshaken and accurate.

Counsel further contended that the victims did not give details of the circumstances surrounding their defilement to enable the court to conclude that the appellant was properly identified. Counsel cited the need for details of where the offence happened and how long it took. The evidence for the respondent was that PW5 specified where the incident happened, inside the house. This court will decide this appeal

on the strength of the prosecution not on the weakness of the defence case.

Our finding was that this child, PW5, was able, at the earliest time possible to explain what happened to her and to her sister. Her action of contemporaneously reporting the defiler, who was someone known on the village is corroborative of the fact that something ghastly had been done to her and to her sister. Her conduct corroborates her allegation.

Despite all the aforesaid, we warn ourselves of the dangers of relying on the evidence of a single-identifying witness who is also a child of tender years. In this case it is imperative to test whether the conditions for identification which favoured an accurate identification existed. The test of correct identification was delineated in **Abdala Nabulere & another versus Uganda, 1979 HCB 77**, as follows;

> **"The court must closely examine the circumstances in which the identification was made. These include the length of time the accused was under observation, the distance between the witness and the accused, the lighting, and the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good then the danger of mistaken identity is reduced, the poorer the quality the greater the danger."**

The evidence for the respondent is that the appellant performed a sexual act on PW5 and on her sister. We have

examined the evidence and find that the appellant defiled PW5 first and then defiled her sister as PW5 watched him defile her. We find that PW5 had enough time to have the assailant under observation, while he violated her and while he did the same sexual act on her sister. She also contemporaneously reported the matter as soon as the adults showed up. On the question of proximity, the assailant was literally laying right on top of PW5, this settles the issue of proximity. Furthermore, the offence happened in broad daylight at 1:00pm. There was enough light for PW5 to identify the assailant. Lastly, it is on record that PW5 knew the appellant quite well having been previously introduced by the grandmother. From the proceedings we can draw the conclusion that the child had a good sense of perception and was able to carefully recollect the events and articulate them. She was possessed of sufficient intelligence to testify about what happened to her and to her sister. In **Livingstone Sewanyana v Uganda** and supreme court observed as follows;

> 'It is clear from the above decision **in Badru Mwindu vs Uganda (supra)** that just like in the case of **Omuroni vs Uganda (supra)**, the Supreme Court upheld the appellant's conviction based on the evidence of witnesses to whom the victim had accused the appellant of defiling her and other ample circumstantial evidence that the prosecution adduced at the trial, notwithstanding the fact that in both cases,

the respective victims and the doctors who examined them had not testified."

Recently in **Kasibante Godfrey CACA No. 30 of 2018** this court came to a conclusion that a conviction can be solely based on the testimony of the victim as a single witness, even if she or he is a child of tender years who has given unsworn evidence, provided the court finds him or her to be truthful and reliable. In Kasibante the court considered **Sewanyana Livingstone v Uganda SCCA No. 19 of 2006**) and emphasized that "what matters is the quality and not quantity of evidence."

More importantly, the courts have of recent found little necessity in corroboration where the evidence of a single identifying witness is sufficient even when that witness is a child of tender years. **In Ntambala Fred v Uganda, Criminal Appeal No. 34 of 2015** the supreme court after considering what amounts to corroboration, made an exception to it in the following terms;

> "Corroboration affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, which confirms in some material particular not only the evidence that the crime has been committed but also that the defendant committed it. The test applicable to determine the nature and extent of corroboration is the same whether it falls within the rule of practice at common law or within the class of offences for which corroboration is required."

As seen from the above holding, corroboration is evidence from other sources which supports the testimony of the complainant and connects or tends to

connect the accused person to the commission of the crime.

The value of corroboration is rooted in the legal standard (proof beyond reasonable doubt) that must be met by the prosecution in order to secure a conviction. Consequently, the prosecution may find it necessary to adduce evidence from more than one witness in order to prove their case beyond reasonable doubt.

Nevertheless, section 133 of the Evidence Act provides that: "Subject to the provisions of any other law in force, no particular number of witnesses shall in any case be required for the proof of any fact."(Our emphasis).

Consequently, a conviction can be solely based on the testimony of the victim as a single witness, provided the court finds her to be truthful and reliable. As stated by this court in **Sewanyana Livingstone vs. Uganda SCCA No. 19 of 2006)** "what matters is the quality and not quantity of evidence."

In conclusion, we dismiss the appellant's claim that the evidence was tainted with inconsistencies and contradictions. PW5's unsworn evidence is the most credible account of what transpired and there is other independent proof to support it such as the actions of the child when her grandmother arrived. She immediately reported the defilement. The medical proof was clear that the two children had been defiled. It is our conclusion that the respondents proved beyond reasonable doubt that it was the appellant who defiled the victims. Ground No.1 and Ground No.2 of this appeal fail.

Ground No.3

3. **That the Learned Trial Judge erred in law and fact when he sentenced the appellant to 45 years and 9 months imprisonment which sentence was termed harsh and excessive given the mitigating factors which were tendered by the appellant hence causing a miscarriage of justice to the appellant.**

The appellant contended that the Learned Trial Judge ignored the mitigating factors and sentenced the appellant to a harsh and excessive sentence. On the other hand, the respondent contended that the acts of the appellant were so cruel that a sentence of not less than 30 years for each count would be appropriate.

The Supreme Court in **Kyalimpa Edward v Uganda SCCA No. 10 of 1995** while referring to **R v Haviland (1983) 5 Cr. App. R(s) 109** laid down the principles upon which an appellate court may interfere with a sentence passed by the trial sentencing Court 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 the court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice".

See also; Kamya Johnson Wavamuno v Uganda SCCA No.16 of 2000, Kiwalabye Bernard v Uganda SCCA No. 143 of 2001, Livingstone Kakooza v Uganda SCCA No. 17 of 1993 [unreported] and **Jackson Zita v Uganda SCCA No. 19 of 1995.**

We have looked at the sentence as passed by the trial court and the reasons given. It is evident that the learned trial Judge while sentencing the appellant considered both the mitigating and aggravating factors. After considering these factors she then sentenced the appellant to 45 years and 9 months. In her sentence the trial Judge ruled as follows:

> "I have considered the submissions of the Prosecution, the Defence and the accused's plea, as well as the laws above mentioned. I have considered the aggravating factors specified in paragraph 20 as well as the militating factors in paragraph 21 of the sentencing guidelines, especially,
> I) The fact that the convict was convicted on two counts of aggravated
> defilement which carries the maximum punishment of death;
> 2) The fact that the victims were seriously injured as a result of a sexual attack on them. PE2 is the medical examination report of Racheal the victim in the first count. Dr. Wodeya Joseph of Bududa Hospital who examined her on the 25/06/2013, found her to be of an apparent age of 2myears. She had sustained scratches on her neck. Her genitals were found with a 3-degree perennial tear involving the vaginal mucosa up to rectal mucosa and her hymen was raptured with oedema and hyperaemia. In her buttocks and anus, there was a perennial tear, involving anal and rectal mucosa. PE3 is the medical examination report of Angella the victim in the third count. She was also examined by Dr. Wodeya Joseph, on the 25/06/2013 and

found to be of apparent age 4 years. her examination revealed that, she had suffered a 2nd degree perennial tear involving the vaginal mucosa and the perennial muscle. She had a ruptured hymen with hyperaemia. Eyewitnesses including PW2 found these victims bleeding with blood up to their legs;

3) The fact that the convict planned the offence knowing that the complainant Kekilia Nandimbe (PW2) was out of the home and had left only children at home.

4) The fact that the convict targeted very susceptible members of the community (two toddlers), to implement his depraved sexual desires;

5) The fact that the offence was executed in the presence of another child -Matuka Rachel was sexually defiled in the presence of Kekyila Angela Nandimbe (PW5). This was beastly conduct;

6) the fact that convict was 35 years old (see PE4), while the victims were only 2 and 4 years of age. He was fit to be their father or even their grandfather as observed by State Counsel;

7) The fact that the convict is a first offender;

8) The fact that the convict had spent 4 years and 5 months on pre-trial remand before conviction. It is mandatory under Article 23 (8) of the Constitution of the republic of Uganda that the court deducts the period spent on remand.

As noted above, death is the punishment prescribed for aggravated defilement and the sentencing guidelines in the third Schedule, Part 1 prescribe a starting point of 35 years for this offence.

The convict's disgraceful and destructive behaviour of sexually assaulting 2 vulnerable toddlers for sexual gratification deserves very serious punishment. In my view, the aggravating factors outweigh the only mitigating factor of the convict being a first offender.

I would have sentenced the convict to imprisonment for 50 years but having deducted the period spent on remand of 4 years and 3 months, I sentence the convict to imprisonment for 45 years and 9 months from the date of conviction on each count. The sentences are to

run concurrently. The convict is informed that he has a right of appeal against the conviction and sentence to the Court of Appeal, within 14 days hereof."

It is apparent that the Learned Trial Judge weighed the mitigating factors and as against the aggravating factors. In this case, she was also guided by the sentencing guidelines. We are of the view however, that the Learned Trial Judge could have paid more attention to sentences considered by the appellate courts in similar circumstances. The sentencing ranges in commensurate matters of aggravated defilement should have informed the sentence. This court explained the meaning of "sentencing range" in the case of **Ninsiima v Uganda CACA No. 0108 of 2010**,

> "By "sentencing range" we understand the trial judge to have been referring to the range given in the recently published Judiciary sentencing guidelines. In our considered view, the said guidelines have to be applied taking into account past precedents of Court decisions where the facts of those decisions have a resemblance to the case under trial."

We have paid attention to the sentence meted out against the appellant. We acknowledge that the appellant was sentenced to 45 years and 9 moths' imprisonment. We shall now do a comparative assessment of this sentence as against similar decisions of this court and the Supreme court. In **Busiku v Uganda Supreme Court Criminal Appeal 33 of 2011.** The appellant was convicted of the offence of defilement contrary

to Section 123 (1) of the Penal Code. He was sentenced to a term of twelve years imprisonment. He appealed to the Court of Appeal against both the conviction and the sentence. The Court of Appeal dismissed the appeal and enhanced the sentence of imprisonment to twenty years. The Supreme Court found that the court of appeal did not err and confirmed the **sentence of 20 years**.

Similarly, in **Tigo Stephen v Uganda Supreme Court Criminal Appeal 170 of 2003** the appellant was indicted and tried and convicted of the offence of defilement under section 127 (1) of the Penal Code before it was amended to section 129(1) of the Penal Code Act and further amended to include several subsections. He was convicted and sentenced to Life Imprisonment. The Supreme Court held that the trial Judge imposed a sentence of imprisonment for life yet she qualified the sentence by limiting it to twenty years which created a vague and uncertain sentence which ambiguity was not cleared by the High Court. The Supreme Court reinstated the sentence of twenty (20) years imprisonment.

The Court of Appeal having been faced with a similar situation as was found in **Tigo** (Supra) sentenced an appellant to 18 years imprisonment. In **Kisembo v Uganda Criminal Appeal 411 of 2014** the appellant was convicted of the offence of aggravated defilement contrary to section 129 (3) & (4) (a) & (b) of the Penal Code Act. The particulars of the offence were that on the 14 May 2011 at Central Ward,

Kyarusozi Town council in Kyenjojo district the appellant performed a sexual act with Adijah Happy, a girl aged 4 years. He was sentenced to life imprisonment. The Court of Appeal set aside the sentence of Life Imprisonment and substituted it with a sentence of **18 years** imprisonment.

In **Mutumbwe William v Uganda SCCA 8 of 2008** the Supreme Court Justices found that the sentence of Life Imprisonment imposed by the trial judge was harsh in the circumstances; it was set aside. They instead imposed a sentence of 15 years imprisonment.

Likewise, in **Tatyama v Uganda Criminal Appeal 35 of 2018** the Supreme Court confirmed a sentenced of 17 years and 4 months against an appellant who had been charged with Aggravated Defilement under section 129 (3) & (4) (a) & (b) of the Penal Code Act. In **Kabwiso Issa v Uganda SCCA No. 7 of 2002** the trial Judge imposed a sentence of 15 years imprisonment but in the wording did not take into consideration the 5 years the appellant had spent on remand. In the result the Supreme Court Justices held that the Trial Judge intended to sentence the appellant to imprisonment for **ten (10) years**. They passed a sentence of 10 years imprisonment against the appellant.

Similarly, in **Kizito Senkula v Uganda SCCA 24 of 2001** the Appellant's sentence of 15 years imprisonment was substituted with one of **13 years**.

We note that the ranges we have alluded to in the preceding authorities make a sentence of imprisonment for 45 years

appear wide far off the mark. A sentence of 45 years and nine months for the two counts even if it was served concurrently is comparatively harsh. We agree with the observation and submission of counsel for the appellant that a sentence of 45 years and 9 months imprisonment on each count was harsh and excessive. We set aside the sentence of 45 years and 9 months. Under section 11 of the Judicature Act, we are clothed with the same authority as the High Court to pass a fresh sentence. We consider a sentence of 20 years on each of Count No.1 and No.3 to be commensurate. Having deducted the 4 years and 9 months the appellant spent on remand, the appellant shall serve a prison sentence of 15 years and 3 months on each of Count No. 1 and Count No. 3 to be served consecutively with effect from the date of conviction. Ground No.3 succeeds in part.

Dated at **Kampala** this 16th **day** of **2023**

HELLEN OBURA
JUSTICE OF APPEAL

CATHERINE BAMUGEMEREIRE
JUSTICE OF APPEAL

CHRISTOPHER MADRAMA
JUSTICE OF APPEAL