

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBALE
(Coram: Cheborion Barishaki, Hellen Obura and Eva Luswata, JJA.)
CRIMINAL APPEAL NO. 0384 OF 2019

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MAKUBA ALIMAKS:.....APPELLANTS

VERSUS

UGANDA:.....RESPONDENT

10 *(Appeal from the decision of the High Court of Uganda at Mpigi before Kaweesa, J delivered on 26/09/2019 in Criminal Session Case No. 054 of 2018.)*

JUDGMENT OF THE COURT

Introduction

15 The appellant was convicted of the offence of aggravated defilement contrary to section 129(3) and 4(a) of the Penal Code Act by the High Court (Henry.I. Kaweesa, J) on the 26/09/2019. He was sentenced to 20 years' imprisonment.

Background to the Appeal

20 The facts of this case as ascertained from the Court record are that Makuba Alimaks, the appellant on the 22/11/2017 at Lwawebe Village, Maddu Sub-county in Gomba District performed a sexual act with K.F, a girl aged 4 years and 7 months. The appellant was consequently tried and convicted of the offence of aggravated defilement and sentenced as aforementioned. Being dissatisfied with the decision of the trial court, the appellant appealed to this Court on the following grounds;

1. *The learned trial Judge erred in law and fact in failing to consider, properly evaluate and weigh all the evidence laid before court thereby arriving at a wrongful determination in convicting and sentencing the Appellant.*

2. *The learned trial Judge erred in law and fact in reaching a final determination in the absence of key evidence or the key witness.*

3. *The learned trial Judge erred in law and in fact in shifting the liability and obligations of the burden of proof beyond reasonable doubt (standard of proof) upon the prosecution and the prosecution evidence and laid such burden to the Appellant that diminished her/his final determination of the case.*

4. *The learned trial Judge erred in law and fact when he convicted the Appellant of this offence in the absence of evidence to prove all the essential ingredients of the offence.*

5. *The sentence of imprisonment for 20 years was harsh and excessive in the circumstances and that the learned trial Judge erred in law and fact when he ignored to consider important matters or circumstances which he ought to have considered before passing sentence.*

Representation

At the hearing, Mr. Steven Birikano represented the appellant on State brief whereas Ms. Nabasa Caroline Hope, Principal Assistant Director of Public Prosecutions assisted by Ms. Emily Mutuzo, State Attorney represented the respondent. The appellant followed court proceedings from Kigo Prison. Both Counsel filed written submissions which were adopted and have been considered in this judgment.

Appellants' Submissions

Counsel argued grounds 1, 2, 3 and 4 jointly and submitted that it is the duty of this Court to re-appraise the evidence adduced at the trial and make its inference on issues of law and fact. He referred this Court to **Rule 30(1) of the Judicature (Court of Appeal Rules)**