**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**[CORAM: KATUREEBE, CJ; TUMWESIGYE, ARACH-AMOKO, MWANGUSYA AND TIBATEMWA-EKIRIKUBINZA, JJSC]**

**CRIMINAL APPEAL NO. 10 OF 2014**

**BETWEEN**

**KASEREBANYI JAMES.....APPELLANT**

**AND**

**UGANDA.....RESPONDENT**

***(An appeal from the judgment of the Court of Appeal (Kavuma, Ag.DCJ; Buteera and Bossa; JJA) dated 10th April, 2014 in Criminal Appeal No.040 of 2006.)***

## JUDGMENT OF THE COURT

This is a second appeal by the appellant against the sentence of life imprisonment imposed on him by the High Court (Muhanguzi J,) on the 24th November, 2006 for the offence of defilement, contrary to S.129 (1) of the Penal Code Act, Cap 120.

### Background

The facts of the case are as follows: The victim is a biological daughter of the appellant. In 2004 the appellant collected the victim from her mother's place and started living with her at his home. There were step children in the appellant's home. He started subjecting her to forceful regular sexual intercourse together with

threats of throwing her out of the house if she resisted. She consequently became pregnant. Subsequently the neighbours noticed the pregnancy and immediately informed the mother who went to her school and confirmed it. At the time of her pregnancy the victim was 15 years old. The mother then reported to the LC officials who interrogated the victim. She revealed that the appellant had sexually abused her leading to her pregnancy. The LCs then arrested the appellant and took him to Police who charged him with the offence of defilement. At the hearing, the appellant pleaded guilty. He was convicted and was sentenced to life imprisonment. His appeal to the Court of Appeal against sentence was dismissed and the sentence was confirmed, hence this appeal.

In the Memorandum of Appeal filed in this Court the ground of appeal is that:

**1. The learned Justices of Appeal erred in law when they confirmed the High Court sentence of life imprisonment which sentence was illegal.**

Learned Counsel Andrew Ssebugwawo represented the appellant on state brief, while Principal State Attorney Okello Richard appeared for the State. Both parties filed written submissions which they adopted and highlighted briefly at the hearing of the appeal.

**Submissions of Counsel**

Counsel for the appellant submitted that the learned Justices of Appeal erred when they upheld the sentence of life imprisonment which was illegal. He gave the following reasons for his contention:

Firstly, counsel contended that the trial Judge, not having handed down a death sentence which is the maximum sentence for the offence of defilement under section 129 of the Penal Code Act, Cap 120, the starting point would be life imprisonment. However, had the appellant not shown remorse and had he not pleaded guilty and thereby saved the court's time, the sentence of life imprisonment would have been fit and proper.

Secondly, he submitted that "life imprisonment" means 20 years according to the Prisons Act unless the contrary is shown by the Prisons Authorities. Counsel contended that the interpretation of "life imprisonment" by the Supreme Court in the case of **Tigo Stephen v Uganda, Crim. Appeal No.08 of 2009 (SC)** where it was held that life imprisonment means imprisonment for the natural life of the convict could not apply to the appellant since he was sentenced before the Supreme Court had made the decision in Tigo.

Counsel submitted that, having been remorseful and having saved the court's time by pleading guilty, the appellant was entitled to a bonus which should include deducting the time he had spent on remand from the 20 years in accordance to Article 23(8) of the Constitution. Counsel submitted that such a sentence would be in line with the plea bargaining policy that is currently being developed by the Judiciary with the support of the Supreme Court.

Counsel therefore prayed that this appeal be allowed, the decision of the Court of Appeal be set aside and the one year and three months the appellant had spent on remand be deducted from 20 years, leaving him with 18 years and 9 months to serve in prison.

Learned counsel for the respondent opposed the appeal and submitted that the sentence was not illegal or excessive and this Court should not interfere with it. He based his submissions on the following reasons:

Firstly, counsel submitted that in the case of **Kiwalabye Bernard V Uganda SCCA No. 143 of 2001,** this Court held that the appellate court is not to interfere with the sentence imposed by the trial court unless the sentence is manifestly excessive or so low to amount to a miscarriage of justice, or where the trial court ignores an important matter which it ought to have considered in passing the sentence.

In the instant case, the trial Judge was correct when he passed the sentence of life imprisonment after considering the aggravating and mitigating factors. This included the fact that the appellant was the biological father of the victim; at the time of commission of the act, the victim was aged only 15 years old; the act committed by the appellant is an abomination in African culture and the offence was committed repeatedly and at all times under all kinds of threats.

The maximum penalty for such an offence is death, but the trial Judge was lenient to impose a life imprisonment sentence and his discretion should not be interfered with.

Counsel submitted that the learned Justices of the Court of Appeal reviewed the decision of the learned trial Judge and looked at the mitigating and aggravating factors as well. They found no reason to interfere with the sentence of the learned trial Judge.

Regarding life imprisonment, counsel submitted that the issue is now settled by this Court in the case of **Tigo** (supra) where it was held that life imprisonment means imprisonment for the natural life of a convict. Counsel urged this Court to interpret the sentence of life imprisonment imposed by the learned trial Judge in line with the case of **Tigo.**

Counsel therefore prayed that the appeal be dismissed.

**Consideration of the Court**

We have perused the judgments on record in both lower courts and have also considered the submissions of Counsel together with their authorities. The only ground of appeal is the legality of the sentence of life imprisonment imposed on the appellant by the trial Judge for the offence of defilement and confirmed by the Court of Appeal.

This Court has had occasion to consider and to state the principles upon which an appellate court can interfere with the sentence of the trial Judge in the case of **Kiwalabye Bernard V Uganda (supra)** cited by the respondent's counsel as follows:

> ***"The appellate court is not to interfere with the sentence imposed by a trial court where the trial court has exercised its discretion on sentence, unless the exercise***

***of that discretion is such that it results in the sentence imposed to be manifestly excessive or so low to amount to an injustice or where the trial court ignores to consider an important matter or circumstance which ought to be considered while passing the sentence or where the sentence imposed is based on a wrong principle."***

This decision was followed recently in the case of **Rwabugande Moses v Uganda SCCA No.25 of 2014.**

The issue therefore is, whether the appellant has made out a case in this appeal to warrant this Court's interference with the sentence imposed by the trial Court on the ground of illegality as alleged by counsel for the appellant.

We shall start from the first limb of the submissions by counsel for the appellant where he criticized the learned trial Judge for not taking into account the fact that the appellant had pleaded guilty and saved courts time and was remorseful in passing the sentence of life imprisonment.

This argument is not correct. We have perused the record before the trial Judge and it reads as follows:

***"Sentence and reasons:***

***Court has carefully considered the facts of this case, the submissions of both state and defence counsel as well as the allocutus of the accused.***

Court noted that:-

> ***"The convict may be a first offender who pleaded guilty and saved state resources. He has served 1 year and 3 months period on remand- These are favorable factors to the convict. He was the biological father of the victim, he was 45years while the victim was 15 years at the time of the commission of offence and he committed the offence under threats and force. These are extremely aggravating factors. In the circumstances court hereby sentences the convict to life imprisonment."***

We also find that the same arguments were actually made before the Court of Appeal. The Court of Appeal dealt with it as follows:

> ***"In the instant case, we find that the learned trial Judge took into consideration the mitigating and aggravating factors before deciding to sentence the appellant to life imprisonment. If anything, his reasons for the sentence are crystal clear and devoid of ambiguities. The arguments by counsel for the appellant that he did not take into account the time spent by the appellant on remand before conviction are without merit."***

Further, we find that this complaint is a veiled attempt at raising the ground of appeal on severity of sentence. Again, we find from their judgment that the learned Justices of the Court of Appeal ably dealt with the appeal before that Court and come to the right

conclusion that the sentence was not excessive in the circumstances.

Most importantly, we have to point out that under Section 5 (3) of the Judicature Act, where an appeal lies to the Supreme Court against a sentence and an order other than one fixed by law, the accused person may appeal to the Supreme Court against the sentence or order on a matter of law only and not the severity of sentence. Section 5(3) of the Judicature Act reads:

"***(3) In the case of an appeal against sentence and an order other than one fixed by law, the accused person may appeal to the Supreme Court against the sentence or order, on a matter of law, not including the severity of the sentence".*** (Underlining was added for emphasis).

This section has been applied by this Court to dismiss appeals against severity or harshness of sentence in several cases including **Sewanyana Livingstone v Uganda, SCCA No. 19 of 2006, Bonyo Abbdul v Uganda, SCCA No. 07 of 2011 and Jamada Nzabaikukize v Uganda, SCCA No. 01 of 2015.**

This submission is therefore untenable before this Court in so far as it complains about the harshness of the sentence.

The above notwithstanding, we find that the complaint is without basis since the maximum penalty prescribed by law for the offence of defilement before the Penal Code Act, Cap 120 was amended was death.

Section 129 (1) of the Penal Code Act, Cap120 provided that:

> ***"Any person who unlawfully has sexual intercourse with a girl under the age of eighteen years commits an offence and is liable to suffer death."***

The learned trial Judge, after considering the mitigating and aggravating factors gave the appellant the next severe punishment that is life imprisonment.

The sentence of life imprisonment is therefore legal and not harsh. The learned trial Judge properly exercised his discretion in reaching that sentence and the Court of Appeal was right not to interfere with it.

We now come to the point regarding the definition of life imprisonment where the learned Justices of Appeal held as follows in their judgment:

> ***" We wish to clarify here that the question of what "life imprisonment" means has also been settled by the Supreme Court in the case of Tigo Stephen v Uganda, Criminal Appeal No. 8 of 2009 where the Supreme Court held :***
>
> ***"We hold that life imprisonment means imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned."***

Upon careful consideration, we hold the view that in reaching their decision on the issue, the learned Justices of Appeal were bound by the doctrine of precedent to follow the decision of this Court on the meaning of life imprisonment. In the case of **Paul K. Ssemogerere and 2 others vs. Attorney General, SC Constitutional Appeal No. 1 of 2002**, it was held that:

> ***"... the doctrine of precedent is now constitutionalized in Article 132(4) of the Constitution, which provides:***
>
> ***" The Supreme Court may, while treating its own previous decisions as normally binding depart from a previous decision when it appears to it right to do so; and all other Courts shall be bound to follow the decisions of the Supreme Court on questions of law."***

Further, it should be noted that the Supreme Court in resolving the vagueness or ambiguity of the sentence in **Tigo's** case, simply clarified and interpreted what was already prescribed and existed in the law. Therefore the decision applies to cases that were decided before the decision in **Tigo** such as the instant one as well. In Tigo's case, the Supreme Court clearly stated that:

> ***"The Prisons Act does not prescribe sentences to be imposed for defined offences. The sentences are contained in the Penal Code and other Penal Statutes.... It only acts as a guide to assist the Prison authorities in***

***administering prisons and in particular sentences imposed by the Courts."***

The Court then went on to hold that:

***"... life imprisonment means imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned."***

In deciding Tigo's case, the Supreme Court followed the holding of the Court in **Attorney General Vs. Susan Kigula & 417 Ors Constitutional Appeal No.3 of 2006** where the Court held that:

***"...the death penalty though Constitutional was not mandatory but discretionary. This would make a sentence of life imprisonment the next most severe sentence and probably the most effective alternative to the death sentence."*** (Underlining was added for emphasis.)

In the recent case of **Ssekawoya Blasio v Uganda, No. 24 of 2014 (SC)**, this Court had occasion to discuss **Tigo** in relation to life imprisonment. This is how the Court clarified it:

***"In our view, Tigo not only clarified on the meaning of the sentence of imprisonment for life. It also clarified what the sentence of imprisonment for life meant in the post Kigula sentencing regime for persons convicted of murder but who are spared the maximum sentence of***

***death provided for under the Penal Code Act.***

***Persons convicted of murder and sentenced to imprisonment for life (meaning for the remainder of their lives) as a result of this Court's decision in Kigula should be distinguished from persons convicted of manslaughter and sentenced to imprisonment for life, who could benefit from remission provisions under our section 86 (3) of the Prisons Act, which provides that 'for the purposes of calculating remission of sentence, imprisonment for life shall be deemed to be twenty years.' Parliament never intended these provisions to be applicable to persons convicted of murder for whom there was only one mandatory sentence after conviction: death. It is also important to note that the remission provisions under our Prisons Act concurrently existed with the mandatory death sentence provisions in the Penal Code Act in the pre Kigula era."***

Although the case of Ssekawoya Blasio was in relation to the offence of murder, the principles of life imprisonment stated in that case still apply to the present case since the maximum sentence for defilement was also death penalty at the time the appellant was convicted in 2006, before the Penal Code Amendment Act, 2007.

It should be noted that the Supreme Court has not departed from the interpretation to date. The Court of Appeal cannot in the premises be faulted for following the case of **Tigo.**

The other contention was that the trial Judge did not take into account the period spent on remand and that the appellant was entitled to a bonus including subtracting the period spent on remand. In light of our holding above, however, we hold that it is impossible to deduct the period spent on remand in the circumstance since life imprisonment is for the natural life of the convict. We are fortified in reaching this conclusion by the decision of this Court in the case of **Magezi Gad v Uganda (Supra),** where this Court held that:

> ***"Life imprisonment is not amenable to Article 23(8) of the Constitution. The above Article applies only where sentence is for a term of imprisonment i.e. a quantified period of time which is deductible. This is not the case with life or death sentences."***

In conclusion, we hold that the sentence is legal. We agree with counsel for the respondent that the sentence was actually lenient, considering the gravity of the offence that the appellant committed. Like the two lower courts, we also note and take a serious view of the fact that the appellant defiled his own biological daughter repeatedly under trauma which in our view should have attracted a deterrent sentence.

However, the learned trial Judge exercised his discretion and imposed a lenient sentence on the appellant who could have otherwise suffered death. We are satisfied that the Court of Appeal re-evaluated the evidence and rightly confirmed the sentence of life

imprisonment. We do not find any reason to interfere with this sentence since it is not illegal.

The appellant also raised an argument that the case should be treated like plea bargaining. This argument is untenable since the sentence complained of did not arise from plea bargaining. In any case the Supreme Court has not yet pronounced itself on any case involving plea bargaining.

In the premises, we hold that the only ground of appeal must fail. We accordingly dismiss the appeal. We uphold the sentence of life imprisonment for the natural life of the appellant as confirmed by the Court of Appeal.

Dated at Kampala this.....25th.....day of.....May.....2018

.....

**HON.JUSTICE BART KATUREEBE**

**CHIEF JUSTICE**

.....

**HON.JUSTICE JOTHAM TUMWESIGYE**

**JUSTICE OF THE SUPREME COURT**

.....

**HON.JUSTICE STELLA ARACH-AMOKO,**

**JUSTICE OF THE SUPREME COURT**

.....

**HON.JUSTICE ELDAD MWANGUSYA**

**JUSTICE OF THE SUPREME COURT**

.....

**HON.JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA**

**JUSTICE OF THE SUPREME COURT**