

**,THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

5 **CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA.
HON. JUSTICE A. TWINOMUJUNI, JA.
HON. JUSTICE C.N.B. KITUMBA, JA.**

CRIMINAL APPEAL NO. 209 OF 2003

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AKAMPURIRA SAMUEL :::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA :::::::::::::::::::::::::::::::::::::: RESPONDENT

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*[An appeal from the sentence of the High Court sitting at Mubende
(Akiiki Kizza, J.) dated 3/11/2003 in Criminal Session Case
No. 55 of 2003]*

JUDGEMENT OF THE COURT

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This is an appeal, with leave of the court against sentence. The following is the background to the appeal. The victim was aged 14 years. On 16/4/2001 the appellant met the victim at Bukuya Trading Centre outside a bar. He convinced her to go with him. They went together and he defiled her. Some boys who had seen them informed the victim's parents. The appellant was arrested and readily admitted that he had defiled the victim. When the appellant appeared for trial before the High Court he pleaded guilty to the indictment that charged him with defilement contrary to section 129 (1) of the Penal Code Act. He was convicted and sentenced to 6 years imprisonment.

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His appeal to this court is on the following ground.

“That the learned trial judge awarded a custodial sentence of nine years in spite of the mitigating circumstances offered by the defence.”

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Mrs. Rita Matovu, appellant's learned counsel, submitted that the appellant had been on remand for three years before sentence. He was a first offender and was sorry for what he had done. She further submitted that the appellant had reformed. Hence he

sat for School Certificate Examination last year while in prison. He has also learnt skills in counselling. She prayed for his immediate release or a reduction of the sentence to three years.

5 In reply, Ms Betty Khisa learned Senior Principal State Attorney supported the sentence because it was never illegal to excessive.

Before passing sentence the learned trial judge gave reasons for the sentence as follows:

“Court: Sentence and reasons thereof. Accused is a first offender. He has pleaded guilty
10 hence saving the court’s time.

He has been on remand for about 3 years. He is relatively a young man. He has prayed for leniency.

**However, Accused committed a serious offence of capital nature. Maximum sentence is death. Hence the law takes a serious view of the
15 matter.**

Even if the victim appears to have consented to the affair, this does not exonerate him, as this is a strict liability offence.

**Putting into consideration all the relevant factors, I sentence the accused
20 to 6 (six) years imprisonment.”**

It is appreciated that the appellant has done some studies while in prison as the court has been informed by his counsel. However, that is no good reason for his immediate release. The appellant is supposed to learn something while in prison if he is capable of doing so.

25 There is no good reason to interfere with the sentence of the trial judge. He took into account all relevant factors before passing the sentence and judiciously used his discretion to impose and sentence of imprisonment for 6 years. This appeal is accordingly dismissed for lack of merit.

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Dated at Kampala this 3rd day of February 2006.

A.E.N. Mpagi-Bahigeine
JUSTICE OF APPEAL

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A. Twinomujuni
JUSTICE OF APPEAL

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C.N.B. Kitumba
JUSTICE OF APPEAL

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