

**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. 325 OF 2003**

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**LUGGYA LAWRENCE :::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**UGANDA :::::::::::::::::::::::::::::::::::::: RESPONDENT**

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*[An appeal from the sentence of the High Court Mubende  
(Akiiki-Kizza, J.) in Criminal Session Case No.227 of 2003]*

**JUDGEMENT OF THE COURT**

20 This is an appeal against the sentence of 10 years imprisonment which was passed against the appellant for the offence of defilement contrary to section 129 (1) of the Penal Code Act.

The background to the appeal is as follows:- The appellant was an uncle of the victim and both of them lived at Birikina village, Mubende District. On the 4<sup>th</sup> day of April 2001 during daytime, the victim was passing by the appellant's home while going to the home of her grandfather, when the appellant called her to his house. He put her on his bed and defiled her. Afterwards he warned her not to tell anyone otherwise he would beat her if she did not comply with his instruction. The victim proceeded to her grandfather's home and later on to her mother's home. In the evening of that day the victim looked sickly. When her mother, Nagawa Zulaita, was bathing her she told her she had some pain in her private parts. When she examined her private parts she noticed that she had been defiled. On being asked by her mother who had done so, the victim named the appellant as her defiler. Nagawa Zulaita reported the matter to Local Council authorities and a search for the appellant was mounted. On 7/4/2001 the appellant went to Nagawa and asked for forgiveness. However, the appellant was

arrested and taken to the police. The victim was taken for medical examination. She was found to be 5 years old. Her hymen had been ruptured some days back. She had injuries and inflammations around her private parts. The injuries were consistent with force having been used.

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The appellant was indicted for defilement contrary to section 129 (1) of the Penal Code Act and pleaded not guilty. When the prosecution closed its case the appellant changed his plea and pleaded guilty to the indictment. He was convicted and sentenced to 10 years imprisonment.

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He has with leave of court appealed against sentence on the sole ground which reads:

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**“The sentence of 10 years passed by the trial judge on the appellant was harsh and excessive in the circumstances of the case considering the appellant as a first offender who pleaded guilty, saving the court’s time and expenses of a protracted trial.”**

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Arguing the ground of appeal, Mr. Mark Bwengye, counsel for the appellant, contended that the sentence of 10 years imprisonment which was imposed on the appellant, aged 21 years was excessive. He submitted that the aim of the sentence is to allow the offender to reform. According to counsel, in the instant appeal, the appellant would be locked away for a very long time and will not be afforded the opportunity to reform. He prayed court to allow the appeal and reduce the sentence from 10 years imprisonment to 5 imprisonment.

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Ms Komuhangi, learned Senior State Attorney, for the respondent supported the sentence. She argued that before passing sentence the learned trial judge took into account all the mitigating and aggravating circumstances. He sentenced the appellant to an appropriate term of imprisonment. She prayed court to dismiss the appeal.

Sentencing is a discretionary matter for the trial judge. The appellate court would not interfere with the sentence unless it is shown that it is based on wrong principles or is

manifestly harsh or excessive. See **Sulaiman Katusabe v Uganda Criminal Appeal No. 7 of 1991 (Supreme Court)**.

5 **In the instant case** the appellant was convicted of defilement which carries a maximum sentence of death. The learned trial judge considered the penalty for the offence the period spent on remand, the age of the victim and his relationship to the appellant. He sentenced him to 10 years imprisonment for defiling his niece.

10 This court, in the case of **Kiberu Christopher vs Uganda, Criminal Appeal No. 66 of 1998**, which is similar to the instant appeal, confirmed a sentence of imprisonment for 12 years. The appellant defiled a neighbour's daughter aged 4 years.

We are of a considering view that the instant appeal is very similar to the above case. In both cases the victims were very young and had close relationship with the  
15 appellants. We see no good reason to interfere with the sentence passed by the learned trial judge.

In the result this appeal is dismissed for lack of merit.

20 **Dated at Kampala this 31<sup>st</sup> day of January 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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