

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 217 OF 2003

COURT OF APPEAL (MPAGI-BAHIGEINE, KITUMBA AND BYAMUGISHA

ZZIWA MOHAMEDI;,,,,,,,,,,,,,,,,,,,,,,,,; APPELLANT

VERSES

UGANDA;,,; RESPONDENT

(Appeal from the sentence of the High Court at Kampala (Kagaba, J.) dated November 11, 2002 in Criminal Session Case No. 126 of 2003)

Criminal Law—Sentence—Period Spent on Remand—Taking into account period spent on remand in sentencing

The appellant was a special hire taxi driver. On September 24, 2001, the appellant was hired by the victim's mother to take them to Rubaga Girls School. While the victim's mother and her brother were in the headmaster's office, the appellant and the victim struck a friendship. The victim got the appellant's telephone number.

On September 26, 2001, the appellant took the victim to a lodge at Nakulabye where he defiled her. She became pregnant and the victim's mother learnt that it was the appellant who was responsible. He was indicted for defilement and he pleaded guilty; where upon he was sentenced to five years imprisonment. He appealed on grounds that Court ought to have included the period of nearly two years spent on remand to reduce the five years sentence.

HELD:

To take into account does not mean a mathematical exercise. What is necessary is that the trial Court makes an order of sentence that is not ambiguous. The circumstances of this case do not justify the interference with the sentence imposed by the trial Judge. The sentence he imposed was neither illegal nor was it excessive in the circumstances

of this case.

Appeal dismissed

Dated this 7th day of February 2006

MPAGI BAHIGEINE, JA

KITUMBA, JA

BYAMUGISA, JA

Legislation considered:

The Constitution of the Republic of Uganda, 1995, Article 23(8)

Cases cited:

Kanya Johnson Wavamunno Vs Uganda [2001-2005] HCB vol.
1 40 Kizito Senkule Vs Uganda, Criminal Appeal No. 24 of
2001