THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA.
HON. JUSTICE C.N.B. KITUMBA, JA.
HON. JUSTICEC.K. BYAMUGISHA, JA.

CRIMINAL APPEAL NO. 197 OF 2003

NYASIO BUMALI :: APPELLANT

VERSUS

UGANDA :: RESPONDENT

[Appeal from the sentence of the High Court of Uganda at Mubende (Akiiki Kizza, J.) dated 22/10/2003 in Criminal Session Case No. 20 of 2002]

JUDGEMENT OF THE COURT

This is an appeal against the sentence of eight years imprisonment that was imposed upon Nyansio Bumali, the appellant, for the offence of defilement contrary to section 129(1) of the Penal Code Act.

The following is the brief background to the appeal. On 7/5/2001 the victim was at Kamusongole village in Mubende District in her grandmother's home. In the absence of her grandmother the appellant convinced the victim and took her to the banana plantation under the pretext of collecting a jackfruit. However the appellant defiled her while they were there. The victim informed her grandmother. The appellant was traced and arrested. On examination the victim was found to be 6 years old and had been defiled.

The appellant was indicted for defilement and pleaded guilty and was sentenced to 8 years imprisonment. He appeals to this court on the following ground.

"That much as the sentence of eight (8) years was lawful, it was harsh to the appellant."

Submitting on this ground, Mr. Samuel Seguya, learned counsel for the appellant contended that the sentence of 8 years imprisonment was on the high side. He argued that if learned judge had considered all the relevant mitigating factors he should have imposed a lower sentence. Counsel suggested that the period of two and half years the appellant spent on remand should have been deducted from the sentence imposed by court.

In reply, Ms Annet Koota, learned Senior State Attorney supported the sentence passed by the trial judge. She submitted that the judge took into account all mitigating factors and passed a lenient sentence of 8 years imprisonment. She relied on **Mbowa Issa Vs Uganda Criminal Appeal No. 14 of 2001** in which this Court upheld a sentence of 15 years imprisonment of the appellant who was 23 years and had defiled a girl of 10 years.

It is trite law that sentencing is with the discretion of the trial judge. This appellate court will not interfere with the sentence passed unless it is either illegal or manifestly low, harsh or excessive so as to occasion a miscarriage of justice.

In the instant appeal the learned judge took into account all relevant factors before sentence. Hence the record reads:-

"Accused is allegedly a first offender. He has pleaded guilty, hence saving court's time and as a sine of repentance. He has been on remand for about 2½ years and is about 38 years old.

However, accused has committed a serious offence. Punishable upon conviction to a possible death sentence as a maximum punishment. Hence the law takes serious view of the matter. The victim in this case is only 6 years of age who is fit to be his own child.

Hence in my view, though he pleaded guilty he deserves a stiff sentence.

Putting everything into account, I sentence accused person to eight (8) years imprisonment."

Indeed the learned judge took into account the period spent on remand and that is one of reasons why he passed a lenient sentence of 8 years imprisonment. The appellant who is an old man of 38 years deceived a young girl aged only 6 years old. In our view, he deserved no mercy.

This appeal has no merit and is accordingly dismissed.

Dated at Kampala this 6th day of February 2006.

A.E.N. Mpagi-Bahigeine
JUSTICE OF APPEAL
C.N.B. Kitumba
HJUSTICE OF APPEAL

C.K. Byamugisha

JUSTICE OF APPEAL