

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

5 **CORAM: HON. JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ**
HON. JUSTICE S.G. ENGWAU, JA.
HON. JUSTICE C.N.B. KITUMBA, JA.

CRIMINAL APPEAL NO. 237 OF 2003

10 **MUSHABE ABDUL ::::::::::::::::::::::::::::::::::::::: APPELLANT**

VERSUS

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

*[Appeal from the judgement of the High Court of Uganda
at Mbarara (P.K. Mugamba, J.) dated 23/1/2003 in
15 Criminal Session Case No. 102 of 2001]*

JUDGEMENT OF THE COURT

The appellant Mushabe Abdul was convicted of defilement contrary to **section 123((1) and 129(1) (new) of the Penal Code Act.**

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The facts leading to this appeal are briefly as follows. The victim, who testified as PW1 at the trial and was then aged 4 years, was sent by her parents to fetch water from the well. The appellant met the victim on the way after she had collected water and requested her to give him water to drink. The victim obliged. She returned to the well to fill her container. The appellant offered her to improvise a cover for her container but she refused. The appellant then grabbed her, threw her on the ground and forcibly had sexual intercourse with her. He ran away. The victim proceeded home while crying.

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The appellant was chased and arrested nearby and taken to the authorities and later to the police.

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During the trial the appellant denied the offence and stated that he was framed up by the victim's father who had a grudge against him. The learned trial judge rejected the appellant's defence, believed the prosecution case and convicted him. He sentenced

him to 14 years imprisonment. Dissatisfied with the sentence he has appealed to this court.

Ms Matovu, learned counsel for the appellant, has prayed court to reduce the sentence
5 from 14 years imprisonment to 8 years. Mr. Kamuli, learned Senior State Attorney, supported the sentence as being appropriate.

We have considered the submissions by both counsel and read the record. We are of
the considered view that the sentence passed by the learned trial judge was neither
10 illegal nor excessive. We see no reason for reducing the same. The learned trial judge considered all what was said in mitigation for the appellant and passed the sentence, which was appropriate in the circumstances.

The appeal is devoid of merit. It is accordingly dismissed.

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Dated at Kampala this 29th day of January 2007.

L.E.M. Mukasa-Kikonyogo
DEPUTY CHIEF JUSTICE

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S.G. Engwau
JUSTICE OF APPEAL

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C.N.B. Kitumba
JUSTICE OF APPEAL