

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 241 OF 2003**

MUGASA JOSEPH ::: APPELLANT

5

VERSUS

UGANDA ::: RESPONDENT

**CORAM: HON JUSTICE A. TWINOMUJUNI, JA
HON JUSTICE S.B.K. KAVUMA, JA
10 HON JUSTICE A.S. NSHIMYE, JA**

*(Appeal from the decision of the High Court at Fort Portal by Hon. Mr. Justice
Lameck Mukasa dated 25th February, 2003 in Criminal Case Session No. 07 of 2002)*

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JUDGEMENT OF THE COURT

The appellant obtained the leave of this court to appeal against sentence only. He was convicted of defilement and was sentenced to 17 years imprisonment. The maximum sentence for this offence is death. Mr. Mark Bwengye who appeared in mitigation
20 pleaded that the appellant was a first offender. That he has been in detention (sentence and remand) for eight years. He cited a case where a case of **Wandulu Patrick Vs Uganda Cr. Appeal No. 171 of 2003** to support his arguments.

Mr. Ndamuranyi Atenyi for the respondent asked us to pass a sentence that will deter members of society from defiling kids as was done in this case. The appellant was a
25 relative of the child (being the cousin to the mother). He was a catechist and therefore a custodian of morals in society.

He appealed to us to uphold the sentence.

The court informed counsel that in the circumstances of this case we intended to enhance
30 the sentence using powers given to this court by Section 11 of the Judicature Act and Section 132 of the Trial on Indictment Act.

Both counsel agreed that the court had powers to do it and counsel for the respondent urged us to do so. Learned counsel for the appellant pleaded with us to be lenient and to reduce the sentence to about 10 year's imprisonment.

5 After hearing both parties on this matter, we are totally dismayed that despite the fact that this offence of defilement attracts a death sentence, some people continue to defile babies with impurity.

We think that it is high time courts raised up with parliament and society as a whole to deal with this continuing menace. We feel that it is now time that the courts passed
10 sentences that will send a message to society that enough is enough and violating the rights of child females must stop.

We find that the sentence of 17 years was on the lenient side where the appellant was a church official and a relative of the child who should have protected her. Though the state
15 did not appeal, the court has powers to enhance the sentence as already stated above.

We accordingly set aside the sentence of 17 years and substitute it with a sentence of 25 years imprisonment. We must inform the appellant that he has a right to appeal against this sentence to the Supreme Court.

20 Dated at Kampala this 15th day of **April 2010**.

A. TWINOMUJUNI
JUSTICE OF APPEAL

25 **S.B.K. KAVUMA**
JUSTICE OF APPEAL

A.S. NSHIMYE
JUSTICE OF APPEAL