

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBARARA**

**CORAM: HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE S.B.K. KAVUMA, JA
HON. JUSTICE M.S.ARACH AMOKO, JA**

CRIMINAL APPEAL NO.71 OF 2006

MAGEZI ROBERT.....APPELLANT

V E R S U S

UGANDARESPONDENT

Ms Abodo Principal State Attorney for the respondent.

Ms Matovu Suwayah for the appellant on State brief

The appellant is present

Ms Lydia Tuhirirwe Court Clerk.

Ms Matovu:

I apply to appeal against sentence only.

Ms Abodo:

No objection.

Court:

Leave is granted.

Ms Matovu:

We contend that the sentence is harsh and excessive in the circumstances of this case. We have three reasons.

- (a) The appellant at the time of the offence was mentally ill the state confirmed this fact on page 3 R/A when it stated that he was undergoing mental treatment. In his allocutus, the appellant said he had a recurring mental problem. He said it occurs during the presence of many people. The sentence of 18 years was excessive.
- (b) The appellant was just 27 years. He was a first offender. He pleaded guilty to the offence. He never wasted court's time. He deserved a lenient sentence. The trial judge failed to take into account the age of the appellant before passing the sentence. He was still young. His age ought to have been considered.
- (c) Appellant had spent 2 years and six months on remand. It was not clear whether the trial judge considered this factor. I now withdraw this as the factor was considered.

I wish to rely on the authority of **Bikanga Daniel vs Uganda**. This case shows that the court has power to reduce the sentence. Pray you reduce that sentence to 10 years imprisonment.

Ms Abodo:

Pray you dismiss the appeal and uphold the sentence. That the appellant was sick. He was examined the next day after the offence and was found to be normal. PW4, the victim said that she was alone with the accused in his saloon. After cutting her hair, he locked the door and defiled her. He was quite normal.

Then it was said that appellant was just 27 years. The victim was only 3 years. The disparity in age is so glaring and the appellant was old enough to know better. The sentence was proper and pray that this court upholds the same.

Ms Matovu:

The record and R/A says that the appellant was examined 18 days after the offence.

JUDGMENT OF THE COURT:

We have listened to both counsel on this matter. The appellant committed a very serious offence which attracts a death sentence. The victim was a very young child aged only three years old. The fact that the appellant was aged 25 years is not a mitigating factor. He is expected at that age to know the difference between right and wrong. However, the record is not entirely clear on the mental status of the appellant at the time the offence was committed. Though the doctors say his mental status was normal, it is also true that he was undergoing some form of mental treatment at the time of the offence. We considered the possibility of enhancing the sentence but we have finally discounted it and a benefit of doubt in his favour of the accused on account of his mental status.

All in all, we hold that offences against children have become a menace in this country and this court must send the correct signal to the community that it will not be tolerated. The sentence of 18 years therefore must stand. The appeal is accordingly dismissed.

Dated this 11th day of November 2010.

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Hon. Justice A. Twinomujuni
JUSITCE OF APPEAL

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Hon. Justice S.B.K. Kavuma
JUSITCE OF APPEAL

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Hon. Justice M.S. Arach Amoko
JUSITCE OF APPEAL

