THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[Coram; Owiny-Dollo, CJ; Mwondha; Tibatemwa-Ekirikubinza; Tuhaise; Chibita; JJSC]

CRIMINAL APPEAL NO. 27 OF 2016

OROMA DENNIS ..... APPELLANT

VERSUS

UGANDA.....RESPONDENT

[Appeal against the Judgment of the Court of Appeal at Kampala before: (Kasule, Bossa and Obura, JJA) dated 7th November, 2016 in Criminal Appeal No. 604 of 2014].

Representation

At the hearing of the appeal, Counsel Emmanuel Muwonge on State Brief represented the appellant while Ms. Ainebyoona Happiness (Chief State Attorney) holding brief for Mr. Badru Mulindwa, Assistant Director of Public Prosecutions represented the Respondent. Both parties relied upon the written submissions filed in Court.

JUDGMENT OF THE COURT

Facts

The facts leading to this appeal as accepted by the lower courts are that on 9th May 2012, Anena Joyce(PW1) and her younger sister Akumu Brenda(PW3) went to the town of Amidu to sell mangoes. On their way back, at about 4pm, they stopped to pick some mangoes on a mango tree which was about a kilometer away from their home in Gangela village.

Unfortunately, PW1 and PW3 were waylaid by the appellant near the mango tree who stopped them from picking the mangoes, claiming that the mangoes were his.

Thereafter, the appellant began beating PW1 and PW3. He first beat (PW3) and grabbed Ushs.1000/= from her which she had obtained as proceeds from the sale of the mangoes. She ran away and remained at a distance of about 150 meters. The appellant then turned to PW1 and beat her too. He thereafter dragged her to a nearby bush, removed her skirt and had sexual intercourse with her. In the process, PW1 raised an alarm and so did PW3 who had witnessed the ordeal that her sister (PW1) had gone through. A passerby, Akello Lucy Aci (PW4) also witnessed the appellant having sexual intercourse with PW1 and raised an alarm. A group of four youth from Gangela responded to the alarm and arrested the appellant. They took him to police with his motorcycle from where he was later taken to court and indicted for the offence of aggravated defilement contrary to **Section 129 (3) and (4)** of the **Penal Code Act**. He was tried by the High Court in Criminal Session Case No.0185 of 2012 in Kitgum.

At the trial, the Prosecution presented 5 witnesses and also tendered a medical report by Dr. Oloya Alex which indicated that PW1 was 13 years and had a raptured hymen about 3 days ago. The doctor's report further indicated that there were injuries and inflammations around PW1's private parts which were consistent with force and that she had contracted vaginal candidiasis. The report was presented in Court by Dr. Akena Jeffrey (PW5) on behalf of his colleague (Dr. Oloya Alex).

In his defence, the appellant denied ever seeing PW1 before or having had sexual intercourse with her. He stated that on 9th May 2012, he had gone to visit his in-laws with a borrowed motorcycle from a friend called Otim. On his way back at about 1pm, he stopped by the road side to pick mangoes from the bush. He had a polythene bag in which he packed the mangoes and tied them on the motorcycle. When he

was about to ride off, he was stopped by PW4 and some youth. They asked him who had given him permission to pick the mangoes which he had tied on his motorcycle. The group then called him a thief and beat him up. In the process, he lost his mobile phone and Ushs. 180,000/=. The appellant insisted that he was framed with the offence of defilement because of the motorcycle that he never saw again together with his property.

The trial Judge (Keitirima, J) found the appellant guilty. He convicted and sentenced him to 35 years' imprisonment.

Dissatisfied with the High Court decision, Oroma Dennis appealed to the Court of Appeal against both the conviction and sentence. The Court of Appeal upheld the conviction but reduced the sentence to 18 years on the premise that the trial Judge had not taken into consideration the mitigating factors presented by the appellant.

Still dissatisfied with the Court of Appeal decision, the appellant lodged an appeal in this Court against both the conviction and sentence on the following grounds:

1. **The learned Justices of the Court of Appeal erred in law and fact when they failed to re-evaluate the evidence on record thus coming to a wrong decision that the appellant had participated in the commission of the offence.**

2. **The learned Justices of the Court of Appeal erred in law and fact when they relied on the uncorroborated evidence of the prosecution to convict the appellant.**

3. **The learned Justices of the Court of Appeal erred in law and fact when they sentenced the appellant to 18 years, a sentence which was harsh, illegal and manifestly excessive in the circumstances.**

Prayers:

The appellant prayed that:

1. The appeal is allowed and the judgment and sentence be set aside.

2. Court deducts the period the appellant spent on remand on any sentence it deems fit.

Ground 1

Appellant's submissions

Counsel submitted that although the learned Justices of the Court of Appeal took cognizance of their duty as a first appellate court which is to scrutinize and re-evaluate the evidence and come to their own conclusion, bearing in mind that they did not see or hear the witness testify, as set out in **Kifamunte Henry vs. Uganda SCCA No. 10 of 1997,** they actually did not carry out the said duty.

Counsel submitted that the learned Justices of the Court of Appeal failed to subject the evidence contained in Police Form 3 (medical report) as well as the evidence of PW5, Dr. Akena Jeffrey to a fresh scrutiny. Counsel argued that since the medical examination and the report were made by Dr. Olayo Alex who was not called to testify in Court despite being present in Gulu within the jurisdiction of Court, caused a miscarriage of justice. Counsel contended that Dr.Oloya who authored the medical report should have been presented in court instead of his colleague-Dr. Akena Jeffrey.

Counsel also submitted that the medical report did not indicate anywhere that the victim was sexually abused.

Counsel submitted that the findings of the Justices that the medical report indicated that PW1's hymen was raptured and her private parts were injured and inflamed, did not point to the participation of the appellant in the sexual offence. Furthermore, that the testimonies of PW1 and PW3 in relation to the said offence could not be relied upon because they contained inconsistencies and were contradictory.

Counsel contended that **Section 30 (b)** of the **Evidence Act** which allows tendering of evidence where a person is dead or cannot be found does not apply to the instant case because Dr. Oloya Alex was present in Gulu during the trial, yet the prosecution chose to invite another doctor who had not examined the victim or authored the report.

Counsel further submitted that although the alleged act happened during day time, the conditions for proper identification were not conducive since PW3 stated that the scene of crime was bushy and she was at a distance of 150 meters from the scene. Counsel argued therefore that this made the identification difficult.

Respondent's reply

Counsel for the respondent supported the decision of the Court of Appeal. Counsel argued that there was no evidence on record to prove that the prosecution deliberately refused to call Dr. Olayo Alex as its witness. Counsel further submitted that the medical report was admitted in evidence under Section 30 (b) of the Evidence Act and not 30 (c). Counsel submitted that it is trite law that where a doctor who examined a person cannot testify, a person who is familiar with his or her hand writing can tender the report according to **Section 30 (b) of the Evidence Act.**

Counsel for the respondent also argued that when Dr. Akena Jeffrey was called to testify instead of Dr. Olayo Alex, neither counsel for the appellant nor the court stopped him from doing so. Counsel further argued that when the Prosecution applied to tender in the medical report through PW5, counsel for the appellant clearly stated that he had no objection. Counsel cited the case of **James Sawo-Abiri and Another vs Uganda SCCA No.5 of 1990**, which stated that an omission or neglect to challenge the evidence in chief on a material or essential point by cross examination would lead to an inference that the evidence is accepted, subject to its being assailed as inherently incredible or possibly untrue.

Counsel further emphasized that the appellant's counsel did not prove to the court that Dr. Olayo Alex was in Gulu town at the time of the trial.

Counsel therefore prayed that the first ground of the appellant be rejected.

Ground 2

Appellant's submissions

For this ground, counsel argued that the evidence of PW1 and PW3 was full of inconsistencies and discrepancies and was uncorroborated. That the discrepancies in the evidence were as follows:

a) The fact that when PW1 and PW3 were allegedly attacked by the appellant, they just cried and did not run from the scene which was unbelievable.
b) The fact that PW3 was beaten and was able to flee the area leaving behind PW1 with the appellant who suddenly had sexual intercourse with her.
c) When PW3 saw the appellant having sex with her sister, she just cried and did not call for assistance from the people coming from Amida.
d) PW3 was about 150 meters away from the scene of crime, a distance which could not enable her identify or see anything happening at the scene.
e) The appellant was not caught in *flagrante delicto* but he was framed since his money and motorcycle were taken by the youth under the pretext of arresting him.

Counsel therefore argued that the testimony of PW1 and PW3 made the case of the prosecution unbelievable and as such the first appellate Court ought to have decided in favour of the appellant.

Counsel further submitted that the contradictions in the prosecution case were serious and grave which made the entire evidence inherently incurable for any court to base a conviction.

Counsel further argued that the learned Justices instead ought to have considered the evidence of the appellant who was assaulted at the scene of the crime and his money and motorcycle taken from him and never returned.

Respondent's reply

Counsel submitted that PW1 and PW3 were 13 years and 8 years respectively at the time of the trial and as such they were of tender age, unable to react appropriately to defend themselves against the appellant save to simply cry. Counsel submitted that PW3 could see what transpired at the scene of the crime much as she was 150metres away.

Counsel further argued that the evidence of PW3 was corroborated by PW4 who on her way home, heard cries from a nearby bush and when she went to see what was transpiring, found the appellant having sex with PW1. That the appellant was actually caught in *flagrante delicto*.

Counsel submitted that the contradictions and inconsistencies were minor and did not go to the root of the case as the Justices rightly found. Counsel therefore prayed that ground 2 be rejected.

Ground 3

Appellant's submissions

Counsel argued that the sentence of 18 years was excessive and illegal because the Justices of Appeal did not deduct the period the appellant had spent on remand. Counsel for the appellant relied on the case of **Rwabugande Moses vs. Uganda Criminal Appeal No.25 of 2014.**

Counsel further relied on the case of **Tumwesigye Anthony vs. Uganda Criminal Appeal No. 46 of 2012** where the appellant who had been convicted of murder was sentenced to 32 years' imprisonment and on appeal the sentence was substituted with 20 years.

Counsel also cited the case of **Tigo Stephen vs. Uganda Criminal Appeal No. 170 Of 2009,** wherein this court held that the sentence of 20 years' imprisonment was serious enough as it amounted to life imprisonment.

Counsel therefore invited Court to deduct the period the appellant had spent on remand.

In the alternative to the above prayer, counsel asked this Court to pass a more lenient sentence taking into account that the appellant was remorseful, a first time offender with no previous record of conviction and a family man with 3 children who are suffering in the village without parental care.

Counsel further submitted that the appellant is now a reformed man whose prison records show that he is now very responsible and ready to rejoin society.

Respondent's reply

Counsel argued that the appellant never raised the issue of illegality of sentence at the Court of Appeal. Counsel submitted that the learned Justices were not supposed to subject the new sentence to another deduction of the period spent on remand because the trial Judge had already done so.

Counsel argued that the case of **Rwabugande Moses vs. Uganda SCCA No. 25 of 2014** cited by the appellant's counsel did not apply in the circumstances because the aforementioned case was delivered in March 2017 and yet the appellant was sentenced in November 2016. Counsel submitted that the gist of the **Rwabugande** case was that the Court had to apply an arithmetical calculation by

subtracting the period spent on remand before arriving at the sentence to be given to the appellant. Counsel submitted that for a precedent to apply to a case presently before Court, it should have been in existence before the new case is determined by Court. For the foregoing submission, counsel relied on the authority of **Byamukama Herbert vs. Uganda SCCA No. 21 of 2007.**

Following the above submission, counsel invited this Court to reject ground 3.

In conclusion, Counsel prayed that the appeal be dismissed and that the sentence and conviction be upheld.

Consideration of Court

It is trite law that a second appellate court does not re-evaluate evidence in the manner of a first appellate court unless it is of the view that in approaching its task, the first appellate court failed to properly review the evidence on record. [See: **Kifamunte Henry vs. Uganda, SCCA No. 10 of 1997 and Bogere Moses vs. Uganda, SCCA No. 1 of 1997]**.

We have carefully read the submissions of counsel together with the authorities cited, the judgment of the Court of Appeal, and the Record of Proceedings including the judgment of the trial court.

We have established the fact that in performing its duty as a 1st appellate court, the Court of Appeal was alive to its duty and indeed went ahead to re- evaluate the evidence on record.

Ground 1

Regarding the first ground, it was the appellant's contention that the learned Justices failed to re-evaluate the following evidence:

(i) participation in the offence;

(ii) the fact that the medical report was presented by a person who was not the author;

(iii) failure of the medical report to indicate that it was the appellant who had sexually abused PW1;

(iv) mistaken identification.

Counsel argued that the learned Justices failed to subject the evidence of the medical report and that of PW5 to a fresh scrutiny since the medical examination was conducted by Dr. Olayo Alex who did not testify in court and thereby caused a miscarriage of justice.

Furthermore, counsel argued that the findings by the Justices that the medical report indicated sexual assault did not point to the appellant's participation. Counsel also argued that the appellant was not properly identified.

A perusal of pages 5 to 7 of the judgment of the Court of Appeal shows that the court re-evaluated the medical evidence referred to and concluded as follows:

"...Regarding the sexual assault, the appellant's complaint is twofold. The appellant challenges the fact that the doctor who examined PW1 is not the one who testified. According to the appellant's Counsel, this makes his evidence unacceptable. The second complaint is on the content of the medical report. According to Counsel, there was no evidence of sexual assault. On the evidence of sexual assault on PW1 and on identification of the appellant as the assailant, the learned trial Judge accepted the evidence of the Prosecution. We have re-evaluated the evidence of both the prosecution and the defense on this aspect of the case.

We recall the law that even in the absence of a medical report, a court can convict one of sexual assault. This Court has stated that medical evidence is merely advisory and goes to the fact and not the law. The Court has discretion to reject it. The Court can even convict without medical evidence as long as there is strong direct evidence and the circumstances of the offence are as cogent and

compelling as to leave no ground for reasonable doubt. (See the case of Mujuni Appolo v. Uganda COA Cr. App. No. 26 of 1999).

Furthermore, we have examined the doctor's report which is Ex. P 2. We observe that the Doctor Olayo Alex who made the medical report did not testify. Rather, Dr. Akena Geoffrey presented the medical evidence. He confirmed that he had worked with Dr. Alex Olayo as a student intern as a doctor and had known him for over ten years. He identified his signature and then presented the report he made on PW1. Where a doctor who examined a person familiar with his handwriting can tender the report in accordance with Section 30(b) of the Evidence Act...

We also observe that PW5 was not cross examined at all on the content of the report. Established jurisprudence shows that an omission or neglect to challenge the evidence in chief on a material or essential point by cross examination would lead to an inference that the evidence is accepted, subject to its being assailed as inherently incredible or possibly untrue. (See James Sawo-abiri and Another v. Uganda Supreme Court Criminal Appeal No. 5 1990).

The report was made within three days of the attack on PW1. It indicated that PW1 had been sexually penetrated. Her Hymen had ruptured. She had injuries or inflammation in her private parts. The injuries were consistent with force having been used sexually. She had a sexually transmitted disease called vaginal candidiasis.

We find the above evidence to be a crucial pointer to what happened to PW1. It establishes beyond reasonable doubt that PW1 was sexually assaulted. The assault is corroborated by the evidence of PW2 and PW4 both of whom saw the assailant having sexual intercourse with PW1.We therefore conclude that the learned trial judge came to the correct conclusion and we see no

error of evaluation of evidence on his part in this regard." (Court's emphasis).

We agree with the above finding and conclusion made by the learned Justices of Appeal. Even without the medical evidence, the offence of sexual assault can be established by the evidence of the victim, who in this case is (PW1). As this Court held in the case of **Ntambala Fred vs. Uganda SCCA No.34 of 2015**, a conviction can be based on the sole testimony of the victim of an offence even when he/she is a single witness. Indeed, in the **Ntambala** decision, Tibatemwa-Ekirikubinza, JSC emphasized that this principle was as true in a sexual offence prosecution as it is in all other prosecutions. Proof of sexual assault can be established by the sole evidence of the victim without the need for corroboration.

That not-withstanding, we find that the medical report was rightly produced by Dr. Akena Jeffrey (PW5) under the provisions of **Section 30 (b) of the Evidence Act.** He confirmed having worked for 4 years with Dr. Olayo Alex who examined the minor; and was therefore conversant with the hand writing and signature of this doctor. **Section 30 (b) of the Evidence Act** provides as follows:

> **Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases—**
>
> **(a)...**
>
> **(b) When the statement was made by such a person.....in the discharge of professional duty ..."**

Having carefully read the Record, this Court notes that the appellant raised no objection at the trial when PW5 was called to testify. There was also no objection raised to the presentation of the medical report by PW5 who was not the author.

Furthermore, just like the learned Justices of Appeal, we note that the appellant did not, during cross-examination of PW5, challenge the contents of the medical report. It is trite law that evidence not objected to or assailed is deemed admitted and can be validly considered by the court in arriving at its judgment.

A reading of the record also shows that the statement that Dr. Olayo was in Gulu during the trial is from the bar and therefore no weight was to be accorded to such a piece of evidence.

Regarding the issue of identification of the appellant, the learned Justices at pages 7 to 8 of their judgment made the following findings:

"....On the identification of the appellant, the appellant denied the offence. What we have to determine is whether the conditions under which he was identified favored correct identification. The evidence of PW2 and PW4 clearly established that the incident took place in broad day light, between 4 and 5 pm. The appellant was found in flagrante delicto by PW4 who made an alarm that attracted some youth, who arrested him. The appellant also accepted that he was at the scene of the crime during the day, although he puts the time between 2pm and 2.30 pm., and that is where he was arrested from. He also accepts that the place where he was arrested from had mangoes in the bush. He further testified that he had mangoes in a polythene bag and he was about to leave the place when PW4 and three youths stopped him. He also corroborated the evidence of PW4 that the motorcycle he had was not his and he had borrowed it. His story that he was imprisoned so as to have his property stolen is therefore not a credible one. The motorcycle did not belong to him.

We are of the view that the learned trial judge came to the right conclusion when he found that the appellant had been properly identified by the witnesses beyond reasonable doubt. The learned trial judge properly evaluated the evidence of the prosecution and the defense. He considered that the victim was the best person to identify her assailant and that PW1 had done so. He also considered that as the victim was of tender age, her evidence needed to be corroborated. He found corroboration in the evidence of PW4, who found the appellant having sexual intercourse with PW1. He also found further corroboration in the medical evidence, which showed that PW1's hymen was raptured. He considered all this evidence alongside the defense evidence that the appellant did not know the victim. He then concluded that the appellant was properly identified as he was caught in flagrante delicto.

We agree with this assessment of evidence. Indeed, PW1, PW2 and PW4 placed the appellant at the scene of the crime. We find that the fact that the offence took place before it was dark is proved beyond reasonable doubt by the evidence of PW2, PW3 and PW4, all of whom the learned trial judge accepted as truthful witnesses. Even the evidence of the appellant indicates that the incident took place during broad day light. The circumstances therefore favored correct identification."

From the above excerpt of the judgment of the Court of Appeal, this Court is not persuaded by the submission of the appellant's counsel that the learned Justices of Appeal erred in re-evaluating the identification evidence and came to a wrong conclusion.

In our jurisdiction, the factors to be considered for proper identification are well settled in a plethora of authorities. These include the length of time the witness observed the accused, the distance between them, the availability of light, and the familiarity between the witness and the accused. All these factors determine the quality of identification evidence. (See: **Abudalla Nabulere and 2 Ors v Uganda (Criminal Appeal 9 of 1978); Bogere Moses & Anor v.**

Uganda (Criminal Appeal No. 01 of 1997); Opolot Justine & Another v Uganda SCCA No. 20 Of 2014).

In the present case, the incident took place in broad day light and close proximity. Therefore, PW1 was able to identify her assailant. PW1's evidence was corroborated by PW3 who was not only beaten by the appellant and managed to escape from his grasp, but was also able to observe, from a distance, the ordeal her older sister had undergone.

Furthermore, the identification evidence of PW1 was corroborated by PW4, a passer-by, who testified that she saw the appellant at the scene lying on top of PW1 to which she made an alarm which attracted some youth who arrested him at the scene.

Further still, the appellant's own evidence squarely placed him at the scene of crime when he testified that he had gone to pick mangoes from the bush during day time but was intercepted by PW4 and some other Youth.

In our view, the conditions favouring correct identification were present and ruled out any possibility of error or mistaken identification.

We therefore find that ground 1 fails.

Ground 2

The appellant's contention under this ground was that the learned Justices of Appeal erred in law and fact when they relied on the uncorroborated evidence of the prosecution to convict the appellant.

The learned Justices noted that counsel did not pursue this ground of appeal during the hearing. Nevertheless, the Court of Appeal found that the evidence of PW1 was sufficiently corroborated by PW3 and PW4. Furthermore, that the evidence of the appellant corroborated the prosecution evidence in the material particular.

Be that as it may, the law on corroboration of sexual offences has been settled by this Court in **Ntambala Fred vs. Uganda (supra)**. We have already reproduced the importance of this decision in our resolution of ground 1 and find it unnecessary to repeat that discussion here.

From the evidence on record, we are satisfied that the learned Justices properly re-evaluated the evidence and correctly came to the conclusion that the appellant defiled PW1.

The appellant's counsel also submitted that the prosecution evidence was full of inconsistencies and discrepancies which made the prosecution case unbelievable and as such, the learned Justices ought to have decided the matter in favour of the appellant.

We note that although the above argument appeared in the written submissions filed in Court, it does not substantiate any of the grounds presented in the Memorandum of Appeal. We are alive to the law on pleadings that a party is bound by their pleadings and this Court will not, without the necessary leave of Court being sought, address a new argument or ground that does not speak to the Memorandum of Appeal. For this reason, this Court will not address the argument on inconsistencies in the evidence.

Having held that a court can base its conviction on uncorroborated evidence of a single witness, we hold that ground 2 fails.

Ground 3

The appellant's complaint under this ground was that the sentence given by the learned Justices was harsh, illegal and excessive because the period spent on remand was not considered while resentencing him. He relied on the case of **Rwabugande Moses vs. Uganda (supra).**

Counsel for the respondent on the other hand argued that the learned Justices were not supposed to make another reduction of the

period spent on remand on the new sentence since the trial Judge had already deducted it.

We agree with the respondent's counsel argument. In **Byamukama Herbert v Uganda, SCCA No. 21 of 2017**, the appellant was convicted of murder and sentenced to death. However, during resentencing, following the case of *Attorney General v Susan Kigula case No. 03 of 2006(SC)*, he was sentenced to 30 years' imprisonment. He appealed to the Court of Appeal against the sentence being harsh. The Court reduced his sentence to imprisonment for 25 years, based on the mitigating factors presented before court. He then appealed to the Supreme Court against the sentence on grounds that it was illegal since the period spent on remand was not deducted from the new sentence imposed on him. He relied on the case of Rwabugande. In dismissing the appeal, this Court held as follows:

"... It is clear from the above record that the trial judge while sentencing the appellant to 30 years did consider the period the appellant had spent on remand. So, the appeal to the Court of Appeal was not focused on the period spent on remand. It was about harshness and excessive sentence of 30 years in prison without considering mitigating factors. The Court of Appeal agreed and found that by taking into consideration mitigating factors particularly that the appellant was relatively young, was remorseful and had spent up to 4 years on remand before being convicted. Based on the above factors, the Court of Appeal reduced the sentence from 30 years to 25years imprisonment. Therefore, the 25years imprisonment imposed by the Court of Appeal could not be subject of another reduction of the period spent on remand because it had already been deducted by the trial court Counsel for the appellant cited the decision of Rwabugande (Supra) in an attempt to sustain the argument that the Court had not taken into account the remand period when imposing the 25 years' imprisonment against the

appellant. We note that the Rwabugande decision does not apply in the circumstances of the instant appeal as the same was decided in March 2017 whereas the appellant was convicted in December, 2016. For a case to be cited as a precedent, it ought to have been decided earlier before the matter at hand. The Rwabugande decision thus does not serve that purpose in the instant appeal.

In the premises therefore, we find no merit in appeal and accordingly dismiss it. Overall, we find that sentence of 25years imprisonment imposed by the Court of Appeal was the lawful and we uphold the same." (Court's emphasis)

Similarly, the issue at the Court of Appeal was about the sentence being harsh and excessive for failure to deduct the remand period. A perusal of the Judgment of the Court of Appeal shows that the learned Justices reviewed the sentence of the trial Judge and found that he had considered the period spent on remand. The learned Justices only faulted the trial Judge for not considering the mitigating circumstances such as the appellant being a first offender, a family man and that at the time he committed the offence, he was of a youthful age of 27 years capable of reforming. Based on these mitigating factors, the Court of Appeal reduced the sentence to imprisonment for 18 years. This sentence cannot be subjected to another deduction (of the remand period) since that period was already considered by the trial Court.

Furthermore, it cannot be over emphasised that a precedent has to be in existence at the time court is determining a matter before it, for it to be followed. In **Sebunya Robert & Anor v Uganda, SCCA No. 58 of 2016** this Court was emphatic in stating that:

"Rwabugande does not have any retrospective effect on sentences which were passed before it ...

The appellant in this instant appeal was sentenced on 5th June, 2014 by the trial court and the judgment in his appeal to the Court of

Appeal was delivered on 7th November, 2016 approximately 4 months before the decision in the Rwabugande matter was delivered on 3rd March, 2017.

Following the principle which bars retrospective application of precedents, we hold that the Rwabugande decision does not apply to the instant appeal. On this premise, the Court of Appeal cannot be faulted for not following the decision of Rwabugande.

We therefore find no reason to interfere with the sentence of 18 years' imprisonment imposed on the appellant by the Court of Appeal.

Accordingly, ground 3 fails.

Conclusion

In the result, we hold that this appeal lacks merit and it is hereby dismissed. The conviction and sentence of 18 years' imprisonment is upheld.

We so order.

Dated at Kampala this 8th day of Aug 2023.

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HON. JUSTICE ALFONSE OWINY-DOLLO
CHIEF JUSTICE.

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HON. JUSTICE MWONDHA
JUSTICE OF THE SUPREME COURT.

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HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA,
JUSTICE OF THE SUPREME COURT.

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HON. JUSTICE PERCY TUHAISE,
JUSTICE OF THE SUPREME COURT.

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HON. JUSTICE MIKE CHIBITA,
JUSTICE OF THE SUPREME COURT