

UGANDA / JUDGMENT

Andebwe Seryako v Uganda (Criminal Appeal No. 0048 of 2021) [2025] UGCA 181 (30 May 2025)

[2025] UGCA 181

COURT

Court of Appeal of Uganda

BEFORE

Dr. F. Zeija, DCJ, Gashirabake, JA, K.K. Katunguka,
JJA/JCC

CASE / FILE NUMBER

Criminal Appeal No. 0048 of 2021

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

HOLDEN AT MASINDI

[Coram: F. Zeija, DCJ, C. Gashirabake, K K. Katunguka, JJA.]

CRIMINAL APPEAL NO. 0048 OF 2021

BETWEEN

ANDEBWE SERYAKO APPELLANT

AND

UGANDA RESPONDENT

1An appeal from a decision of the High Court of Uganda sitting at tulasindi by Gadenya, J., in Criminal Session Case No. 0060 of 2016 delivered on the 2n0 day of September, 20201

JU MENT OF THE COURT

Introduction

- t11 The appellant was indicted by the High Court of the offence of aggravated defilement contrary to Section 129 (4)(a) of the Penal Code Act. Upon arraignment, the appellant pleaded guilty, was convicted and sentenced to 20 years' imprisonment. The pre-trial remand period was deducted and the appellant was to serve 14 years, 5 months and 22 days.
- 121 Being dissatisfied with the sentence of the trial Court, the appellant filed this appeal on the following grounds;
- 1. The learned trial Judge erred in law and fact when he sentenced the appellant to twenty (20) years' imprisonment, which sentence is manifestly excessive and harsh in the circumstances.
- 2. The learned trial Judge erred in law and fact by failing to adequately

Page 1 of 8

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consider the mitigating factors presented in favour of the appellant.

- 3. The learned trial Judge erred in principle by imposing a deterrent sentence that was not proportionate to the circumstances of the case and the personal circumstances of the Appellant.
- 131 The appellant prayed that;
- a) The appeal be allowed,
- b) The sentence be quashed and set aside, and that he is given a lenient sentence.

Background

- 141 The facts of the case as presented before the trial Court are that on the 24th day of February, 2015 at around 10:00am, at Nyinga II Village in Kiryandongo District, the Victim (NA) aged 2 years was playing with other children in the neighbourhood. When the complainant went to fetch her, she found the victim (NA) in Andebwe Seryako (appellant)'s house.
- 151 Upon returning home, the Victim (NA) started to cry and point at her private parts while calling the appellant's name. The complainant immediately checked the Victim's private parts and noticed some injury. She suspected that the appellant had defiled the Victim. The complainant sought clarification from a neighbour - Meling Harriet, who confirmed that she had earlier seen the appellant take the child into his house that morning.

- 161 The complainant then confronted the appellant at the nearby trading centre where he had gone to drink alcohol. The appellant denied the allegations. The matter was reported to police and the appellant was arrested. Both the victim and the appellant were medically examined at Kiryandongo Hospital. The medical report of the victim (Police Form 3 - PE.1) revealed genital injuries consistent with forceful penetration. The appellant was examined (Police Form 24 - PE.3) and found to be mentally sound and aged 20 years. The victim's age was further confirmed through her Child Health Card (P. E.2).

Page 2 of 8

t7l The appellant was later arraigned before the High Court and convicted upon his own plea of guilt, to the charge of aggravated defilement, contrary to section 129(l) and (4)(a) of the Penal Code Act. He was sentenced to twenty (20) years imprisonment, with a deduction of five (5) years spent on remand, resulting in a net custodial sentence of fourteen (14) years, five (5) months, and twentytwo (22) days.

Representation

tB1 At the hearing, the appellant was represented by IVr. Simon Kasangaki while Ms. Happiness Ainebyona a Chief State Attorney appeared for the respondent. Both parties filed written submissions which were adopted as their legal arguments.

Appellant's Submissions

- 19l On ground one of the appeal, learned counsel for the appellant submitted that the sentence was manifestly excessive and harsh in the circumstances. Counsel relied on the decrsion in Tigo Stephen vs Uganda, Criminal Appeal No. 8 of 2009 to submit that while offences of a sexual nature against minors require serious punishment, the sentencing Court must also be guided by proportionality of the offender's age and other mitigating factors.
- [10] Regarding ground two, the appellant's Counsel submitted that, whereas the trial Court acknowledged the mitigating factors which included that the appellant was a first time offender, aged 20 years at the time, he pleaded guilty at the earliest opportunity thereby saving the Court's time, that he expressed remorse for the offence and had spent 5 years on remand; the trial Court did not attach sufficient weight to them.
- [11] Counsel cited the decision in Ainobushoborozi vs Uganda, Criminal Appeal No. 6 of 2015, to submit that an early guilty plea, especially in sexual offences, is a significant mitigating factor that must be rewarded with a considerable reduction in sentence.
- [12] Finally, on the third ground, Counsel forthe appellant submitted that the sentence

Page 3 of 8

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was disproportionate and excessively deterrent. Counsel submitted that a sentence must always be tailored to fit both the crime and the offender. For this proposition Counsel cited *Attorney General vs Susan Kigula & 417 Others* (Constitutional Appeal No. 3 of 2006). Counsel submitted that in this instant case, a 2}-year sentence did not sufficiently reflect the balance between retribution, deterrence and rehabilitation. That considering the mitigating factors, a custodial sentence of a lesser duration would still serve the aims of deterrence and retribution while upholding the principles of proportionality.

[13] In conclusion, Counsel for the appellant prayed that the sentence of 20 years be quashed and substituted for a lenient sentence of 8 years,

Respondent's submissions

- [14] In reply, the learned Chief State Attorney representing the respondent submitted on the first ground that; the sentence of 20 years' imprisonment meted out on the Appellant was neither harsh nor excessive in light of the maximum sentence of death for Aggravated Defilement under Section 129 (3) & 4 of the Penal Code Act CAP 120. It was Counsel for the respondent's submission that, for a sentence to be excessive and harsh, it should be over and above the prescribed sentence by law, which was not the case here.
- [15] On the second ground, the respondent's counsel submitted that on page 9 and last paragraph of the record of appeal, the trial Judge considered the mitigating factors in favour of the appellant prior to passing the sentence against him. That this contributed to the trial Court giving him a lenient sentence of 14 years and 5 months' imprisonment after deducting the time spent on remand.
- [16] In reply to ground three, Counsel for the respondent submitted that the principle of consistency as highlighted in *Aharikundira Yustina vs Uganda*, SCCA No, 027 of 2025 (unreported), is a vital principle of a sentencing regime, That in this regard, a

Page 4 of 8

sentence of 20 years, after deducting the time spent on remand to 14 years' imprisonment was not far from the ranges of sentences upheld by this Court.

[17] To support this submission, Counsel referred to numerous decided cases with similar circumstances which include, *Kabagambe Yoweri vs Uganda* Caca No. 659 Of 2015, where this Court did not interfere with a sentence of 22 years where the appellant had pleaded guilty and was 20 years while the victim was 11 years. And *Benywanira Emmanuel vs Uganda* Caca No. 0120 Of 2018, in which the appellant had pleaded guilty to aggravated defilement of a victim estimated to be 4 years but still this Court found that the sentence of 32 years was legal and that there was no basis for setting it aside.

Consideration of the Appeal

The duty of the first appellate court stated under Rule 30(1) of the Judicature (Court of Appeals Rules) Directions, is to re-appraise all material evidence that was adduced before the trial court and come to its own conclusions of fact and law while making allowance for the fact that it neither saw nor heard the witnesses testify. This principle was also stated in *Henry Kifamunte vs Uganda*, Supreme Court Criminal Appeal No.10 of 1997.

In this regard, we have carefully read the record of the trial court, the submissions of both counsel and the authorities cited, and others not cited by the parties.

Resolution of the Appeal

[19] All the grounds of appeal relate to the sentence and shall be resolved jointly. The law regarding appellate Courts' powers in sentencing is well settled. In the case of *Kiwalabye Bernard vs Uganda*, Supreme Court Criminal Appeal No. 143 of 2001, Court stated as follows;

> "An appellate court will only alter a sentence imposed by the trial Court if it is evident it acted on a wrong principle or overlooked some material factor, or that the

> > Page 5 of 8

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sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration"

- [20] We shall duly apply the above principles. The crux of this appeal is that the sentence meted out by the trial Judge was harsh and excessive, imposed without consideration of the mitigating factors, and was not proportionate to circumstances of the case.
- [21] The sentencing order of the trial Judge was couched as follows;

„SENTENCE;

The convict pleaded guilty and saved Court's time. He was also remorseful for committing the offence. These 2 facts are mitigating circumstances that entitle the convict to a less severe sentence. Be that as it may, the convict wrecked, for good, the life of the little 2-year-old child who looked upon him for protection and for that reason, he deserves a deterrent sentence to deter him and others from violating small girls, on offence which is on the risk (slc) / consider a sentence of 20 years appropriate for the offence.

I am also obligated to deduct the 5 years he has spent on remand, The convict will serve a net sentence of 14 years, 5 months and 22 days, Convict has a right to appeal against the severity of sentence." Sentence, 40 years has remand of 5 years - therefore has 35 years"

[22] We take the caution offered by this Court in *Ndyabalema Fulugensio vs Uganda*, Court of Appeal Criminal Appeal No. 26 of 2016 that there is always a high threshold to be met for an appellate Court to interfere with the sentence handed down by a trial Judge on grounds of it being manifestly excessive. Since sentencing is a matter of judicial discretion, uniformity of sentences is hardly achievable. Therefore, appellate Courts should only interfere where it is clear that the sentence was manifestly excessive, for example where the trial Court arrived at a sentence without considering mitigating circumstances.

[23] It is evident that the trial Court considered the relevant mitigating factors presented in favour of the appellant. The trial Judge weighed the above considerations as is required by the Constitution (Sentencing Guidelines for Courts of Judicature)

Page 6 of 8

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(Practice) Directions, 2013. We find no grounds to fault the trial Court for the sentence meted out, There is no indication that sentence was either harsh nor excessive.

- [24] The supreme Court in the authority of *Livingstone Kakooza vs Uganda*, (19941 UGSC 17, stated that the sentences imposed in previous cases of similar nature do afford material consideration while this Court is determining appeals.
- [25] As observed in the myriad of authorities submitted by the respondents counsel, ^a sentence of 20 years' imprisonment is within the acceptable sentencing range for the offence of aggravated defilement where the accused has pleaded guilty. We have also considered that whereas the appellant was indeed aged 20 years at the time, the victim was only 2 years old. Worse still, Counsel for the appellant cited the appellant's HIV + status as a mitigating factor, which to the contrary is aggravating factor.
- t26l From the foregoing, after considering the submissions of Counsel for the appellant and Counsel for the respondent and the listening to the oral arguments, we find no merit in the appeal. The sentence was neither harsh nor excessive, It was not premised on wrong principles of law. we find no reason to interfere with the discretion of the trial Judge

Decision of Court

- [27] In the final result, the appellant shall continue serving the sentence meted out at the trial Court by the trial Judge.
- [28] The appeal stands dismissed.

We so order.

CgE-A &*,,,

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Dated this 30th day of May 2025. Dans Flavian Zeija (PhD) Justice of Appeal Christopher Gashirabake Justice of Appeal Ketrah Kitariisibwa Katunguka Justice of Appeal

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