

UGANDA / JUDGMENT

Idraku v Uganda (Criminal Appeal 255 of 2014) [2025] UGCA 13 (24 January 2025)

[2025] UGCA 13

COURT

Court of Appeal of Uganda

BEFORE

Egonda-Ntende, JA, Tibulya, JA/JCC, Kazibwe, JA

CASE / FILE NUMBER

Criminal Appeal 255 of 2014

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT GULU

[Coram: Egonda-Ntende, Tibulya, Kazibwe Kawumi, JJA]

CRIMINAL APPEAL NO. 255 OF 2014

(Arising from High Court Criminal Session Case No. 032 of 2012 at Arua)

BETWEEN

IDRAKU SILVER= \$==APPELLANT\$

AND

\$UGANDA =\$

=RESPONDENT

(An appeal from a Judgment of the High Court of Uganda (Ibanda Nahamya, J.), delivered on the 21st August 2013)

JUDGMENT OF THE COURT

Introduction

This is an appeal against sentence only with leave of this court. The appellant was convicted by the High Court of the offence of aggravated defilement, contrary to Section 116 (3) and (4) of the Penal Code Act, Cap. 128. The particulars of the offence were that on the 2nd July 2011 at Cecelela village, Moyo District, had unlawful sexual intercourse with a girl, FC, under the age of 14 years. He was sentenced to 30 (thirty) years' imprisonment. The appellant's sole ground of appeal is as follows:

> 'That the Learned Trial Judge erred in law and fact by imposing a manifestly harsh and excessive sentence of 30 years against the Appellant and failed to subtract from the sentence the period spent on remand which led a serious miscarriage of justice to the prejudice of the Appellant.'

The brief facts of this appeal are that F C (the victim) lived at Cecelela Village, in Moyo District with her mother and sister. The victim and the appellant's home neighboured Hill Valley Primary School. The victim was in Primary 2 in the same school where she would also go and play with other children, even when there were no school activities going on. On the 2nd day of July, 2011, at about 3:00 pm, while playing at the said school, the appellant called the victim and sent her to buy for him cigarettes. When she bought the cigarette and brought to the appellant, he told her to enter the primary two class room where he sent away the other children.

The appellant then defiled the victim and warned her not to reveal what happened to anyone. After the incident, the victim's sister who had been looking for her, saw the victim and the appellant seated outside the class room together and when the victim saw her sister, she ran away, thereby raising suspicion. The victim's mother later found the victim hiding in the bushes. When she asked the victim to tell her what she was fearing, the victim revealed that the appellant had defiled her. When her knicker fell down, it had whitish substance. The matter was reported to Police. The victim who was 9 years old, was medically examined and found to have bruises around her private parts which were consistent with forceful sexual intercourse. The appellant was arrested, medically examined and found to be of normal mental status.

Sentence of the trial Court

Following the appellant's conviction, the trial Judge's sentencing notes and order were concisely stated as follows;

> 'I have noted Parties Submission towards Aggravating factors and mitigating factors. Whereas I will not reproduce them here, I wish to single out the fact that at the time of the commissioning of the offence, the victim was 9 years old, whilst the convict was 43 years old, a difference of 34 years. I also note the gravity of the offence of Aggravated Defilement. A person convicted of it is liable to suffer death. FC, a pupil in P.2 at Hill Valley Primary School was full of life and eager to go to school but her defiler according the prosecution would affect her schooling. She was

injured physically and affected psychotically. I have considered the mitigating factors. First offender, been on remand for 13 months, family man with children including a sickly child. However, when the two sides are put on a weighing machine, the aggravating factors exceed the mitigating factors. This is a case in which I am inclined to apply a deterrent sentence. The convict was aged 43 years and a father himself. He should have protected the victim as he would do to his own children. He cannot tell Court now that he needs to go and look after or support his children. All children are the same, they are to be loved and cherished not revisited since you did not find it be fitting to control your libido then I doubt whether you can do so now. People like you

should be put away from circulation for a long time to give young and innocent children of tender years a chance to grow without fear. Having considered the period spent on remand, I will mete down to you a deterrent sentence to teach you a lesson and others like you.

I hereby sentence you to a term of imprisonment of 30 (thirty) years.

Right of Appeal against sentence explained.'

The appellant is aggrieved with the 30-year sentence that was imposed by \$[5]\$ the trial court resulting in the instant appeal.

Representation and Counsel's Submissions

- At the hearing, Mr. Odyek Douglas appeared for the appellant while the \$[6]\$ respondent was represented by Ms. Ainebyoona Happiness, Chief State Attorney in the Office of the Director, Public Prosecutions.
- In his written submissions, the appellant's learned counsel submitted that \$[7]\$ the trial Judge did not give adequate weight to the fact that the appellant was 43 years old at the time of conviction, was married with children, was a sole bread winner and had spent 13 months on remand. She submitted that the 30 years' imprisonment imposed on the appellant was too harsh and excessive. She prayed for a reduced sentence of 15 years imprisonment.
- Ms. Ainebyoona Happiness for the respondent submitted that the learned \$[8]\$ trial Judge effectively considered all the mitigating factors presented by the appellant and upon weighing the mitigating factors against the aggravating factors; found that the aggravating factors outweighed the mitigating factors before sentencing the appellant. She contended that the sentence passed by the trial Judge was not illegal, harsh or excessive and the trial Judge did not overlook the law or any material factor.

Analysis

The Supreme Court and the predecessor Court of Appeal for East Africa, [9] have set down the principles to be applied by a first appellate court in dealing with appeals against sentence. The said principles are re stated in *Livingstone Kakooza v Uganda* [1994] UGSC 17 in the following words;

> '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 if the 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: See *Ogalo S/O Owoura v R* (1954) 21 E. A. C. A. 270.'

- The foregoing principles are equally applicable in the instant case. [10]
- It appears to us that much as the learned trial judge ticked the right boxes [11] in determining the sentence of the appellant the result was unduly harsh and manifestly excessive. It was out of range of sentences imposed for similar offences.
- The Supreme Court in *Leo Byaruhanga v Uganda* [1995] UGSC 7 [12] considered an appeal against sentence where the appellant had been convicted of defilement of an 8-year-old girl and sentenced to 10 years' imprisonment. The court confirmed the sentence of 10 years' imprisonment.
- This court in *Birungi Moses v Uganda* [2014] UGCA 51 considered an [13] appeal against sentence for aggravated defilement where the appellant had defiled a young girl, 8 years old, and was sentenced to 30 years' imprisonment. It found the sentence harsh and excessive and reduced the same to 12 years' imprisonment.
- In *Turyayomwe Moses v Uganda*, Court of Appeal Criminal Appeal No. [14] 20 of 2013, (unreported) the appellant was convicted of aggravated defilement and sentenced to 15 years' imprisonment by the trial court. This Court upheld the sentence of 15 years' imprisonment as appropriate in the circumstances of the case. It only deducted the period the appellant had spent on remand and let the appellant serve a sentence of 13 years and 17 days' imprisonment.
- In *Opio Francis v Uganda* [2020] UGCA 52 this court, on a conviction [15] for aggravated defilement, set aside a sentence of life imprisonment and substituted it with a sentence of 17 years and 9 months' imprisonment.

Decision

We allow the appeal against sentence. We set aside the sentence imposed \$[16]\$ by the trial court for being harsh and excessive. We are satisfied that in the circumstances of this case the appropriate sentence would be 18 years' imprisonment from which we shall deduct the pre-trial period the appellant spent in custody, of 1 year and 1 month, and order the appellant to serve a sentence of 16 years and 11 months' imprisonment from 21st August 2013, the date of conviction.

Signed, dated and delivered at Gulu this \$\mathcal{P}\$ day of

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redrick Egonda-Ntende **Justice of Appeal**

> \$\lambda \alpha\$ Margaret Tibulya **Justice of Appeal**

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Moses Kazibwe Kawumi **Justice of Appeal**

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