

UGANDA / JUDGMENT

Katamba v Uganda (Criminal Appeal 190 of 2016) [2025] UGCA 154 (20 May 2025)

[2025] UGCA 154

COURT

Court of Appeal of Uganda

BEFORE

Kazibwe, JA, Nakachwa, JA/JCC, Kakooza Sabiiti, JA/ JCC

CASE / FILE NUMBER

Criminal Appeal 190 of 2016

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT MBARARA

CRIMINAL APPEAL NO.190 OF 2016

VERSUS

KATAMBA ISMA

APPELLANT

RESPONDENT

 $\$ \backslash \mathrm{mathsf{S}} \$$

UGANDA

(An appeal from the judgment of the High Court at Mbarara (Matovu, J) delivered on 8th July 2016 in Criminal Session Case No.293 of 2015)

(Coram: Kazibwe Kawumi, Nakachwa & Kakooza Sabiiti, JJA)

JUDGMENT OF THE COURT

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The appellant pleaded guilty to a charge of Aggravated defilement and was accordingly convicted. He was sentenced to 19 years' and 1 month' imprisonment on 8th July 2016.

Background ²⁵

The facts upon which the appellant was convicted are that on 2nd June 2015, the victim whom we have called 'AB' was at home playing with her brother. She was three years old at the time. The appellant visited their home and gave AB's brother shillings 100/= to buy popcorn. When the brother left, the appellant took AB to the workers' house and had sexual intercourse with her.

The brother who had gone for popcorn returned and called AB. The appellant emerged from the workers' house and ran away. AB's mother returned home thereafter and was informed of what had transpired.

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The mother traced the appellant who was arrested from the nearby ⁵ trading centre and subsequently charged with the offence to which he pleaded guilty.

The Appeal is premised on the following ground;

The learned trial Judge erred in law and fact when he convicted the 10 appellant based on a plea bargain agreement without following the proper procedure leading to a miscarriage of justice.

The Appellant proposed that the appeal is allowed and the appellant be acquitted having served 10 years of the imposed sentence.

Representation

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Ms. Ahimbisibwe Lydia appeared for the appellant on state brief while Mr. Nahurira Jacob a State Attorney in the Office of the Director Public Prosecutions appeared for the respondent.

The court validated the Notice of Appeal filed out of time. Submissions filed by Counsel were adopted by the Court with leave, as their final submissions in the determination of the appeal.

Submissions by Counsel for the Appellant

It was observed by Counsel that the record of proceedings clearly shows that there was a Plea bargain agreement admitted by both the Prosecution and Counsel for the appellant during the trial. The accused/appellant stated in the trial court that; -

"I voluntarily accepted to waive my rights by signing this aareement." It was submitted that the trial Judge however did not explain to the

accused/appellant the rights he waived and the effect of the said

agreement which had not been signed before a judicial officer.

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It was further argued that it was the duty of the Judge to find out $\$ \mathit{S} \$$ whether the contents of the Plea bargain agreement were explained to the accused to avoid a miscarriage of justice and this could only be done by conforming to the requirements of Rule 12 of the Judicature (Plea Bargain) Rules of 2016. It was submitted that the failure to adhere to the requirements of Rule 12 occasioned a miscarriage of justice and 10 rendered the entire proceedings illegal.

Counsel cited *Wesamba Adam v Uganda CACA No.0101 of 2020* for the holding that under rule 12(4) of the Plea bargain rules, the trial court is required to confirm that an accused person freely and voluntarily, without threat or use of force, executed the agreement with full understanding of all matters and that the requirements are intended to preserve the accused's non-derogable constitutional right to a fair hearing enshrined in Article 28 of the Constitution.

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It was further argued that a plea bargain agreement is governed by the Contracts Act and the component of consent should be the governing factor which the court had to prove at plea taking. Counsel noted that in most cases, plea bargain sessions are conducted in Prisons where accused persons may have less bargaining power and an accused may end up signing the agreement without his consent.

It was further submitted that the Plea bargain agreement was not translated to the accused/appellant in the language he understood since the Advocate who signed to certify that he had translated it did not \$30\$ indicate the language that was used. Counsel contended that the trial Judge ought to have inquired into whether the Plea bargain agreement was translated to the appellant. The Court was urged to find that the Plea bargain agreement was illegal and irregular. A prayer was made for the appellant to be acquitted since he had already served 10 years in Prison.

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It was submitted that ordering for a retrial would constitute double $\$ \mathit{S} \$$ jeopardy and occasion further injustice to the appellant relying on *Alenyo Marks (A3) V. Uganda [2016] UGSC 33* for the proposition.

Submissions by Counsel for the Respondent

- Counsel for the respondent contended that the trial Judge followed the \$10\$ procedure of recording pleas of guilty as provided for in the case of Adan V Republic [1973] EA 443. It was argued that charges were read and explained to the appellant in a language that he understands. The appellant pleaded guilty and admitted to the facts which were explained to him. Counsel observed that the ingredients of the offence were 15
- contained in the facts which were read and explained to the appellant.

It was submitted that the failure to explain the contents of the Plea bargain agreement to the appellant by the trial judge did not occasion a miscarriage of justice because that was done by the Advocate representing him. Counsel relied on section 139 of the Trial on Indictments Act for the submission.

- Counsel submitted that the Plea bargain agreement was carefully crafted and it imposes a duty of an accused person's Advocate to explain \$25\$ the rights waived and the consequences of the transaction to his/her client. The rationale of the requirement it was argued, is for the accused to make an informed decision and the appellant voluntarily pled guilty with the full understanding of all matters in the agreement.
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It was pointed out that the Advocate is an officer of the Court and thus explained the whole procedure to the appellant on behalf of the court subsequent to which he voluntarily signed the agreement and accepted to serve 20 years' imprisonment.

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Counsel cited Hajji Eliasa Namunya & Others v Uganda [2024] UGSC 1 \$\mathsf{S}\$ in which the Court observed that substantive justice requires that the anomaly pointed out in the process of plea taking be overlooked in favour of the wider cause of substantive justice. The court was invited to dismiss the appeal

Analysis and determination

As a first appellate court, it is our duty to re-appraise all evidence that was adduced before the trial court and come to our own conclusions on the facts and the law while making allowance for the fact that we neither saw nor heard the witnesses testify. See Kifamunte Henry v Uganda [1998] UGSC 20.

We perused the proceedings leading to the conviction and sentencing of the appellant and specifically the application of the Plea Bargain Agreement in the whole process. We found it imperative to reproduce the record of proceedings in that respect; -

"8/7/2016

Mr. Anthony Kurugyeshuri for the State.

Mr. Dhabangi Samuel for the accused.

Accused: Understands Runyankore

Clerk: Atwine

State: We extracted a plea bargain agreement

Mr. Dhabangi: Its true, I signed this agreement.

Accused: I voluntarily accepted to waive my rights by signing this agreement.

Court: Indictment read to accused in open court

Accused. I have heard. It is true.

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Court: A plea of guilty is entered.

Mr. Kato: The facts are that on 2nd June 2015 the victim was at her parents' home aged 3 years. The accused gave her 100/= to buy popcorn. The accused grabbed the victim and took her in the house and had sexual intercourse with her. The victim's mother came and was told what happened. She chased the accused who was arrested at the trading centre. He was taken to Police and he admitted the offence.

Accused: Those facts are correct.

Court: The accused is convicted of Aggravated *defilement on his plea of guilty.*

Accused: I accepted to serve a prison term of twenty (20) years.

Warder: He has been on remand for eleven (11) months.

SENTENCE: The convict accepted to serve a prison term of twenty (20) years and after deducting the eleven (11) months he has spent on remand, he is sentenced to serve a prison term of nineteen (19) years and one (1) months."

We noted that Mr. Dhabangi who appeared for the accused in court was \$25\$ the same Advocate who represented him during the bargaining exercise with the State Attorney who was also in court for plea taking.

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In the Advocate's statement that forms part of the agreement, the Advocate confirmed to have explained to the appellant the rights he was waiving, facts of the case, the nature and elements of the charge and confirmed that there is a factual basis for the plea.

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- Whereas the trial Judge was required to explain the rights the accused $\$$ was going to waive by executing the Plea bargain agreement under Rule 12 of the Plea bargain Rules, the record of proceedings in the trial court reflects that the appellant had a full understanding of those rights by admitting that he voluntarily agreed to waive them by signing the agreement.
- $\$10$

We are further of the view that the appellant substantially understood the charge preferred against him and the manner in which the offence was committed as reflected in his admission to the truth of the facts presented to the trial court. The plea was unequivocal and the procedure adopted was substantially in line with the guidelines in the case of *Adan v Republic* (1973) EA 345.

Section 61 of the Trial on Indictments Act [CAP 25] which provides for plea taking states as follows: - $\$20$

> "The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the court shall cause otherwise to order, and the indictment shall be read over to him or her by the Chief Registrar or other officer of the Court, and explained if need be by that officer or interpreted by the interpreter of the Court; and the accused person shall be required to plead instantly to the indictment....."

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The provision underscores two elements in our view. The unfettered appearance of the accused before the court and an understanding of the nature of the case preferred against him before taking plea.

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Section 61 of the Act being the principal law on plea taking is silent on $\$$ the necessity to explain the Constitutional rights to the accused about to take his or her plea. The complaints raised by the appellant however are tailored to the unexecuted role of the trial Judge in the plea taking process that was preceded by a Plea bargain agreement.

We are alive to the requirements of Rule 12 of the Plea Bargain Rules to the effect that the court is under a duty to inform an accused person of his or her rights and to satisfy itself that the accused person understands them and the nature of the charge he or she is pleading to. Did the failure by the court to explain the rights to the appellant occasion a miscarriage of justice to warrant a setting aside of the sentence imposed by the court?

The Advocate who appeared for the appellant during the negotiations preceding the plea taking proceedings was in court and did not challenge \$20\$ the court for not having explained the rights the appellant was forfeiting to him. The appellant on his own is on record as having stated that he voluntarily waived the rights by signing the Plea bargain agreement. The statement made by the appellant points to his awareness about the rights he waived. We thus find that no miscarriage of justice was \$25\$ occasioned to the appellant.

The Trial on Indictments Act gives room to courts to uphold decisions even where there is an error during proceedings. Thus Section 138 (1) and (2) of the Trial on Indictments Act provides that; -

"138. Reversability or alteration of finding, sentence or order by reason of error, etc."

- (1) Subject to the provisions of any written law, no finding, sentence or order passed by the High Court shall be

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reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, indictment, order, judgment other \$or\$ warrant, proceedings before or during the trial unless the error, omission, irregularity or misdirection has, in fact, occasioned a failure of justice.

- (2) In determining whether any error, omission, irregularity or misdirection has occasioned a failure of justice, the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

Any omission in the plea taking procedure by the trial court had to be raised during the trial. Even then, for the appellant to succeed on the ground of appeal he raised, he had to prove that a miscarriage of justice was occasioned to him by the error allegedly committed by the trial 20 Judge. In *Matata Bwambale & Others v Uganda* [2023] UGCA 326, this court was faced with an appeal raising a complaint that ingredients of the offence were not explained to the appellant by the trial court. The Court acknowledged that it was the position and invoked section 139 of the Trial on Indictments Act. It was held that; - \$25\$

> "We acknowledge the fact that the trial court omitted to read the ingredients of the offence to the appellant. However, for this court to interfere with the decision, it must be demonstrated that this omission led to a failure of justice as provided for under section 139 of the Trial on Indictments \$Act.\$ "

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The Supreme Court in Uganda v Guster Nsubuga & Others, SCCA No.92 \$\mathsf{S}\$ of 2018 was faced with a situation where the respondents did not plead to an amended indictment as required by Section 51(1) of the Trial on Indictments Act. The Court held that; -

"We would consider section 51(1) of the Trial on Indictments Act as one of those, given the circumstances of this case which has to be construed as being directory rather than mandatory. The Constitution of the Republic of Uganda in Article 126(2)(e) enjoins Courts to do substantive justice instead of majoring in technicalities....."

We noted that the appellant did not claim to have suffered any injustice by the court's failure to explain the rights he waived to him. Raising the complaint on appeal as a technicality cannot lead to a reversal of the unequivocal plea he took before the trial Judge. The Court is further cognizant of the necessity to administer substantive justice as enshrined in Article 126 (2)(e) of the Constitution of the Republic of Uganda.

We find no merit in the appeal which we accordingly dismiss.

Signed, delivered and dated at Mbarara this \$20^{17}\$ day of May 2025.

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Moses Kazibwe Kawumi Justice of Appeal

> **Florence Nakachwa Justice of Appeal**

Cornelia Kakooza Sabiiti Justice of Appeal

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