

UGANDA / JUDGMENT

Kikomeko v Uganda (Criminal Appeal 152 of 2018) [2024] UGCA 110 (15 May 2024)

[2024] UGCA 110**COURT**

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Muzamiru, JA, Monica K. Mugenyi, JA

CASE / FILE NUMBER

Criminal Appeal 152 of 2018

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THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA HOLDEN AT JINJA**

[Coram: Geoffrey Kiryabwire, JA; Muzamiru Kibeedi, JA; Monica tvlugenyi]

CRIMINAL APPEAL NO. 152 OF 2018

(Arising from High Court Criminal Session Case No. 236 ot 2017 al t\4ukono)

BETWEEN

KIKOMEKO MOSES APPELLANT

AND

UGANDA RESPONDENT

(An Appeal from the Judgment of the High Court of Uganda Margaret Mutonyi J Delivered on 22nd February 2018)

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JUDGMENT OF THE COURT

Introduction

The Appellant was indicted and convicted of the offence of Rape contrary to Sections 123 and 124 of the Penal Code Act Cap 120.

The Facts

The Appellant on the 7th day of tvlarch 2014 at Nsuube Village in Mukono District had unlawful carnal knowledge of Mary Muhayi without her consent. The Appellant pleaded guilty to rape. On the fateful date, the accused had previously sold cabbages to the complainant and returned to her home to sell yams. The complainant instructed her maid to go with the Appellant to go to his garden to pick the yams. The complainant returned crying saying the Appellant raped her in the valley. She was examined on Police Form ³ A and found to be 18 Years of age.

Decision of the Trial Court

The Trial Judge convicted the Appellant and sentenced him to 15 years' imprisonment. Dissatisfied, the Appellant appealed against conviction and sentence on the following ground: -

„That the learned trial Judge erred in law in giving a sentence that was manifestly harsh and excessive in the circumstances."

The Respondent opposed the Appeal.

At the hearing, the Appellant was represented by Mr. Martin Asingwire and the Respondent by Ms. Lillian Omara Alum Chief State Attorney'

The parties sought the leave of court to adopt their written submissions as their legal arguments in this Appeal which was granted

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Powers of the Appellate court

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This is a first Appeal. We are alive to the duty of a first appellate Court which was espoused in the case of Kifamunte Henry v Uganda SCCA No.10 of 1997 to reappraise all the evidence at the trial and come up with our own inferences of law and fact.

In the matter of Kiwalabye v Uganda Criminal Appeal No. 143 of 2001(SC) it was held that: -

"The appellant court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of its discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle."

On the ground of contesting a Sentence that has been rendered, we are also alive to the decision in *Ogalo s/o Owoura v R* (Supra) where the Court held: -

"... The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the court had been trying the Appellant they might have passed a somewhat different sentence and it would not ordinarily interfere with the discretion, exercised by the trial judge unless as was said in *James v R*, (1950) 18 EACA 147, "it is evident that the Judge has acted upon wrong principle or overlooked some material factor". To this we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. An appropriate sentence should be proportionate to the offence with the gravest offences attracting the most severe penalties and lesser

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offences in terms of aggravation attracting less severe penalties. Courts also have added another principle of consistency in terms of equality before the law so that offences committed under similar circumstances with similar degree of gravity should attract the same range of sentences therefore precedents of the appellate courts are a relevant guiding actor..."

We shall apply the above principles to this appeal.

Ground: That the learned trial Judge erred in law in giving a sentence that was manifestly harsh and excessive in the circumstances

Submissions of Appellant

Counsel for the Appellant argued that Court did not take into account the principal of uniformity and consistency in sentencing. Counsel cited *Rwabugande Moses V Uganda*, Supreme Court Criminal Appeal No. 25 Of 2014 which allows Court to interfere with the discretion of the sentencing court. Counsel also cited *Kayondo Sadam v Uganda*, Court of Appeal 524 of 2016 where on a plea of guilty, Court deducted 6 years from the original sentence. In that matter, Counsel had prayed that the original sentence be reduced by 6 years making it 9 years.

Submissions of Respondent

Counsel for the Respondent did not make Submissions in Reply to the single issue agreed before the Justices of Appeal on 20th March 2023.

Findings and Decisions of Court

We have considered the submissions before us and the Record of Appeal which we shall take into account and consideration.

Under this ground, Counsel for the Appellant cited the case of Rwabugande Moses V Uganda (Supra) where the court held that: - $\mathcal{D}^{\mathcal{G}_i}$

"Court can interfere with the discretion of the sentencing court, only where the sentence is illegal or the court is satisfied that there was failure of discretion or failure to take into account a material consideration or principle."

Counsel also referred Court to Kayondo Sam V Uganda (Supra), where a sentence of 20 years' imprisonment was reduced to 14 years to take into account that the appellant had pleaded guilty to the offence, which was put at 6 years.

Section 11 of the Judicature Act gives this Court all the powers, authority and jurisdiction as that of the trial Court to impose an appropriate sentence of its own.

In Onaba Razaki vs Uganda, CACA No. 327 of 2009, this Court set aside the sentence of 15 years' imprisonment for the offence of rape and substituted it with 14 years. The appellant had attacked the victim at 11:00 p.m. on her way from work and raped her in the grass.

In Yebuga Majid vs Uganda, CACA No. 303 of 2009, the appellant raped the victim while in her sleep and he was convicted and sentenced to 15 years' imprisonment. On appeal, this Court upheld that sentence of 15 years.

In Boona Peter vs Uganda, CACA No. 16 of 1997, the appellant was convicted of rape and sentenced to 10 years' imprisonment. On appeal against sentence on the ground that it was manifestly excessive, this Court dismissed the appeal and confirmed the sentence.

Even without a formal reply by the Respondent, Court finds that the sentence meted by the trial Court is within the range rendered in similar cases. We are therefore not convinced that the sentenced rendered against $\bigcup_{\Lambda}$

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the Appellant is manifestly harsh and excessive in the circumstances. we accordingly disallow this ground.

Final Decision

Having held as we have on the above issues Decide and Order that the Appeal is dismissed.

You have the right to appeal against this Sentence to the Supreme Court

We so order.

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Dated at
2024
day of.
this | |-----| |
Hon. Mr. Justice Geoffrey Kiryabwire | | | Hon. Mr. Justice Muzamiru Mutangula Kibeedi | | |
*Hon. Lady Justice Monica K. Mugeny |

.l'his Judgment was signed before this Judge ceased to hold that office.

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