

UGANDA / JUDGMENT

Mubiru Joshua v Uganda

(Criminal Appeal No. 0193 of 2021)

[2025] UGCA 130 (8 May 2025)

[2025] UGCA 130

COURT

Court of Appeal of Uganda

BEFORE

Gashirabake, JA, Asa Mugenyi, JA/ JCC, John Mike Musisi, JJA/JCC

CASE / FILE NUMBER

Criminal Appeal No. 0193 of 2021

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THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

[Coram: C Gashirabake, A. Mugenyi & J. M. Musisi, JJA]

CRIMINAL APPEAL NO.0193 of 2021

MUBIRU JOSHUA . APPELLANT

VERSUS**UGANDA RESPONDENT**

(Arising from the judgment of the High Court of Uganda (Dr. Winfred N Nabisinde, J,) Criminal Case No.0j8 of 2019, delivered on the 17th of February 2020)

JUDGMENT OF THE COURT

[1] The Appellant, aged 19 years, was indicted for the offence of aggravated defilement contrary to Section 129 (3) and (4)(a) of the Penal Code Act (now Cap 128). It was alleged that the appellant in April 2017 at Katala Kazinga Busuwula in the Wakiso district, performed a sexual Act on NSN, a girl aged 10 years. The Appellant appealed against the sentence only. The ground of appeal states;

> "The learned sentencing judge erred in law and fact where she failed to consider the principle of uniformity and consistency while sentencing the Appellant, thereby imposing on the Appellant a harsh and manifestly excessive sentence leading to a miscarriage of Justice."

[2] The Respondent opposed the appeal on the grounds that the sentence was neither excessive nor harsh as alleged by the Appellant

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Representation

[3] At the hearing, the Appellant was represented by Mr. Mbalire Mohamed on the State brief. Mr. Kulu Idambi, Assistant Director of Public Prosecutions represented the Respondent.

Submissions for counsel for the Appellant

- [4] Counsel for the appellant started by seeking leave of Court under Section 132(1Xb) of the Trial on Indictment Act Cap 25, Rules 2(2), a3(3)(a) of the Rules of the Judicature (Court of Appeal Rules) Direction, SI 1 3- 10.
- [5] Counsel for the appellant was alive to the role of this Court as the first appellate Court, as was stated in *Henry Kifamunte vs Uganda* [1998] UGSC 20.
- [6] Counsel was also alive to the principles upon which this Court may interfere with the discretion of the sentencing Judge as stated in *Kyalimpa Edward vs*

Uganda Criminal Appeal No. 10 of 1995.

- [7] It was submitted for the appellant that there is need for the court to consider consistency when sentencing. Counsel relied on *Baruka Asuman vs Uganda*, Court of Appeal Criminal Appeal No. 387 of 2014. where this court underscored the importance of consistency and uniformity to the effect that it is the only means that the appellate court can determine whether the sentence meted out to the convict/ appellant manifestly is harsh and excessive.
- [8] The trial Judge was faulted for failure to consider the previous sentences meted down to convicts who have committed similar offences in similar circumstances. Counsel argued that a sentence of 17 years was excessive. Counsel cited *Aharikundira Yusitina vs Uganda*, I20181 UGSC 49, where the court found that the court has to consider other pre-sentencing requirements elucidated in the Constitution, Statutes, Practice Directions,

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together with general principles of sentencing. He also cited principle 6 (C), which provides for the principle of consistency.

- [9] Counsel relied on Tiboruhanga Emmanuel vs Uganda, Court of Appeal Criminal Appeal No. 655 of 2014, where the court held that the sentences approved by this Court in previous aggravated defilement cases range between 11 to 15 years unless there are other aggravating factors. In Wamboza Disan vs Uganda, Criminal Appeal No.205 of 2011, the court reduced a sentence from life imprisonment to 20 years. In Adriko Geoffrey vs Uganda [2024] UGCA 328, the court reduced a sentence of 20 years to ¹⁸ years of imprisonment. In Birungi Charles vs Uganda, [2024] UGCA 251, the court confirmed a sentence of 18 years for aggravated defilement. Finally, in Kwizera Jonana vs Uganda, [2024] UGCA 246, a sentence of 21 years was reduced to 18 years.
- [10] It was argued that the appellant was remorseful and pleaded guilty and took responsibility for the crime, and fortunately enough, he did not infect the victim with HIV.
- [11] Counsel prayed that this court invokes Section 11 of the Judicature Act to set aside this harsh and manifestly excessive sentence. Counsel submitted in mitigation that the appellant was a first offender, remorseful as he pleaded guilty, young man capable of reforming, and prayed for a lenient sentence of ¹3 years.

Submissions by counsel for the Respondent.

U2) Counsel submitted that in Livingstone Kakooza vs Uganda, [1994] UGSC 17, this court as well as the Supreme Court have decided that an appellate court should only interfere with the trial court's sentence if and only if the said trial court overlooked some material fact and the sentence was

was

manifestly excessive. Counsel argued that, in this case, 17 years and 3 months of imprisonment were excessive.

- [13] Citing Kifamunte Henry vs Uganda (supra) and Kiwalabye Bernard vs Uganda SCCA NO. 143 OF 2001, (unreported). Counsel was alive to the role of this court.
- [4] Counsel submitted that 17 years and 3 months was not excessive in the circumstances of the case.

ANALYSIS

Role of the First Appellant Court

- [15] Under Rule 30(1) of the Judicature (Court of Appeals) Directions, SI 13-10, the duty of this court as the first Appellate Court is to re-evaluate the evidence on record and come to its conclusions. This was re-echoed in Henry Kifamunte vs Uganda, [1998] UGSC, 20.

- [16] Regarding the power of this Court in interfering with the discretion of the sentencing Judge, the Supreme Court in *Kyalimpa Edward vs Uganda Criminal Appeal*, No. 10 of 1995, (unreported) referring to *R vs De Haviland* (1983) 5 Cr. App. R(s) 109 and held as follows on page 114:

"An appropriate sentence is a matter for the discretion of the sentencing Judge. Each case presents its own facts upon which ^ajudge exercises his discretion. It is the practice that as an appellate court, this Court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to injustice: *Ogalo s/o Owoura vs R* (1951) 21 EACA 270 and *R vs Mohamedali Jamsi* (1948) 15 EACA 126"

[17] In *Aharikundira vs Uganda* (supra), the court found that;

"There is a high threshold to be met for an appellate court to intervene" with the sentence handed down by a trial Judge on the grounds of it being manifestly excessive. Sentencing is not a mechanical process but a matter of judicial discretion; therefore, perfect uniformity is hardly possible. The *keyword is "manifestly excessive." An appellate court will only intervene* where the sentence imposed exceeded to permissible range or sentencing variation."

- Sentencing is not a mechanical process but a matter of judicial [18] discretion, which is guided by the Constitution, statutes, Practice directions, and the general principles of sentencing. We have considered the fact that this offence of aggravated defilement carries a maximum sentence of death and a second sentence of life imprisonment as provided for under Section 129 of the Penal Code and the Sentencing Guidelines (supra). We have also considered both the mitigating and aggravating factors as presented by the appellant before the trial court.
- [19] Regarding consistency, in similar cases like *Bacwa Benon vs Uganda*, CACA, 869 of 2014, the court confirmed a life sentence for an appellant who pleaded guilty to the offence of aggravated defilement. In *Bushir Burayuri vs Uganda* (2023) UGCA, 265, upheld a sentence of 45 years after the Appellant had defiled a 12-year-old.
- [20] We find that a sentence of 17 years and 3 months is neither manifestly harsh nor excessive considering the circumstances of the case.
- [21] This appeal lacks merit and the appellant will continue serving his sentence.
- [22] We are satisfied that a sentence 17 years and 3 months' imprisonment from the date of conviction will meet the ends of justice in this case. This appeal is dismissed.

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We so Order

tL Dated, signed and delivered this2025 day of N\e\

CHRISTOPHER GASHIRABAKE

APPEAL

DR. ENYI

JUSTICE APPEAL

JOHN SISI JUSTICE OF APPEAL

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