

UGANDA / JUDGMENT

Nyecko Charles Alias Obama v Uganda (Criminal Appeal No. 0656 of 2015) [2025] UGCA 134 (9 May 2025) [2025] UGCA 134

COURT

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Luswata, JA, Mulyagonja, JA

CASE / FILE NUMBER

Criminal Appeal No. 0656 of 2015

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT ARUA

[Coram: Geoffrey Kiryabwire, JA; Irene Mulyagonja, JA; Eva K. Luswata, JA]

CRIMINAL APPEAL NO. 0656 OF 2015

(Arising from High Court Criminal Session Case No. 0101 of 2013 at Gulu)

BETWEEN

NYEKO CHARLES ALIAS OBAMA APPELLANT

AND

UGANDA RESPONDENT

(An Appeal from the Judgment of the High Court of Uganda Hon. Justice Wilson Masalu Musene,
J Delivered on 20th August 2014)

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JUDGMENT OF THE COURT

^Introduction

The Appellant was indicted and convicted of the offence of Aggravated Defilement C/S 129(3) and (4) (a) of the Penal Code Act.

The Facts

On the 16th day of January 2013 at Larnin Adera Village, Koro Sub County in Gulu District, the Appellant being a person infected with HIV performed a sexual act on the victim, a girl aged 8 years old.

When the matter came for plea in the High Court of Uganda sitting at Gulu, the Appellant pleaded guilty and was convicted on his own plea of guilty.

Decision of the Trial Court

The Trial Judge sentenced the Appellant to 18 years' imprisonment. Dissatisfied, the Appellant appealed against conviction and sentence on the following ground: -

The learned trial Judge erred in law and fact when he passed an illegal sentence of 18 years' imprisonment without considering the pre-trial remand period that the Appellant had spent in prison.

Being an Appeal against sentence only, counsel for the Appellant first sought leave of Court to appeal the sentence. Section 132(1)(b) of the Trial on Indictments Act Cap 23 provides that: -

"an accused person may, with leave of the Court of Appeal, appeal to the Court of Appeal against the sentence alone imposed by the High Court, other than ^a sentence fixed by the law."

The Counsel for the Respondent did not oppose the application for an appeal on sentence only and further did not oppose the Appeal.

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At the hearing, the Appellant was represented by Daisy Bandaru of M/S Bandaru and Co. Advocates and the Respondent by Mr. Patrick Omia Senior State Attorney.

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

Ground No. 1: The learned trial Judge erred in law and fact when he passed an illegal sentence of 18 years' imprisonment without considering the pre-trial remand period that the Appellant had spent in prison.

Submissions of Appellant

Counsel submitted that the Trial Court did not take into consideration the period the Appellant spent on remand, and as such handed down an illegal sentence on the Appellant. That on page 11, lines 13 to 14 of the record of Appeal, it was submitted for the prosecution that the Appellant had been on remand for 1 year and 7 months, however while sentencing the Appellant, the Trial Judge did not consider the 1 year and 7 months spent on pre-trial remand. Therefore, the sentence of 18 years' imprisonment was illegal as it did not comply with the mandatory constitutional requirement in Article 23(8) of the Constitution.

Counsel argued that the learned Trial Judge should have deducted the period of 1 year and 7 months from the 18-year sentence. Counsel prayed that this Court was a good case for Court to interfere with the sentence of the trial Court. She referred us to the decision in **Kyalimpa Edward V Uganda; SCCA No. 10 of 1995** where the principles upon which an Appellate Court may interfere with a sentence were considered. The Supreme Court referring to **R V De Haviland (1983) 5 CR. APP. 109** held that: -

"An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its' own facts upon which a judge exercises his discretion. It is the practice that as an Appellate Court, this court will normally not interfere with the discretion of the sentencing judge unless the

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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 an injustice. "

She prayed that the Ground of Appeal succeeds, because the sentence of 18 years' imprisonment was illegal and should therefore be set aside. Counsel for the Appellant prayed that the Appellant be re-sentenced taking into account the pre-trial remand period.

Submissions of Respondent

Counsel for the Respondent conceded that the sentence of the lower Court was illegal because the learned Judge did not take into consideration the provisions of Article 23(8) of the Constitution of the Republic of Uganda and Guidelines made thereunder. Similarly, Counsel concurred with the authorities cited by the Appellant in support of his arguments.

Counsel thus prayed that Court exercises its power to remedy the illegality, by deducting 1 year and 7 months from the Appellant's 18-year sentence.

Findings and Decisions of Court

We have considered the submissions of both Counsel for which we are grateful.

This is an Appeal against sentence only. Article 23(8) of the Constitution provides: -

"...Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment."

In the case of *Rwabugande Moses V Uganda SCCA No.25 of 2014*, while discussing Article 23(8) of the Constitution, the Supreme Court held that ^a Sentence arrived at without taking into consideration the period spent on remand is illegal for failure to comply with a mandatory constitutional provision.

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On the other hand, we have taken into consideration that the Respondent concurs with the submissions of the Appellant. The constitutional obligation upon a trial court is to consider the period spent on remand and this also extends to sentences arrived at by plea-bargaining.

In the case of *Obote David Vs Uganda, Criminal Appeal No. 331 of 2017* this Court upheld an Appeal against the 20-year sentence imposed on the Appellant by the trial court and thereafter varied it by deducting the period of 3 years, 1 month and 17 days that the Appellant spent on remand.

Both Counsel prayed that Court exercise its powers under S.1 I of the Judicature Act Cap ¹ / sup>1 ; S. 132 of the TIA Cap 32, while remedying the illegality, maintain the 18 year sentence, but deduct the 1 year and 7-month remand period.

The case at hand was decided, at page 14 of the Record of the Court of Appeal, while sentencing the Appellant, the learned Trial Judge held: -

"This court has from time to time decided cases of Aggravated Defilement which are on the increase. I shall not repeat. I wholly agree and adopt the submissions by Mr. Omia Patrick for State. I only add as Mr. Ladwar submitted that since convict has pleaded guilty and saved court's time, I shall not sentence him to life imprisonment. Instead, I do hereby sentence convict to 18 years' imprisonment."

We have clearly observed that the learned Trial Judge did not state at any point that he took into consideration the period spent on remand by the Appellant. In essence, although the sentence was handed down on 20th August 2014, predating the Rwabugande Case (Supra), still the remand period was not taken into consideration at all. Since the Respondent does not contest the sentence period of 18 years we shall exercise our powers under Section II of the Judicature Act and deduct the 1 year and 7 months spent on remand.

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We accordingly resolve this ground in the affirmative.

Final Decision

Having held as we have on the above issues Decide and Order that:

- 1. The Appeal is granted.
- 2. The period of 1 year and 7 months is deducted from 18 years. Therefore, the Accused serve 16 years and 5 months from the date of sentencing, 20th August 2014.

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

We so order.

Dated at \$Kamhala\$. This \$9^{th}\$. Day of \$May\$. 2025. Hon Mr Justice Geoffrey Kiryabwire, JA
Hon Lady Justice Irene Mulyagonja, JA Hon Lady Justice Eva K. Luswata, JA

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