

UGANDA / JUDGMENT

# Omirambe Benjamin v Uganda (Criminal Appeal 48 of 2021) [2024] UGHCCRD 8 (25 January 2024)

[2024] UGHCCRD 8

## COURT

HC: Criminal Division (Uganda)

## BEFORE

Gadenya, J

## CASE / FILE NUMBER

Criminal Appeal 48 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL APPEAL NO. 048 OF 2021

ARISING FROM MAKINDYE COURT CRIMINAL CASE NO. 954 OF 2021

OMIRAMBE BENJAMIN ..... APPELLANT

Vs.

UGANDA ..... RESPONDENT

## JUDGEMENT

BEFORE HON. JUSTICE GADENYA PAUL WOLIMBWA

## 1. Introduction

On 22nd January, I dismissed this Appeal and reserved the reasons to be delivered later. These are the reasons for the dismissal of the Appeal.

Omirambe Benjamin (the Appellant) being dissatisfied with the decision of H/W Basemera Sarah Anne delivered on 21st October, 2021, at the Chief Magistrate's Court of Makindye, appealed against only the sentence on grounds that:

1. The Learned Trial Magistrate erred in law and fact when she sentenced the Appellant to five years' imprisonment which is deemed to be harsh and manifestly excessive in the obtaining circumstances i.e. having pleaded guilty to the Offense.
2. The Learned Trial Magistrate erred in law and fact when she failed to consider the remorsefulness of the Appellant who never wasted Courts time by pleading guilty to the charges.
3. **Background to the Appeal.**

On 29th August, 2021, the Appellant was charged with the Offense of Defilement Contrary to section 129 of the Penal Code Act. The Prosecution case was that on 31st July, 2021, the Appellant performed a sexual Act with Namaganda Lillian, a girl aged 15 years, at Kibuli Kisasizi Zone, Makindye Division in Kampala. On 21st October, 2021, the Appellant pleaded guilty to the offense as charged. He was convicted on his own Plea of Guilty and sentenced to 5 years' imprisonment. him being dissatisfied with the sentence, filed this Appeal.

In his Memorandum of Appeal, the Appellant sought for the prayer that the sentence of 5 years' imprisonment be set aside and substituted with a fair and lenient sentence in the obtaining circumstances.

#### 1. Issue

Whether the Trial Courts Sentence should be set aside and substituted with a "fair and lenient" sentence in the obtaining circumstances?

#### 1. Resolution

##### \* 1. The Law on Appeals

Section 34 (1) of the Criminal Procedure Code Act empowers an Appellate court to only interfere with the sentence passed by the trial court if it appears that the court acted on wrong principle or overlooked some material facts or the sentence is illegal, or manifestly excessive as to amount to a miscarriage of justice. Additionally, Section 34 (2) (a) (b) (c) of the Criminal Procedure Code Act empowers an Appellate Court to:

1. Reverse the finding and sentence, and acquit or discharge the appellant, or order him or her to be tried or retried by a court of competent jurisdiction;
2. Alter the finding and find the appellant guilty of another offence, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence by imposing any sentence provided by law for the offence; or
3. With or without any reduction or increase and with or without altering the finding, alter the nature of the sentence.

Section 204 (3) of the Magistrates' Court Act prohibits appeals from cases where a person pleaded guilty and was convicted unless the legality of the plea or the extent or legality of sentence is called into question. It provides that:

\*“No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a magistrate's court except as to the legality of the plea or to the extent or legality of the sentence.”\*

In a similar provision, the Trial on Indictment Act under Section 132 (3) equally prohibits appeals from cases where a person pleaded guilty and was convicted unless the legality of the plea or the extent or legality of sentence is called into question. It provides that:

\*“No appeal shall be allowed in the case of any person who has pleaded guilty in his or her trial by the chief magistrate or magistrate grade I or on appeal to the High Court and has been convicted on the plea, except as to the legality of the plea or to the extent or legality of the sentence.”\*

These sections empower the High Court to entertain an appeal of a case where the 'appellant' pleaded guilty to a charge in the trial court but the legality (legality means the state of being in accordance with the law) of the said plea is in question or where the extent or legality of the sentence is called into question. These sections enjoin courts to determine disputes by reference to pre-existing legal rules only. Punishment is only to be imposed for behavior which is expressly marked in law as criminal at the time that it was committed. This principle serves as an important protection against the arbitrary application of the law and the misuse of power.

#### \* + 1. Duty of the Appellate Court

This Court is cognizant of the fact that it is the first appellate court and must therefore, evaluate all the evidence on the court record considering the fact that it did not see the demeanor of the witnesses when testifying.

In *Kifamunte Henry v Uganda (Criminal Appeal No. 10 of 1997)* [1998] UGSC 20 (15 May 1998), the Supreme Court guided that :

\*the first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from manner and demeanor, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on the credibility of witnesses which the appellate Court has not seen. See *Pandya vs. R.* (1957) E. A. 336 and *Okeno vs. Republic* (1972) E. A. 32 Charles B. Bitwire ys Uganda - Supreme Court Criminal Appeal No. 23 of 1985 at page 5.\*

\*Furthermore, even where a trial Court has erred, the appellate Court will interfere where the error has occasioned a miscarriage of justice: See S. 331(I) of the Criminal Procedure Act.’ It does not seem to us that except in the clearest of cases, we are required to reevaluate the evidence like is a first appellate Court save in Constitutional cases. On the second appeal, it is sufficient to decide whether the first appellate Court, on approaching its task, applied, or failed to apply such principles: See P. R. Pandya vs. R. (1957) E. A. (supra) Kairu vs. Uganda (1978) FI. C. B. 123.\*

#### \* + 1. The Appeal

**The Issue: Whether the Trial Courts Sentence should be set aside and substituted with a “fair and lenient” sentence in the obtaining circumstances?**

It is a fundamental principle that the sentencing discretion of a Judicial Officer is not disturbed on appeal unless error is shown. An appellate court does not interfere with the sentence imposed simply because it is of the view that the sentence is insufficient or excessive. It only interferes if it is shown that the sentencing Judicial Officer committed error in acting on a wrong principle or issued either an illegal sentence or a manifestly harsh/excessive sentence as to amount to a miscarriage of justice.

In the instant case, the Appellant was sentenced for behavior expressly marked as criminal and punishable under section 129 of the Penal Code Act at the time of commission. The trial Magistrate did not misuse judicial power by arbitrarily applying nonexistent law to sentence the Appellant. Additionally, when sentencing the Appellant to 5 years’ imprisonment, the Trial Chief Magistrate considered both the Aggravating and Mitigating reasons. At pages 3 and 4 of the record, the Trial Magistrate stated as follows:

\*“Convict is a first time Offender. He has pleaded Guilty without wasting Courts time and appears remorseful. However, this offense is rampant within this area of jurisdiction. The convict instead of protecting the victim rather decided to attack and abuse her resulting into early pregnancy and he needs to be punished in order to deter him and other would be offenders. I sentence the accused to five years’ imprisonment\*.”

The excerpt above shows that for the mitigating factors, the trial Magistrate considered the fact that the Appellant pleaded guilty and did not waste courts’ time; he was a first time offender; and, he appeared to be remorseful. Whereas, under the Aggravating factors, she considered the fact that the offense is rampant; violence was used in the commission of the offense; breach of trust by sexually abusing the victim which act resulted into early pregnancy; and, the need for the Appellant to be punished as a deterrence measure to him and other would be offenders.

As earlier noted, on appeal, sentences can only be set aside if the sentence is illegal or manifestly harsh. This one is neither illegal nor harsh and excessive. An offense that attracts a maximum penalty of life imprisonment, a 5-year sentence is sufficient in light of the obtaining circumstances.

#### 1. Decision

This Appeal stands dismissed for lack of merit. The Sentence of Trial Magistrates delivered on 21st October, 2021 is upheld.



Gadenya Paul Wolimbwa

**JUDGE**

23rd January 2024

The judgment is delivered by Court in the presence of:

1. The Appellant
2. Balinone Charles- Court Clerk
3. Joan Nyaketcho- Research Officer
4. Respondent absent.



Gadenya Paul Wolimbwa

**JUDGE**

25th January 2024

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