

Ruhanga v Uganda (Criminal Appeal 282 of 2021) [2025] UGCA 109 (24 April 2025)

[2025] UGCA 109

BEFORE

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

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On 1th November 2017, the victim NS aged 17 years left her home to play netball. She met the appellant who invited her to his home. It is alleged that the appellant forced the victim into p.!" he was occupying which was an unfinished house. The appellant forcefully asked her for sexual

intercourse, which she resisted, but he later succeeded at having unprotected sex with her. The victim informed the appellant that she wanted to go back home. The appellant refused and had sex with her again. The victim spent the night with the appellant. The victim's father reported a case of the disappearance of her daughter. He was later

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tipped that her daughter was in the appellalt's home' The victim's father went to the appellant's home and that is where the appellant and the victim were found.

5 The appellant was arrested and charged with the offence of delilement. The appellant, after a full trial was convicted and sentenced to 25 years in prison by the trial Judge. The appellant not satisfied with the decision of the High court filed this appeal against the sentence only.

¹⁰ 3. GROUNDS OF APPEAL

Being dissatisfied with the sentence the appellant appealed on the following ground.

- 1. That the trial judge erred in law and fact when he imposed on the appellant
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^aharsh and manifestly excessive sentence leading to a miscarriage of justice

Representation

20 At the hearing on 2nd April 2025, the appellant was represented by Mr. Mohammda Mbalile on state brief while the respondent was represented by Mr. Joseph Kyomuhendo Chief State Attorney holding brief for Mr. Kulu Idambi Assistant Director of Public Prosecutions.

SUBMISSIONS OF PARTIES

4, COUNSEL F'OR THE APPELLANT'S SUBMISSIONS.

The counsel for the appellant submitted on the duty of the first appellate court. He stated that the parties are entitled to obtain from the appellate court its own decision on issues of fact as well as of law. He cited Kifamunte Henry u Uganda, Supreme Court Criminal Appeal IO of 1997, where the Supreme Court held that;

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"The first appellate court has the duty to review the evidence of the case and 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."

In regard to ground 1, the appellant submitted that the trial Judge failed to properly evaluate mitigating factors alongside the aggravating factors. They contended that the Judge did not consider the principles of uniformity and consistency in sentencing of convicts who committed offences in similar circumstances leading him to sentence the appellant to 25 years of imprisonment which was manifestly harsh and excessive in the circumstances.

The counsel for the appellant submitted on the principles upon which an appellate court may interfere with the sentence passed by the trial sentencing court and that they were considered in the Supreme Court in *Kgalimpa Edutard u Uganda*, Criminal Appeal No. 10 of 1995. The Supreme Court referred to *R v Hauiland*, (1983) 5 Cr App R(S) 109 and held as follows,

"An appropriate sentence is a matter for the discretion of Sentencing Judge. Each case presents its own facts upon which the Judge exercises his discretion. It is the practice that an appellate court, this court not normally interfere with the discretion of the sentencing judge unless the sentence is illegal and unless the court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to injustice."

The counsel for the appellant submitted that it is a legal requirement that before a convict can be sentenced, the trial court is obliged to exercise its discretion meticulously considering all the mitigating factors and other pre-sentencing requirements elucidated in the Constitution, statutes and general principles of sentencing as per the case of *Ahaikundira Yusitina u Uganda*, Supreme Court Criminal Appeal No. 27 of 2015. 25 30

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The counsel for the appellant submitted that paragraph 5(a) of the Constitution (Sentencing Guidelines for Courts of Judicature (Practice) Directions, 2013 requires the sentencing Court to consider the principles of proportionality deterrence and rehabilitation, that the sentence should be aimed at assisting in

- 5 rehabilitating and re-integrating an offender into society. He averred that the sentence of 25 years imposed on the appellant who is 21 years and HIV positive would not give him any opportunity to reform and be re-integrated back in the society but rather ruin his future. He argued that the appellant is of youthful age capable of reforming and benefiting his family and the society. The appellant
- retaliated the mitigating factors including the fact that he was a first time offender, was young and prayed for leniency. He submitted that the trial Judge, while sentencing the appellant, only considered the period spent on remand leaving out other factors. 10

- The counsel for the appellant submitted that the commission of the offence never involved any violence before, during and after the commission of the offence until his arrest and submissive to the authorities during the arrest. He cited *Kibigo Poul u Uganda*, Criminal Appeal No. 70 of 2014 where it was held that ^a renowned rule of judicial practice that sentencing a convict without previous antecedents deserves more leniency. 15 20

The counsel for the appellant emphasized the need to maintain consistence in sentencing the convicts of similar offences committed in similar circumstances as required under Paragraph 6(c) of the Sentencing Guidelines. He cited *Tiboruhanga Emmanuel u tJganda*, Court of Appeal Criminal Appeal No. 655 of 2014 where the court considered the fact that the appellant was HIV positive as an additional aggravating factor. The court imposed a sentence of 22 years' In *Omara Charles u Uganda*, Criminal Appeal No. 158 of 2014 the victim was 10 years and the accused HIV positive. The court sentenced him to 28 years. 25

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The counsel for the appellant submitted that this court while considering the aggravating factor and the consistency of sentencing for the offence of aggravated defilement committed in similar circumstances, the sentence should be reduced from 25 years to 17 years and the period spent on remand should be deducted.

5. COUNSEL FOR THE RESPONDENT'S SUBMISSIONS

10 The counsel for the respondent cited *Kiutalabye Benard u Uganda*, SCCA 143 of 2001 where it was stated that the appellate court did not interfere with the sentence imposed by the trial court which had exercised its discretion on the sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to miscarriage of justice or where a trial Judge ignores to consider an important matter of circumstances which ought to be considered and the sentence imposed

- 15 is wrong in principle. The counsel for the respondent submitted that an appellant court should only alter the trial court's sentence if the court acted on a wrong principle or overlooked some material factor or the sentence was manifestly excessive. He cited *Liuingstone Kakooza u Uganda*, Criminal Appeal No. 17 of 1993. The respondent submitted that this was not such a case. He stated that
- 20 by passing the sentence, the trial Judge considered both the aggravating and mitigating factors. He referred to the sentence where the Judge stated, "I have considered the aggravating factors put before court by prosecution and mitigating factors enumerated by defense."

- 25 The counsel for the respondent submitted that the offence carries a maximum sentence of death. The sentence of 22 years and 11 months is a very lenient and not harsh as counsel for the appellant wants court to believe. The counsel for the respondent submitted that an appropriate sentence is a matter for the discretion of court and the facts of the case, and that is why we have different courts sentencing appellants to different sentences for the same offences ranging from 12 years to life imprisonment and sometimes-even death.

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The respondent cited Othieno John u Uganda, Criminal Appeal No. 174 of 2010 where the appellant was sentenced to 29 years of imprisonment for aggravated defilement. In Murogortabu William u Uganda, Criminal Appeal Nos. 212 and 449 of 2015 the appellant was also sentenced to 29 years in prison' In Kaserebangi u Uganda, SCCA 040 of 2006, (2014) UGCA 89 the appellant was sentenced to 32 years of imprisonment. In Okello Geoffrey u Uganda, Criminal Appeal No. 34 of 2014. The appellant was sentenced to 22 years of imprisonment. In Ndugu Raulensio u Uganda, Criminal Appeal No. 676 of 2015, the appellant was sentenced to 22 years of imprisonment. The respondent prayed that this court finds it proper not to interfere with the sentence meted on the appellant

by the Trial Judge.

6. DETERMINATION OF COURT

The appellant contends that the sentence of 25 years for aggravated defilement was harsh and manifestly excessive sentence leading to a miscarriage of justice and should be substituted with 17 years.

In Kirtalabge Bernord u Uganda, SCCA 143 of 2001 it was held that it is trite law that the appellant court is not to interfere with the sentence imposed by ^a trial court which has exercised its discretion unless the discretion is such that it results in the sentence imposed being manifestly excessive or low as to amount to a miscarriage of justice or where the trial court ignores to consider an important matter or circumstance which ought to be considered while passing sentence or where the sentence is imposed on wrong principle' So we have to determine whether the sentence on the appellant is excessive and harsh' 20 25

The appellant submitted that the Judge, while sentencing the appellant, only considered the period he had spent on remand leaving out other factors. The learned Judge in his decisions stated, 30

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"I have considered the aggravating factors put before court by prosecution and mitigating factors enumerated by defense. It is true that aggravated defilement is a serious offence that carries a maximum penalty of death. However, the maximum sentence is normally reserved for extreme cases, that you could refer to as the rarest of cases."

It is clear from the extract of the sentencing ruling, that the trial Judge did not consider only the time spent on remand. He noted that the maximum penalty is death. Therefore, a sentence of 25 years is not excessive.

- In determining whether the sentence was harsh, we shall consider the mitigating and aggravating factors. In aggravation, the victim was a child. The convict used violence, he grabbed her up to his house and forced her into sex. She got bruises on some parts of her body. The accused was HIV positive and never used protection, hence exposing the victim to the risks of contracting it. It was 10
- submitted that the aggravated defilement is rampant within Uganda. There is need to give a deterrent sentence that will act as a lesson to communities. The convict is not remorseful and he wasted court's time and resources. They averred that the convict needs to be kept in custody to give him time to reform. In mitigation, the defense counsel prayed for leniency. The appellant was a first time offender with no previous criminal record. He was still young, and is capable 15
- of reforming. That the accused spent 2 years and one month on remand. In sentencing the appellant, the trial Judge noted: 20

"It also true that court reserves the discretion to give an appropriate and lawful sentence. In the instant case, the convict waylaid the victim who was going home after playing net ball with her friends in the evening, grabbed her and pulled her to the construction site where he was sleeping and had sex with her."

The court noted that the appellant was not remorseful. Taking all the factors the court took into consideration, it cannot be said to not have exercised its discretion properly after looking at the evidence on record.

We have also to apply the principle of consistency and uniformity as required under Paragraph 6(c) of the Sentencing Guidelines. The appellant is a young

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man, who has HIV. He defiled a 17-year old girl. We have looked at similar decisions. In Bongo Abdul v Uganda, SCCA 7 of 2011, the Supreme Court confirmed life imprisonment for aggravated defilement of a 14-year-old victim who had exposed to HIV infection. In Bachtta Benon V Uganda, CACA 869 of 2014, this court confirmed life imprisonment for aggravated defilement of a 10-year-old who was also predisposed to HIV infection. In Segiringa v Uganda, Criminal Appeal No. 549 of 2076, [2004] UGCA 204, (9 August 2024) where a sentence of 43 years was confirmed

where the victim was two years old and the appellant was HIV positive. In relation to the above the sentence imposed by the trial Judge is lenient. we do not find the sentence of 25 years of imprisonment in any way excessive or harsh.

We find no reason to fault the trial Judge's application of his discretion in sentencing. We uphold the sentence of 25 years of imprisonment. The period spent on remand of 2 years 1 month was deducted. The appellant will still serve 22 years and 11 months from the date of sentencing' The appeal is dismissed'

".nt Dated at Kampala this ...**L . daY 2025

r c opher Gashirabake

Justice of Appeal

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