

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

5 **CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA.  
HON. JUSTICE A. TWINOMUJUNI, JA.  
HON. JUSTICE C.N.B. KITUMBA, JA.**

**CRIMINAL APPEAL NO. 236 OF 2003**

10

**BIRAMUGWIRA PAUL :::::::::::::::::::: APPELLANT**

**VERSUS**

**UGANDA :::::::::::::::::::: RESPONDENT**

15

*[Appeal from the sentence of the High Court (L.N. Mukasa, Ag. J.)  
sitting at Fort Portal in Criminal Session Case No. 27 of 209..?)*

**JUDFEMENT OF THE COURT**

20 This appellant, Biramugwira Paul, was convicted of defilement contrary to section 129(1) of the Penal Code Act and sentenced to twelve years imprisonment.

25 The following facts of the case were confirmed by the appellant as correct at his trial in the High Court. On 4/7/2003 at Nyakimanya, Boma, Fort Portal, Kabarole District at around 12.00 p.m. the victim aged 5 years was returning home from her nursery school. She met the appellant on the way who offered her 2 mandazi and walked along with her. He branched with her into the bush and defiled her. People who had seen the appellant taking the victim to the bush followed them. They found the appellant on top of the victim and on seeing them he tried to run away but was chased and arrested. He was taken to the police. The victim was medically examined and  
30 found to be 5 years old, and her hymen had been ruptured. The appellant was 78 years old. On being indicted before the High Court for the offence of defilement, the appellant pleaded guilty and was sentenced to 12 years imprisonment. He appealed to this court against the sentence for the following ground namely:-

**“That the learned trial judge awarded a custodial sentence of (12) twelve years inspite of the mitigating circumstances offered by the defence.”**

5 Mrs. Rita Matovu, learned counsel for the appellant submitted that the appellant was a first offender, pleaded guilty to the indictment and had been on remand before sentence for 1 year and 7 months. She prayed for a reduction of sentence to 7 years imprisonment.

10 Ms Betty Khisa learned Senior Principal State Attorney, for the respondent supported the sentence. She submitted that the learned judge took into account all mitigating circumstances. In her view the sentence was extremely reasonable.

Before passing sentence the learned trial judge stated:-

15 **“The convict is an old man whose age has been put at 89 years. At such an advanced age the convict should have been expected to be a responsible person in society who would uphold the morals in society and provide an example to the young generation, instead he shamelessly turned his lust for sex to a young innocent girl of only 5 years old, who**  
20 **was a naturally grand daughter to him.**

**The conduct of the accused at such an advanced age must be severely punished most especially in this era of AIDS and STDS. When defilement has become one of the leading crimes in Uganda. The victim might be**  
25 **affected by the ordeal she went through in her sexual relationships throughout her lifetime. People of the convict’s conduct must be kept out of society for the safety of the young ones.**

30 **I must take into consideration of what his counsel has said on his behalf in mitigation. He is an old man, sickly with a family. He has spent 1 year and 7 months on remand which period I have taken into consideration pursuant to the provisions of Article 23 of the Constitution.**

**Taking all the above in consideration the convict is sentenced to twelve (12) years of imprisonment.”**

5 We are in agreement with the reasons given by the learned judge and the sentence passed.

10 It was indeed a lenient sentence taking into account the maximum penalty of the offence, which is death, the age of the victim who was only 5 years and that of appellant of 78 years.

This appeal lacks merit and is accordingly dismissed.

**Dated at Kampala this 3<sup>rd</sup> day of February 2006.**

15

**A.E.N. Mpagi-Bahigeine  
JUSTICE OF APPEAL**

20

**A. Twinomujuni  
JUSTICE OF APPEAL**

25

**C.N.B. Kitumba  
JUSTICE OF APPEAL**

30