

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT FORT PORTAL
(Coram: Buteera, DCJ, Mulyagonja & Luswata, JJA)
CRIMINAL APPEAL NO. 98 OF 2015

5 **LUSWATA DESIRE** **APPELLANT**

VERSUS

UGANDA **RESPONDENT**

(Appeal from the decision of the High Court of Uganda held at Nakawa before Hon. Mr. Justice Wilson Masalu Musene delivered on
10 *19th March 2015 in Criminal Session Case No. 163 of 2015)*

JUDGMENT OF THE COURT

INTRODUCTION

15 The appellant was indicted and convicted of the offence of aggravated defilement contrary to section 129 (3) and (4) (a) and (d) of the Penal Code Act (Cap 120). The appellant pleaded guilty after a plea bargain process and prosecution recommended a sentence of imprisonment of 17 years. The learned trial Judge sentenced the appellant to the recommended sentence. He deducted the period
20 of 1 year that the appellant spent on remand and the appellant was to serve 16 years' imprisonment.

BACKGROUND

25 The facts of this case as ascertained from the court record are that Luswata Desire, the appellant, on 11th June 2014, found the victim at her aunt's home tethering a calf. He instructed her to do so quickly and follow him. The appellant took the victim to the bush and had sexual intercourse with her. While still in the act, the victim's aunt called her. This prompted the appellant to run away. The victim's aunt


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made an alarm that led to the arrest of the appellant by the area LC I Chairperson who handed him over to police.

5 The victim was examined on PF 3A and was found to be 12 years old with her labia majora soiled with semen dripping from the vaginal canal. The appellant was also examined on PF24A and found to be 21 years old with a sound mental state.

10 When the appellant appeared for plea taking, he pleaded guilty to the offence, having been engaged in a plea bargain process. He was convicted on his own plea of guilty and sentenced to imprisonment for seventeen (17) years, the period the appellant had agreed to be sentenced to. The appellant is dissatisfied with the sentence, hence this appeal.

Ground of Appeal

15 **The learned trial judge erred in law and fact when he confirmed a harsh and excessive sentence of 17 years' imprisonment arising from an irregular plea bargain agreement.**

REPRESENTATION

20 At the hearing, Mr. Muhumuza Samuel represented the appellant on state brief. Mr. Ssemalemba Simon Peter, Assistant Director of Public Prosecutions, represented the respondent. Counsel for the respective parties filed written submissions. They applied to court and were granted leave to adopt and rely upon them as their final submissions.

APPELLANT'S SUBMISSIONS

25 Counsel for the appellant applied for leave to appeal against sentence alone and court granted him the leave. He stated that plea bargain is guided by the Judicature (Plea Bargain) Rules 2016. It is defined in Rule 4 as the process between an accused person and the prosecution, in which an accused person agrees to plead guilty in

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