

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0181 OF 2014**

**UGANDA** ..... **PROSECUTOR**  
**VERSUS**  
**OWACHA MOSES NJUNJU** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

When this case came up on 15<sup>th</sup> December 2016, for plea taking at the beginning of the criminal session, the accused was indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on 9<sup>th</sup> October 2013 at Pajau Central village in Nebbi District, the accused had unlawful sexual intercourse with Acirocan Christine, without her consent. The accused entered a plea of guilty to the indictment.

The court then invited the learned State Attorney, Ms. Jamilar Faidha, to present the facts of the case, whereupon she narrated the following facts; on the night of 9<sup>th</sup> October 2013, the complainant prepared food for both her husband and the accused, who had come to visit. The accused and the complainant's husband had supper together while the complainant retired to her bedroom after serving the two of them. She closed the door of her bedroom leaving the accused and her husband in another room. At around midnight, she realised someone was having sexual intercourse with her. She thought it was her husband doing so and she asked him why he was performing the act with her knickers still on. The accused did not respond but continued with the act, forcing the complainant to begin crying. Shortly after the act, the accused attempted to get out of the house but met the complainant's husband at the doorway. He identified the accused and attempted to grab him but the accused managed to escape. The complainant and her husband raised an alarm as they pursued the accused. More people responded to the alarm and joined the chase. They managed to arrest the accused and handed him over to the area L.C.I and later to Pakwach Police Station. Both the complainant and the accused were medically examined and the

finding recorded on Police Forms 3A and 24A respectively. The accused was found to be of sound mind. The two forms were tendered as part of the facts of the case. When the accused confirmed that the facts were correct, he was convicted on his own plea of guilty for the offence of Rape c/s 123 and 124 of *The Penal Code Act*.

Submitting in aggravation of sentence, the learned State Attorney stated that; - the maximum penalty for the offence is death, the accused abused the complainant's hospitality. He raped a married woman in her own home and caused her embarrassment before the local community. Rape is a dehumanising act that traumatises the victim for a long time. The offence is rampant within the region and there is need to protect women from rapists like the accused. She prayed for a deterrent sentence that will send a warning to all would be rapists.

In her submissions in mitigation of sentence, Counsel for the accused on state brief, Ms. Winifred Adukule refuted the submission that rape is rampant in the region since out of the 40 cases cause-listed for the session, only three of them are offences of rape. The accused has spent three years on remand, he has pleaded guilty and is remorseful. He also was a victim of mob violence during his arrest whereby he sustained multiple injuries. She prayed for a lenient sentence. In his *allocutus*, the convict stated that he was taking care of the orphaned children of his late brother including his own children, a number of whom are of school-going age. His mother is frail and only crawls. She is not capable of looking after those children. He therefore prayed for lenience.

In sentencing the accused, I am guided by the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. Regulations 20 and 22 thereof specify circumstances by virtue of which the court may consider imposing a sentence of death in a case of this nature. None of them arose in the instant case. I have not found any other extremely grave circumstances as would justify the imposition of the death penalty. The manner in which the offence was committed was not life-threatening and neither was death a probable result of the accused's conduct. For those reasons, I have discounted the death penalty.

The next option in terms of gravity of sentence is that of life imprisonment. However, none of the relevant aggravating factors prescribed by Regulations 20, 22 and 24 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, are applicable to this case. Similarly, that possibility too is discounted.

In imposing a custodial sentence, Item 2 of Part I of the guidelines prescribes a base point of 35 years' imprisonment. This can be raised on account of the aggravating factors or lowered on basis of the mitigating factors. In doing so, the court must take into account current sentencing practices for purposes of comparability and uniformity in sentencing. I have therefore reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Kalibobo Jackson v Uganda C.A. Cr. Appeal No. 45 of 2001* where the court of appeal in its judgment of 5<sup>th</sup> December 2001 considered a sentence of 17 years' imprisonment manifestly excessive in respect of a 25 year old convict found guilty of raping a 70 year old widow and reduced the sentence from 17 years to 7 years' imprisonment. In the case of *Mubogi Twairu Siraj v Uganda C.A. Cr. Appeal No.20 of 2006*, in its judgment of 3<sup>rd</sup> December 2014, the court of appeal imposed a 17 year term of imprisonment for a 27 year old convict for the offence of rape, who was a first offender and had spent one year on remand. In another case, *Naturinda Tamson v Uganda C.A. Cr. Appeal No. 13 of 2011*, in its judgment of 3<sup>rd</sup> February 2015, the Court of Appeal upheld a sentence of 18 years' imprisonment for a 29 year old appellant who was convicted of the offence rape committed during the course of a robbery. In *Otema v Uganda, C.A. Cr. Appeal No. 155 of 2008* where the court of appeal in its judgment of 15<sup>th</sup> June 2015, set aside a sentence of 13 years' imprisonment and imposed one of 7 years' imprisonment for a 36 year old convict of the offence of rape who had spent seven years on remand. Lastly, *Uganda v Olupot Francis H.C. Cr. S.C. No. 066 of 2008* where in a judgment of 21<sup>st</sup> April 2011, a sentence of 2 years' imprisonment was imposed in respect of a convict for the offence of rape, who was a first offender and had been on remand for six years.

I have noted the fact though that in none of the comparable decisions had the accused pleaded guilty. The sentences were imposed following a conviction after a full trial. Considering the gravity of the offence, the circumstances in which it was committed in the instant case and the fact that the complainant was raped in her own home, the punishment that would suit the convict

as a starting point would be 25 years' imprisonment. A plea of guilty offered readily before commencement of trial usually results in a discount of anywhere up to a third of the sentence that would otherwise be imposed after a full trial. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, by reason of the plea of guilty, the sentence considered as a starting point is reduced to 17 (seventeen) years.

The sentence is mitigated further by the fact that the accused is a first offender, he is now 52 years old and with considerable family responsibilities. The severity of the sentence he deserves has been tempered by those mitigating factors and is reduced from the period of seventeen years, proposed after taking into account the aggravating factors and the plea of guilty, now to a term of imprisonment of 13 (thirteen) years' imprisonment.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a accused. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, requires the court to "deduct" the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This requires a mathematical deduction by way of set-off. From the earlier proposed term of 13 (thirteen) years' imprisonment arrived at after consideration of the mitigating factors in favour of the convict, he having been charged on 17<sup>th</sup> October 2013 and has been in custody since then, I hereby take into account and set off the three years two months as the period the accused has already spent on remand. I therefore sentence the accused to nine (9) years and eight (8) months' imprisonment, to be served starting today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Arua this 23<sup>rd</sup> day of December, 2016.

.....  
Stephen Mubiru  
Judge.