

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0121 OF 2014**

**UGANDA** ..... **PROSECUTOR**  
**VERSUS**  
**OMIRAMBE VINCENT** ..... **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 Aggravated Defilement *c/s* 129 (3) and (4) (a) of *The Penal Code Act*. However, because the facts of the case were equivocal as regards the age of the victim having been below 14 years at the time of the offence, the uncertainty in the age of the victim was resolved in favour of the accused and the indictment was amended to simple defilement. In the amended indictment, the accused was charged with the offence of Simple Defilement *c/s* 129 (1) of *The Penal Code Act*. It was alleged that between the month of November 2012 and November 2013 at Mukindwa village, Ganda Parish, Panyimur Sub-county in Nebbi District, the accused performed a sexual act with Atimango Brenda Owekmeno, a girl 14 years old.

When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Richard Bundu. The court then went ahead to ascertain that the accused had full understanding of the implications of a guilty plea and its consequences, the voluntariness of the accused's consent to the bargain and appreciation of the eventual waiver of his constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made the finding that the accused made a knowing, voluntary, and intelligent plea bargain, and after he had executed a

confirmation of the agreement, went ahead to receive the agreement to form part of the record. The amended indictment was then read to the accused whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; on 23<sup>rd</sup> November 2013, the victim's father returned home and found his daughter missing. Upon inquiry and searching for the victim, he was informed that the accused and the victim were lovers. The victim's father then proceeded to the home of the accused. The accused upon seeing the victim's father approach, he fled from his home and went to another landing site where he was pursued and arrested. The victim too had gone into hiding. She emerged from hiding on 26<sup>th</sup> November 2013 and informed her father that she was in love with the accused, and that she had had sexual intercourse with him on numerous occasions. Both the victim and the accused were taken for medical examination. The accused was found to be of sound mind. The victim was found to be of the apparent age of fourteen years. Both Police Forms 24A and 3A were tendered as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Simple Defilement c/s 129 (1) of *The Penal Code Act*. In justification of the sentence of seven (7) years' imprisonment proposed in the plea agreement, the learned State Attorney submitted that the offence carries a maximum penalty of life imprisonment. The convict was 23 years old and the victim only 14 years old. Offences of this nature are on the rise and for that reason the convict deserves a deterrent sentence. In his submissions in mitigation of sentence, the learned defence counsel submitted that the convict had readily pleaded guilty and not wasted court's time. He has no previous criminal record and still a young man capable of reform. His parents died and he has three siblings to look after. He has spent three years on remand and therefore deserves a lenient sentence. In his *allocutus*, the convict prayed for a lenient sentence so that he can return home and care for his siblings. He complained of a pain in the chest and around his waist. The victim was not available in court to make her victim impact statement.

I have reviewed the proposed sentence of seven years' imprisonment in light of the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*.

According to Item 1 of Part IV thereof (Sentencing range for defilement), the starting point when imposing a custodial sentence for the offence of Simple defilement is 15 years' imprisonment, which can be reduced or increased depending on the mitigating and aggravating factors applicable to the specific case. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Uganda v Aringanira Isaac, High Court Criminal Session Case No. RUK. 17 of 2011*, where a 23 years old man was convicted as a first offender after trial, for the offence of Simple Defilement of a 14 year old girl. He was HIV positive and on drugs but was remorseful, and capable of reforming. He was nevertheless on 13<sup>th</sup> December 2012 sentenced to 15 years' imprisonment despite having been on remand for one year and eight months.

The aggravating factors as provided for by Regulation 35 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* which are relevant to the instant case are; the age difference of 8 years between the accused and the victim and the numerous acts of sexual intercourse committed by the convict on the victim. Accordingly, in light of those aggravating factors, I have adopted a starting point of twenty years' imprisonment.

From this, the convict is entitled to a discount for having pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating his sentence.

The sentencing guidelines leave discretion to the Judge to determine the degree to which a sentence will be discounted by a plea of guilty. As a general, though not inflexible, rule, a

reduction of one third has been held to be an appropriate discount (see: *R v Buffrey (1993) 14 Cr App R (S) 511*). Similarly in *R v Buffrey 14 Cr. App. R (S) 511*). The Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the Court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to reduce the sentence by one third from the starting point of fifteen years to a period of thirteen years' imprisonment.

The seriousness of this offence is mitigated by a number of factors. The mitigating factors as provided by Regulation 36 of the Sentencing Guidelines which are relevant to the instant case are; the remorsefulness of the convict, being a first offender, a relatively young man with no previous relevant or recent conviction and his plea of guilty. He deserves more of a rehabilitative than a deterrent sentence. The severity of the sentence he deserves for those reasons has been tempered and is reduced further from the period of ten years' imprisonment, proposed after taking into account his plea of guilty, now to a term of imprisonment of ten years.

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 8 (eight) years' imprisonment arrived at after consideration of the mitigating factors in favour of the convict, he having been charged on 27<sup>th</sup> November 2013 and has been in custody since then, I hereby take into account and set off the three years and one month as the period the accused has already spent on remand.

I have considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, and the fact that the convict has already spent three years and one month on remand. Although the plea bargain was entered into before the indictment was amended and the offence reduced to simple defilement and be as it may that the offence in contemplation of the parties at the time the plea bargain was reached was much graver than the one the convict pleaded guilty to, I find the proposed sentence of seven years' imprisonment to be appropriate

and for those reasons accept it and hereby sentence the accused to seven (7) years' 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.

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Stephen Mubiru

Judge.