

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**

**CRIMINAL CASE No. 0017 OF 2013**

**UGANDA** ..... **PROSECUTOR**

**VERSUS**

**OMIRAMBE EMMANUEL** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case first came up for plea taking on 15<sup>th</sup> July 2016, when the accused pleaded not guilty to the indictment and the case was set down for the commencement of hearing on 21<sup>st</sup> July 2016. On that day, the accused and his counsel on state brief, Mr. Ben Ikilai and the State Attorney prosecuting the case, Mr. Emmanuel Pirimba intimated to court that there were ongoing negotiations for a plea bargain in the case.

When the case was called out in court for hearing later that day, the accused and his counsel informed the Court of the accused's intention to change his plea from not guilty to a plea of guilty following a successful plea negotiation. The court then allowed the learned state attorney to introduce the plea agreement and proceeded to ascertain that the accused had a full understanding of what a guilty plea means and its consequences, the voluntariness of the accused's consent to the bargain and appreciation of its implication in terms of waiver of the 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 accused was then allowed to take plea afresh whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to inform court the factual basis for the guilty plea, whereupon he narrated the following facts; the victim of the offence, was at the time of the incident aged between 10 – 11 years. On 9<sup>th</sup> June 2012, she was sent by her father, Mr. Omirambe Simon, to take a duck to a one Joyce Pajulu's home, at around 2.00 pm. She did not find Pajulu home but found the accused at home who directed her to place the duck in the kitchen. The accused then got hold of her hand and pulled her into his bedroom where he forcefully removed her underpants and had sexual intercourse with her. She attempted to make an alarm but the accused threatened her and covered her mouth with his hand. After the act, the victim left the house and on being asked by a one Dorcus as to what she was doing inside the house she narrated the whole event. When she got home, she feared to report to her parents until 11<sup>th</sup> June 2012 when Dorcus reported to the victim's father. The victim was taken to Awindiri Police Post where a case of aggravated defilement was opened up against the accused. Both the accused and the victim were taken to hospital for medical examination. Both police forms 3A and 24A 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 defilement c/s 129 (3) and (4) (a) of the Penal Code Act. In justification of the sentence of ten years proposed in the plea agreement, the learned State Attorney argued that the offence attracts a maximum sentence of death, the victim was an infant who suffered physically and psychologically as a result of the act. She also contracted a venereal disease from the accused and her family had to incur medical expenses in treating the disease. In his submissions in mitigation, learned counsel for the accused argued that the accused was a first offender, had readily pleaded guilty, and has elderly parents to look after. In his *allocutus*, the convict pleaded he had spent four years and three months on remand, life in prison was very difficult, he is a first offender and prayed for a lenient sentence to enable him return to society later and be able to look after his family since his children are now out of school.

In her victim impact statement, the victim of this crime, now aged about 15 years, informed court that she still suffers from the psychological trauma of the incident as a result of which her concentration in school is quite low. Her father confirmed these after effects and added that her

daughter now has a phobia for male teachers and himself as her father, which phobia affected her performance at school and her relationship with him as her father. He said he would not mind a sentence for the accused, severer than the ten years proposed in the plea agreement.

I have reviewed the proposed sentence of ten years' imprisonment in light of the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Birungi Moses v Uganda C.A Crim. Appeal No. 177 of 2014* where the appellant who was aged 35 years was convicted of the offence of aggravated defilement of a girl aged 8 years and sentenced to 30 years imprisonment. On appeal, the Court reduced the sentence from 30 years to 12 years imprisonment. In the case of *Kobusheshe v Uganda, C.A. Crim. Appeal No. 110 of 2008*, the appellant who was aged 30 years at the time the offence was committed, was indicted for defilement of a girl aged 5 years, tried and sentenced to 17 years' imprisonment. On appeal against both the conviction and sentence, the court upheld the conviction and sentence since it was neither harsh nor excessive in the circumstances of the case. In another case, *Ninsiima Gilbert v Uganda C.A. Crim. Appeal No. 180 of 2010*, the appellant was convicted of the offence of aggravated defilement of a girl aged 8 years old and was sentenced to 30 years imprisonment. On appeal, the court set aside the sentence of 30 years imprisonment on ground that it was harsh and manifestly excessive and substituted it with a sentence of 15 years imprisonment. Lastly, in *Nyasio Bumali vs. Uganda [2006] HCB 1* in which an appeal against a sentence of 8 years imprisonment was dismissed. The appellant had been convicted on his own plea of guilty to defilement of a 6 year old child. In that case, the appellant argued that although the sentence of 8 years was lawful, it was harsh and if the trial Judge had considered all the relevant mitigating factors, he would have imposed a lower sentence. The Supreme Court maintained the 8 year sentence.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to a term of imprisonment of ten (10) years, to be served starting from today. Having been convicted and sentenced on his own plea of guilty, the convict has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Arua this 25<sup>th</sup> day of July, 2016.

.....

Stephen Mubiru  
Judge.