

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

CRIMINAL CASE No. 0093 OF 2016

UGANDA PROSECUTOR

VERSUS

ONGIERTHO COSMIC ACCUSED

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case first came up for plea taking on 15th July 2016, when the accused pleaded not guilty to the indictment and the case was set down for the commencement of hearing on 9th August 2016. On that day, hearing of the case commenced with receipt of the admitted evidence of PW1 Dr. Ajal Paul of Wadelai Health Centre III, who examined the victim and PW2 another doctor of Nebbi Hospital who examined the accused. The assessors were sworn in. The accused and his counsel on state brief, Ms. Olive Ederu indicated to court that the accused intended to change his plea from not guilty to guilty under a plea bargain. The learned State Attorney prosecuting the case, Mr. Emmanuel Pirimba, had no objection to entering into negotiations for a plea bargain with the accused. The court adjourned to the afternoon for that purpose.

At the commencement of the afternoon session, the parties reported they had successfully negotiated a plea bargain. The court then allowed the learned Senior State Attorney to introduce the plea agreement and proceeded to ascertain that the accused had a full understanding of what the guilty plea meant 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 is deaf and dumb but married and lives with her husband. On 22nd May 2012, at around 10.30 am, the accused entered the house of the victim. He greeted her using sign language and the victim replied. The accused immediately grabbed her and pushed her onto the bed. He scattered different household items in the process including a mosquito net. He undressed the victim, pushed his pair of trousers down and proceeded to have forceful sexual intercourse with the victim without her consent. She could not make an alarm because she is dumb. The accused later got off the victim and as he was getting out of the house, the victim's husband, one Ocamá Alensio, saw him. The accused hurriedly picked his bicycle and rode away. The victim's husband got concerned, he entered the house and found the victim in a distressed mood. He found the household items had been scattered around the house. He inquired from the victim as to what had happened. She informed the husband using sign language that the accused had had sexual intercourse with her without her consent. The husband immediately informed the area L.C. officials and people in the neighborhood gathered. The victim together with the L.Cs reported the matter to the police. The accused was arrested and charged with the offence of rape. Both the victim and the accused were medically examined and Police forms 3 and 24 were adopted as part of the facts.

Upon ascertaining from the accused that the facts as stated were materially 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. In justification of the sentence of ten years' imprisonment proposed in the plea agreement, the learned Senior State Attorney adopted the aggravating factors stipulated in the plea agreement and added that the convict was a catechist with the Pentecostal Assembly of God and ought to have behaved better. In her submissions in mitigation of sentence, the learned defence counsel adopted the factors stipulated in the plea agreement.

In his *allocutus*, the convict pleaded for forgiveness since sinning is part of humanity. He prayed to court to take into account his plea of guilt, his advanced age, the orphaned children and his

own children he was looking after before his arrest. He asked his friend, the husband of the deceased to forgive him so that they can be friends again. In their victim impact statements, both the victim and her husband expressed their concern that the victim could have possibly lost her life since the accused had squeezed her neck during the rape. She also at the time was recovering from the after effects of a recent still birth. They were not willing to forgive the convict. They preferred a sentence which will not enable the convict to return to the village.

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 *Kalibobo v Uganda C.A. Cr. Appeal No. 45 of 2001* where the court of appeal in its judgment of 5th December 2001 considered a sentence of 17 years' imprisonment as manifestly so excessive as to have caused a miscarriage of justice. It was reduced from 17 years to 7 years' imprisonment. In that case a 25 year old man had raped a 70 year old woman who lived with her dumb son. In *Mubogi v Uganda, C.A. Cr. Appeal No. 20 of 2006* where the court of appeal in its judgment of 3rd December 2014, set aside a sentence of 18 years' imprisonment and imposed one of 17 years' imprisonment on account of the period spent on remand, for a 27 year old convict of the offence of rape. Lastly, the case of *Otema Vs Uganda, C.A. Cr. Appeal No. 155 of 2008* where the court of appeal in its judgment of 15th 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.

Having 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 four years and two months on remand, 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 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 11th day of August, 2016.

Stephen Mubiru

Judge.