

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0198 OF 2014

UGANDA **PROSECUTOR**

VERSUS

ANDABATI VINCENT **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 20th September 2016, in a special session for plea bargaining. The accused was indicted with the offence of Aggravated Defilement c/s 129 (3) and 4 (a) of The *Penal Code Act*. It was alleged that on 15th July 2014 at Ondramacaku Trading Centre in Arua District, the accused had unlawful sexual intercourse with Kalungi Blessing, a girl under the age of fourteen years.

When the case was called, the learned State Attorney, Ms. Jamilar Faidha reported that she 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. Samuel Ondoma. The court then went ahead to ascertain that the accused had 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 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 she narrated the following facts; on 14th July 2014, the victim was left her daughter

aged one year and five months, with her neighbor known as Night, as she went to fetch water. The child started crying expressing her desire to return home. Night handed over the child to the accused to return her home to the mother. Instead of taking her home, the accused took the child into a grass thatched house from where he defiled her. As the victim's mother was returning from the well, he saw the accused emerge from the house and the child was following him while crying. The mother asked the accused to take the child to her but he refused. A girl nearby picked the child and took it to the mother but the child would not stop crying. She thought the child had wet her knickers and on checking discovered seminal fluid oozing from the child's vagina. She interrogated the accused who denied any wrongdoing. The accused was checked and was found with semen-like fluid around the fly of his pair of trousers. He was immediately arrested and taken to the police post for his safety since the mob threatened to lynch him. The accused and the victim were subsequently taken to Arua Regional Referral Hospital where upon medical examination the victim was found to have been 1 ½ years old and the accused to be of sound mind. The respective police forms 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 Aggravated Defilement c/s 129 (3) and 4 (a) of the *Penal Code Act*. In justification of the sentence of ten (10) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement, which are that;- the offence attracts a maximum penalty of death, this type of offence is rampant in the region, the victim was only one year and five months old and was traumatized by the experience as seen from her incessant crying even after being soothed by the mother, and added that the accused had a duty to protect the child but instead sexually ravished her. The victim is likely to suffer psychological trauma as a result for a long time and there is need to protect children from people like the accused.

In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement; - which re that the accused has spent one year and 1 month on remand, he was a victim of a motorcycle accident and partially paralyzed on one side, he is a first offender, has sickly parents and three children he was looking after, and added that

the convict was only nineteen years old at the time he committed the offence, and at 21 years old now he is still a young man and capable of reform.

In his *allocutus*, the convict stated that before his arrest, he was the bread winner for his sickly parents and young family. He is also paralyzed on one side of his body following a motorcycle accident.

I have reviewed the proposed sentence of thirteen 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 *Agaba Job v Uganda C.A. Cr. Appeal No. 230 of 2003* where the court of appeal in its judgment of 8th February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the case of *Lubanga v Uganda C.A. Cr. Appeal NO. 124 of 2009*, in its judgment of 1st April 2014, the court of appeal upheld a 15 year term of imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of a one year old girl. In another case, *Abot Richard v Uganda C.A. Crim. Appeal No. 190 of 2004*, in its judgment of 6th February 2006, the Court of Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the offence defilement of a 13 year old girl but had spent three years on remand before sentence. In *Lukwago v Uganda C.A. Crim. Appeal No. 36 of 2010* the Court of appeal in its judgment of 6th July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

The most serious aggravating factor in this case is the age of the victim. In light of this factor, I did caution the convict of the possibility of the proposed sentence being enhanced and he chose not to opt out of the plea agreement despite that possibility. On the other hand, key the mitigating

factors are that; the accused was only 19 years old at the time he committed the offence and suffers a physical handicap. He has also readily pleaded guilty and is a first offender.

Having considered the sentencing guidelines, the current sentencing practice in relation to offences of this nature, the aggravating and mitigating factors as well as the fact that the convict has already spent two years and two months on remand, I consider the proposed sentence of ten years' imprisonment to be on the lower side. I therefore reject this aspect of the submitted plea agreement entered into by the accused, his counsel, and the State Attorney. I instead sentence the accused to a term of imprisonment of fifteen (15) 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 6th day of October, 2016.

.....

Stephen Mubiru
Judge.