

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0166 OF 2015

UGANDA **PROSECUTOR**
VERSUS
ACHIA SIMON **ACCUSED**
Before Hon. Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

The convict was indicted with one count of Aggravated Defilement c/s 129 (3) and 4 (a) of the *Penal Code Act*. He initially pleaded not guilty to the indictment but at the subsequent appearance intimated to court that he wished to change his plea. The indictment was read to him again and he pleaded guilty. He was thereafter convicted on his own plea of guilt after he confirmed the correctness of the facts as read to him. The facts were briefly as follows;

On 14th December 2014 at Too-Ekitera village, Nawaikorot Parish Ngoleriet sub-county in Napak District the accused performed as sexual act on Longoria Judith when she met her on the way to fetch water her sister Logiel Ruth. the accused got the victim when she was about twenty meters away from the sister as she had ran to pick some tamarind fruits. He took her away about 50 meters away and performed s sexual act on her in a sorghum garden. She made n attempt to raise an alarm. Later he let the victim go home. The sister of the victim reported the matter to their mother Aleper Lucia and the victim revealed to her the accused. She reported to the police and the accused was arrested after some time around March of the following year. The victim and the accused were examined. The accused was charged accordingly.

In her submissions on sentencing, the learned Resident State attorney prayed for a deterrent custodial sentence on grounds that; the victim in the case was only six years old. The accused took advantage of the vulnerable child and disappeared for four months before he was arrested. There was an element of violence as per the medical form. He deserves a deterrent sentence. It should not be less than 15 years' imprisonment. Counsel for the accused, prayed for a lenient custodial sentence on grounds that; the convict is a first offender. He was a school going pupil at

the time who had just finished PLE Examinations. His age is not known at the moment. He puts it at 17, the other evidence is that he was 16. the offence was not violent as the medical form shows only rapture of the hymen. By change of plea he is remorseful and ready to reform. He has been on remand for more than two years enough time for him to reform he deserves lenience. In his *allocutus*, the convict prayed to be helped since he was in school at the time. He prayed for a sentence that will enable him to go back to school. He will never commit such and offence again.

I have perused exhibit P. Ex.3 which is P.F. 24 tendered as part of the admitted evidence during the preliminary hearing of this case, it indicates that the accused was 18 years old as at 11th March 2015 when he was medically examined. This would suggest the possibility that he was under the age of 18 years by 14th December 2014 when he committed the offence. P. Ex.4 which is the official record for his 2014 PLE examination, placed his age at 17 years as well. Considering that the available evidence does not prove with reasonable certainty that the convict was an adult at the time he committed the offences, he will in the circumstances of this case be given the benefit of the doubt. The available evidence reasonably suggests that he was 17 years old at the time he committed the offence.

Under section 94 (1) (d) of *The Children Act*, where the charges have been admitted or proved against a child, the court may order detention of the child, in the case of an offence punishable by death, for a maximum period of three years. In the instant case, although he has been convicted as an adult, the accused was a child at the time he committed the offence and therefore would have been liable to a period of detention not exceeding three years. The accused has been on remand since 13th March 2015, a period of two years and six months now which is nearing the upper limit of the maximum period of time for which he would have been incarcerated had the trial been conducted expeditiously.

I have considered the aggravating factors in the case most especially the very tender age of the victim, at only six years at the time the offence was committed. Despite the the mitigating factors as explained bt the convict and his counsel as well as the victim impact statement which indicates that the victim has more or less recovered from the more serious negative effects of the

criminal act performed on her, I am inclined to consider the maximum detention period of three years for juveniles as the punishment befitting the convict in this case.

In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict was charged 13th March 2015 and been in custody since then, a period of two years and six months. I hereby take into account and set off a period of two years and six months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of six (6) months, 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 Moroto this 28th day of September, 2017.

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Stephen Mubiru
Judge.
28th September, 2017