

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0095 OF 2015

UGANDA **PROSECUTOR**

VERSUS

CHEKUTA WILLIAM **ACCUSED**

Before Hon. Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

When this case came up on 14th August 2017, for plea taking at the beginning of the criminal session, the accused was indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on 15th October 2014 at Lomachar village, Nakaale Parish, Lorengedwart sub-county in Nakapiripirit District, the accused had unlawful carnal knowledge of Lomongin Anna, without her consent. The accused entered a plea of guilty to the indictment.

The court then invited the learned Resident State Attorney, Mr. Amalo Peter Gerald, to present the facts of the case, whereupon he narrated the following facts; on 16th June 2014 at around 6.00 pm between Nakale and Machar villages, the accused way laid the victim on her way home and performed an unlawful sexual act on her by force and in the process assaulted her and then he took off and went into hiding. However the victim reported the LC1 of the area who advised her to go to the police where she reported and was given PF3. The victim was examined and the medical report is to that effect that ether were some wounds on the fingers and the lips and also evidence of a sexual act. On 17th October 2014 the accused was arrested in Namara Trading Centre, taken to the police and charged accordingly. When the accused confirmed that the facts were 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*.

Submitting in aggravation of sentence, the learned State Attorney stated that; - although the convict is a first offender and has not wasted the court's time but his act was violent and offends the dignity of a woman and he deserves a deterrent sentence. The offence attracts a maximum

of death. He first escaped and that is not conduct of a remorseful person. He prayed for thirty years' imprisonment.

In his submissions in mitigation of sentence, Counsel for the accused on state brief, Mr. Engwau George prayed for a lenient sentence on grounds that; the convict is remorseful based on his own plea, he is 32 years old. He has a family with two wives and nine children that look forward to him going back home one day. He acted under a cultural belief and he now realises that he was wrong and has spent two years on remand. In his *allocutus*, the convict prayed that he should be sentenced to a few years' imprisonment to enable him return home and check on his children. His mother died and she left two children. He had already discussed with the victim and he was marrying her as his third wife.

In sentencing the accused, I am guided by the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. Regulations 20 and 22 thereof specify circumstances by virtue of which the court may consider imposing a sentence of death in a case of this nature. None of them arose in the instant case. I have not found any other extremely grave circumstances as would justify the imposition of the death penalty. The manner in which the offence was committed was not life-threatening and neither was death a probable result of the accused's conduct. For those reasons, I have discounted the death penalty.

The next option in terms of gravity of sentence is that of life imprisonment. However, none of the relevant aggravating factors prescribed by Regulations 20, 22 and 24 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, are applicable to this case. Similarly, that possibility too is discounted.

In imposing a custodial sentence, Item 2 of Part I of the guidelines prescribes a base point of 35 years' imprisonment. This can be raised on account of the aggravating factors or lowered on basis of the mitigating factors. In doing so, the court must take into account current sentencing practices for purposes of comparability and uniformity in sentencing. I have therefore reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Kalibobo Jackson 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 manifestly excessive in respect of a 25 year old convict found guilty of raping a 70 year old widow and reduced the sentence from 17 years to 7 years' imprisonment. In the case of *Mubogi Twairu Siraj v. Uganda C.A. Cr. Appeal No.20 of 2006*, in its judgment of 3rd December 2014, the court of appeal imposed a 17 year term of imprisonment for a 27 year old convict for the offence of rape, who was a first offender and had spent one year on remand. In another case, *Naturinda Tamson v. Uganda C.A. Cr. Appeal No. 13 of 2011*, in its judgment of 3rd February 2015, the Court of Appeal upheld a sentence of 18 years' imprisonment for a 29 year old appellant who was convicted of the offence rape committed during the course of a robbery. In *Otema v. 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. Lastly, *Uganda v Olupot Francis H.C. Cr. S.C. No. 066 of 2008* where in a judgment of 21st April 2011, a sentence of 2 years' imprisonment was imposed in respect of a convict for the offence of rape, who was a first offender and had been on remand for six years.

I have noted the fact though that in none of the comparable decisions had the accused pleaded guilty. The sentences were imposed following a conviction after a full trial. Considering the gravity of the offence, the circumstances in which it was committed in the instant case, the punishment that would suit the convict as a starting point would be 15 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.

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 ten years' imprisonment.

The seriousness of this offence is mitigated by a number of factors; the accused is a first offender, he is now 30 years old. The severity of the sentence he deserves has been tempered by those mitigating factors and is reduced from the period of ten years' imprisonment, proposed after taking into account the aggravating factors and the plea of guilty, now to a term of imprisonment of 6 (six) years' imprisonment.

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 6 (six) years arrived at after consideration of the mitigating factors in favour of the accused, the accused having been charged on 21st October 2014 and has been in custody since then, I hereby take into account and set off the two years and ten months as the period the accused has already spent on remand. I therefore sentence the accused to three (3) years and two (2) months' 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 Moroto this 15th day of August, 2017.

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Stephen Mubiru
Judge.
15th August, 2017