

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT MOROTO**  
**CRIMINAL SESSIONS CASE No. 0086 OF 2015**

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

**VERSUS**

**KAPUKOMO IVAN** ..... **ACCUSED**

**Before Hon. Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

The convict was indicted with one count of Rape c/s 123 and 124 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 2<sup>nd</sup> August 2014 vat Karita trading Centre the victim met the accused at around 7.00 pm. She had taken alcohol and was tipsy. the accused offered to house her since it was already dark the victim accepted. the accused slept on his bed while the victim slept on the floor. In the wee hours of the morning the accused forcefully carried the victim to his bed and performed a sexual act on her. the victim raised an alarm and Maruk, Lokwanener and a one Daddy responded. They guarded the house until morning and at 5.00 am the called the police who came and arrested the accused who was take n to police as the victim was taken for medical attention. She was examined on 4<sup>th</sup> August 2014 at Karita Health Centre III by an enrolled nurse. He found she was about 63 years old and she was of normal mental status; pain in the chest and neck. The spleen was enlarged. On the genitalia there were sperms and on the anus there were some tears on the upper part and the probable cause was that the person used a lot of strength to penetrate

In his submissions on sentencing, the learned Resident State Attorney prayed for a deterrent custodial sentence on grounds that; The maximum punishment is death or other forms of custodial sentence. Although the convict did not waste courts time, however the offence was committed in a violent manner. The victim was of advanced age almost fit to be his mother. He

prayed for twelve years' imprisonment. In her submissions in mitigation of sentence, Counsel for the accused, prayed for a lenient custodial sentence on grounds that; under paragraph 21 of the Sentencing Guidelines a plea of guilty is a mitigating factor. He is very remorseful. He is a first offender and has no criminal record. He is also youthful at 36 years and also has five dependants; three of whom are his biological children and he is their primary care giver. He has a health condition. He has spent three years on remand. He is sickly and the living conditions in the prison are not healthy. He has been on remand since 14<sup>th</sup> August 2014. He has learnt his lesson. She prayed for a short custodial sentence to enable him reintegrate in society and suggested five years' imprisonment.

In his *allocutus*, the convict pleaded to court to enable him get out of prison. He also prayed that the court takes into account the fact that on the day of the offence, he was drunk. He prayed to be allowed to return home to help the family. He is not in good health. He has constant headache. He prayed for a punishment that can help him get out of prison. He will never repeat the offence he committed. Considering the period he has been in prison, he regretted what he did and he has changed his ways.

In sentencing the accused, I am guided by *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 cases 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 5<sup>th</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 15<sup>th</sup> 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 21<sup>st</sup> 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.

Considering the gravity of the offence, the circumstances in which it was committed in the instant case and the fact that the complainant was raped by a person who took advantage of her drunken state and pretended to be a good Samaritan, thereby abusing her trust, the punishment that would suit the convict as a starting point would be 12 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 and considered a reduction of the starting point to eight years' imprisonment. The sentence is mitigated by the factors submitted by both the convict and his counsel, more especially his remorsefulness and evident poor health. In light of this, the term he deserves is reduced further to four 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 4 (four) years' imprisonment arrived at after consideration of the mitigating factors in favour of the convict, he having been charged on 14<sup>th</sup> August 2014 and has been in custody since then, I hereby take into account and set off the three years and one month as the period the accused has already spent on remand. I therefore sentence the accused to ten (10) months' imprisonment, to be served starting today.

The convict is advised that he has a right of appeal against both conviction and sentence, within a period of fourteen days.

Dated at Moroto this 28<sup>th</sup> day of September, 2017.

.....

Stephen Mubiru  
Judge.  
28<sup>th</sup> September, 2017.