

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0053 OF 2017

UGANDA **PROSECUTOR**

VERSUS

LOKUT JOHN **ACCUSED**

Before Hon. Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

When this case came up for plea taking, the accused was indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on 4th September 2016 at Nasinyonoit village "A", Nakapiripirit District the accused had unlawful sexual intercourse with Moru Anna without her consent. The accused entered a plea of guilty to the indictment

The court then invited the learned Resident State Attorney to present the facts of the case, whereupon he narrated the following facts; On 4th September 2016 at Nasinyonoit village in Nakapiripirit village the accused met one Moru Ann on the way in the afternoon hours and chased after her. A struggle ensued in a nearby bush where the accused had forceful sexual intercourse with her without her consent. The victim made an alarm and a person came to her rescue. The accused was caught in the act and disengaged. The victim later reported to the police. The accused was arrested and the victim was examined and it was discovered there were elements of bruises and force used and a sexual act took place. The accused was examined at Nakapiripirit Health Centre III on P.F 24 and found to be mentally stable and there were no other relevant findings. Forms 3A and 24A respectively were tendered as part of the facts of the case. 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, has pleaded guilty and not wasted court's time however the manner in which the offence was committed was violent and the convict took the opportunity that the

victim was walking alone. The victim was a young woman at 24 years and the offence affects the dignity of women.

In her submissions in mitigation of sentence, Counsel for the accused on state brief argued that; the convict is a first offender. The court should consider that the convict has admitted the commission of the offence at an early stage. During his remand he has learnt a lesson and he is now remorseful for he appreciates that it is wrong. It is a cultural practice. I consider that it is considered. The convict is very useful and should reform. The convict be given a lenient sentence. In his *allocutus*, the convict stated that; he prays court to forgive him. What he committed is a grave offence but the court should be lenient to him and give him a short sentence. He has problems at home. His mother has two children. His mother left boys and he is the one who is supposed to help them.

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 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 and the fact that the complainant was raped in her own home, the punishment that would suit the convict as a starting point would be 24 years' imprisonment. A plea of guilty offered readily before commencement of trial usually results in a discount of anywhere up to a third of the sentence that would otherwise be imposed after a full trial. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, by reason of the plea of guilty, the sentence considered as a starting point is reduced to 16 (sixteen) years.

The sentence is mitigated further by the fact that the accused is a first offender, was 18 years old at the time he committed the offence. He also has considerable family responsibilities. The severity of the sentence he deserves has been tempered by those mitigating factors and is reduced

from the period of sixteen years, proposed after taking into account the aggravating factors and the plea of guilty, now to a term of imprisonment of 10 (ten) 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 an 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 10 (ten) years' arrived at after consideration of the mitigating factors in favour of the accused, the accused having been charged on 10th September 2016 and has been in custody since then, I hereby take into account and set off one year as the period the accused has already spent on remand. I therefore sentence the accused to nine (9) years' 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 29th day of September, 2017.

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Stephen Mubiru,
Judge.
29th September, 2017