

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0089 OF 2014

UGANDA **PROSECUTOR**
VERSUS
DIMBA PASCAL **ACCUSED**

Before Hon. Justice Stephen Mubiru

JUDGMENT

The accused in this case is indicted with one count of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*. It is alleged that the accused on the 1st day of November 2013 at Kinda village, Nyoke Parish, Kuluba Sub-county in Koboko District as a guardian, had unlawful sexual intercourse with Bako Margaret, a girl of sixteen years.

The facts as narrated by the prosecution witnesses are briefly that the accused is the grandfather of the victim. According to PW6 Joyce Wile, the mother of the victim, the accused is here maternal uncle. The victim, PW5 Margaret Bako, was born in 1998 to her and her husband Saverio. When Saverio died during the year 2002, PW6 went together with the victim and her three siblings to live with the accused. The accused allowed PW6 to build a house within his homestead where she lived with the victim and her three siblings. Eventually PW6 remarried, leaving the victim and her three siblings behind in the accused's homestead.

The victim, PW5 Margaret Bako, testified that on several occasions, her paternal uncles demanded that the accused hand over her custody to them but the accused declined demanding that they had to pay to him the outstanding dowry first in respect of PW6 and compensation for his care and maintenance of the victim. Sexual encounters with the accused were preceded by occasional unsolicited gifts of cash to her in the sums of shs. 1,000/= and 2,000/= by the accused. One day when the two of them had gone to the Democratic Republic of Congo to weed in a garden of cabbages, the accused threw her down and threatened to cut her with a panga if she made an alarm. He undressed her and forcefully had sexual intercourse with her, causing her a

lot of pain in her private parts. When she returned home that day, she had to massage her private parts with warm water to ease the pain. The next incident occurred when the accused and the victim had gone to the accused's other home in Kaya, South Sudan. He again had forceful sexual intercourse with her while they were alone in the garden. The last incident was on the night of 1st November 2013 when she woke up during the night to find the accused lying on top of her. The accused threatened to burn the house down if she made any noise and she recognised him by voice and as he walked out of the house. The following day at around 4.00 p.m. she escaped to the home of his paternal uncle PW4 Maliyamungu Mathias.

PW4 testified that when the victim arrived at his home, he noticed that she looked distressed. The following day, his mother who had made a similar observation about the victim's condition, advised him to ask her what the problem was. When PW4 asked her what the problem was, the victim narrated the events of the night of 1st November 2013. PW4 alerted the area L.C1. Chairman and the mother of the victim. Together with a few other people they went to the home of the accused to find out whether the accusation was true. According to PW4, the accused denied having committed the offence. According to PW6, he admitted having committed the offence after being slapped by one of the victim's uncles. The accused then offered a ram which was slaughtered in performance of a cleansing ritual. The accused was thereafter arrested and handed over to the police. He and the victim were examined medically and both police forms were tendered in evidence as P.E.X.1 and P.E.X.2 respectively. Medical examination of the victim done on 5th November 2013 revealed that she was aged 15 years based on her dentition, with a broken hymen but with no blood stains. Medical examination of the accused done on 7th November 2013 revealed that he was 63 years old and of normal mental state.

In his defence, the accused admitted being the victim's grandfather and guardian at the time of the alleged incident. He said he retained custody of the victim because her paternal uncles had failed to pay outstanding dowry due in respect of his niece, PW6 mother of the victim. He denied having any garden in Congo or another home in Kaya. He denied having sexually assaulted the victim and attributed the accusation to a grudge between himself, PW4 Maliyamungu Mathias and his brother Candiga David the L.C.1 Chairman, over a two acre piece of land. It is a dispute which has lasted since 1925. When PW6 came to his home together with a group of other people accusing him of having committed the offence, he denied but they began assaulting him and

forcefully slaughtered a sheep which had been tethered near his house where the owner, a one Sunday, had left it that morning in his care promising to pick it later. He opined that the victim was conniving with her paternal uncles to falsely accuse him of the offence in their plot to take over the disputed land.

In her final submissions, the learned State Attorney prosecuting the case Ms. Jamilar Faidha argued that all ingredients of the offence had been proved beyond reasonable doubt and the accused should be convicted as indicted. That the victim was under the age of 18 years was proved by the medical evidence, the testimony of the victim and that of her mother. That a sexual act was committed on her was proved by the victim's testimony, the medical evidence and her distressed condition. That it is the accused who committed the act was proved by the testimony of the victim who knew him very well and properly recognised him visually and by voice despite the difficult circumstances. This is also corroborated by the admission of the accused in the presence of the mother of the accused and offer of a sheep for cleansing. That the accused was a person in authority of the victim was proved by the victim's testimony, that of her mother, her uncle and the accused's own admission in his defence.

In his final submissions, counsel for the accused on state brief Mr. Samuel Ondoma argued that the prosecution had failed to prove the case against the accused beyond reasonable doubt and that therefore he should be acquitted. Counsel conceded that all ingredients of the offence had been proved except the one relating to identification of the accused as the perpetrator of the offence. He argued that there was no proper identification since the offence was committed at night in the absence of any form of light. He implored court to believe the accused's defence that the accusation is based on a grudge over land between him and the victim's uncles. The victim succumbed to their pressure to falsely accuse him.

In their joint opinion, the assessors advised court to acquit the accused on grounds that although the prosecution had proved that the victim was below 18 years of age at the time of the incident, that a sexual act was performed on her and that the accused was a person in authority over her, the evidence of identification was unreliable. In their view, the conditions that existed at the time did not favour correct identification.

In this case, the prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the accused person and the accused is only convicted on the strength of the prosecution case and not because of weaknesses in his defence, (See *Ssekitoleko v. Uganda [1967] EA 531*). By his plea of not guilty, the accused put in issue each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove each of the ingredients beyond reasonable doubt. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see *Miller Vs Minister of Pensions [1947] 2 ALL ER 372*).

For the accused to be convicted of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

1. That at the time of the incident, the victim was below 18 years of age.
2. That a sexual act was performed on the victim.
3. The accused is a parent or guardian of or a person in authority over the victim.
4. That it is the accused who performed the sexual act on the victim.

The first ingredient requires proof of the fact that at the time of the offence, the victim was below the age of 18 years. The most reliable way of proving the age of a child is by the production of her birth certificate, followed by the testimony of the parents. It has however been held that other ways of proving the age of a child can be equally conclusive such as the court's own observation and common sense assessment of the age of the child (See *Uganda v Kagoro Godfrey H.C. Crim. Session Case No. 141 of 2002*).

In the instant case, the court was presented with the oral testimony of PW5 (Margaret Bako) who said she was 15 years old. Her mother, PW6 (Joyce Wile) stated that the victim was born in 1998 and was now 18 years old. The admitted evidence of PW1 (Medical Clinical Officer Anjuku Bond) who examined the victim on 5th November 2013 (four days after the day the offence is alleged to have been committed) contained in his report, exhibit P.E.1 (P.F.3A) is to the effect that the victim was 15 years as at the date of examination. The admitted evidence of PW2 Consultant Psychiatrist Aduku Alex, who examined the victim on 3rd January 2014 (two months

after the day the offence is alleged to have been committed) contained in his report, exhibit P.E.2 (P.F.3A) is to the effect that the victim was 16 years at the date of examination. Neither the accused nor his counsel contested this ingredient during cross-examination of these witnesses and neither did counsel do so in his final submissions. On basis of all that evidence and in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that on 1st November 2013 the victim was below 18 years.

The second ingredient required for establishing this offence is proof that the victim was subjected to a sexual act. One of the definitions of a sexual act under section 129 (7) of *the Penal Code Act* is penetration of the vagina, however slight by the sexual organ of another or unlawful use of any object or organ on another person's sexual organ. Proof of penetration is normally established by the victim's evidence, medical evidence and any other cogent evidence, (See *Remigious Kiwanuka v Uganda; S. C. Crim. Appeal No. 41 of 1995 (Unreported)*). The slightest penetration is enough to prove the ingredient.

In the instant case, the court was presented with the oral testimony of PW5 Margaret Bako the victim herself who said the assailant had sexual intercourse with her while lying on top of her while she slept in her bed. Her testimony is corroborated by that of PW4 Maliyamungu Mathias, her paternal Uncle, who observed her distressed condition a day after the incident. There is further corroboration in the form of the admitted evidence of PW1 Medical Clinical Officer Anjuku Bond who examined the victim on 5th November 2013, four days after the day the offence is alleged to have been committed. His report, exhibit P.E.1 (P.F.3A) reveals his findings that the victim's hymen was broken, although there were no blood stains. She reported to him that the incident had happened five days before. Neither the accused nor his counsel contested this ingredient during cross-examination of these witnesses and neither did counsel do so in his final submissions. On basis of all that evidence and in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that Margaret Bako was the victim of a sexual act that occurred on 1st November 2013.

The next ingredient required for proving this offence is that at the time of that sexual act, the accused was a parent or guardian of, or a person in authority over the victim. The court was presented with the oral testimony of PW5 Margaret Bako the victim who explained that the

accused is her grandfather and that she had lived with him since the death of her father. PW4 Maliyamungu Mathias, the paternal Uncle of the victim, testified that the accused is a maternal uncle to the wife of his late brother, PW6 Joyce Wile who is the mother of the victim. The victim came from the home of the accused to his home following that incident and had lived at the home of the accused following the death of her father. PW6 Joyce Wile, the mother of the victim, testified that the accused is her maternal uncle and that the victim lived with the accused from the time she re-married. The accused refused to relinquish custody of the victim to PW4 over unpaid dowry for the mother of the victim. The accused himself in his defence admitted being a maternal uncle to the victim's mother and having had custody and guardianship of the victim since her mother re-married.

“A person in authority” is not defined by the *Penal Code Act*. Applying the purposive approach to statutory interpretation, for purposes of section 129 (4) (c) of the *Penal Code Act*, a person in authority means any person acting in *loco parentis* (in place of parent or parents) to the victim, or any person responsible for the education, supervision or welfare of the child and persons in a fiduciary relationship, with the child i.e. relations characterized by a one-sided distribution of power inherent in the relationship, in which there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith with regard to the interests of the child reposing the confidence. The accused admitted that he cared for the victim following her mother's remarriage and in the opinion of the assessors, under Lugbara culture, he was a person entitled to retain custody of the victim until his demand for compensation for having looked after her was met by her paternal uncles. Neither the accused nor his counsel contested this ingredient during cross-examination of these witnesses and neither did counsel do so in his final submissions. On basis of all that evidence and in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that the accused was a person in authority over Margaret Bako as at 1st November 2013.

The last essential ingredient required for proving this offence is that it is the accused that performed the sexual act on the victim. This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of crime, not as a mere spectator but as an active participant in the commission of the offence. In this case we have the direct evidence of a

single identifying witness, PW5 Margaret Bako the victim who explained the circumstances in which she was able to identify the accused as the perpetrator of the act. She was asleep, it was at night and there was no form of light whatsoever in the house. The conditions therefore were not favourable to correct identification. She however claims to have recognised the accused first by voice when he spoke and threatened to set the house on fire if she made any noise and secondly, visually as he walked out of the door after the act. Where prosecution is based on the evidence of a single identifying witness, and more so where the conditions were not favourable to correct identification, the Court must exercise great care so as to satisfy itself that there is no danger of mistaken identity (see *Abdalla Bin Wendo and another v R (1953) E.A.C.A 166*; *Roria v Republic [1967] E.A 583*; and *Bogere Moses and another v Uganda, S.C. Cr. Appeal No. 1 of 1997*).

In visual identification cases, a conscientious, responsible and fair minded person can make a mistake when it comes to identification just as an impulsive, irresponsible and not very bright person. There is a possibility of reluctance of even a perfectly fair minded person once they have made up their mind about the matter, to admit that they may be wrong in their identification of the person. It is a fact of life that a person who makes an identification may be honestly reluctant to admit that there is a possibility of his or her having made a mistake. This may not apply to everybody, but a court should be on its guard against accepting and acting upon the witness' identification simply because it was impressed by him or her as a witness. All these observations which apply to a visual identification apply equally to voice identification.

Empirical research shows that voice identifications can sometimes be accurate but can also be highly unreliable, even more so (on average) than eyewitness testimony. A court therefore ought to evaluate voice identification evidence with extreme care. Voices that are familiar in everyday situations may not be easily identified or recognized with reliable accuracy in other contexts. It seems clear from both informal observations and experimental evidence that individuals vary widely in their ability to identify people solely by their voices. In rare cases, this ability is severely impaired or altogether absent.

In *Mutachi Stephen v Uganda, C.A. Cr. Appeal No.132 of 1999*, the victim was awakened by a loud bang at his door whereupon the door was thrown open and three thugs entered his house. Two of them were armed with guns. They threatened to shoot him and menacingly demanded money and other properties while torturing him. They tore a mattress and took shs. 44,000/= plus

other household properties. Two of the thugs were recognized by the complainant as the accused whom he had known before that day. The wife of the complainant also recognized one of them as a person she had also previously known. This recognition was facilitated by the fact that the thugs were flashing a torch around while searching for property and counting the money they had stolen. The court considered the evidence of one of the victims that he knew the voice of AI and that when he spoke the witness confirmed AI was one of the assailants because his voice was known to the witness. The court believed that with the frequent interaction between AI and the witness, the visual identification of AI was confirmed by the identification and recognition of his voice as one of his assailants thus confirming his visual identification.

The Canadian case of *R v Campbell, 2006 BCCA 109* is another case illustrative of this point. In that case, Campbell was charged with robbing a video store. The issue in the case was the identity of the thief. The store clerk was the only person to give identification evidence. The robber was previously unknown to her and she interacted with him on the date in question for five to ten minutes. A month later she claimed to see him at a local mall. She recognized him by his appearance and his voice. The trial judge cautioned himself regarding the frailties of eyewitness evidence but said nothing about the weaknesses of earwitness evidence. On the contrary, he only used the victim's voice identification to help overcome any weaknesses with her visual identification. On appeal, Campbell claimed that his conviction was unreasonable, in part because the trial judge "gave undue weight to [the victim's] recognition of the appellant's voice as confirming her identification of him." The British Columbia Court of Appeal said nothing about that submission and only used the earwitness testimony to help justify the reasonableness of the visual identification evidence.

The reliability of voice identification evidence depends on a number of factors including; (a) familiarity, the greater the familiarity of the listener with the known voice the better is his or her chance of accurately identify a disputed voice, (b) length of exposure to the voice both before and during the incident, (c) the retention interval between the time when the witness last heard the voice and when recognition of the voice is called in issue (d) the degree to which the earwitness made a conscious effort during the crime to pay attention to the characteristics of the perpetrator's voice (e) whether the perpetrator used unfamiliar language and accent, the danger,

where the accused has an accent being that the witness is identifying the accent rather than the particular voice of the accused. People may not be able to distinguish readily between voices speaking in a manner that is unfamiliar to the witness (f) the distinctiveness of the perpetrator's voice (or lack thereof), and so on.

In her testimony PW5 Margaret Bako stated that she knew the accused very well before the incident and that she recognised his voice when he threatened to set the house on fire if she made any noise. Indeed her evidence is consistent with that of her mother PW6 and uncle PW4 to the effect that she had lived at the home of the accused from the year 2002 following the death of her father. The accused admitted as much in his defence. Therefore by November 2013, she had lived at the home of the accused for eleven years. She had known the accused from the tender age of four years. She insisted that she had no reason to falsely accuse her grandfather. I have considered the fact that there were frequent interactions between the accused and the victim during that period of eleven years, since they lived in the same homestead. There is no indication in the evidence before me that the victim ever left the custody of the accused during that period. The retention interval between the time when the witness last heard the voice of the accused and the night of 1st November 2013 is therefore not in issue. The assailant spoke to the victim in very close proximity and the duration of the sexual act was long enough to aid correct identification of the voice. I am satisfied that in the circumstances, there is no possibility of error in the victim's recognition of the voice of the assailant. This voice recognition was further aided by her ability to recognise him visually as he walked out of the door after the act.

I observed the victim as she testified in court. She came across as shy and hesitant when required to narrate the graphic details of the specific sexual acts but was firm and consistent in all other aspects of her testimony. She appeared to be a steady, truthful and reliable witness. She withstood the rigorous cross-examination of defence counsel. She answered all questions without hesitation or exaggeration. She had no motive of her own to falsely implicate the accused, a person she confessed to like despite what he did to her. I am not persuaded by the argument that she is a mere tool in the grudge that exists between the accused and her uncles, if such grudge exists at all. It is incredible that PW4 and his brother would instigate the victim to create a story of the type the court has heard.

The offence being of a sexual nature, it is a rule of practice not to convict an accused on the uncorroborated evidence of the victim. Corroboration is also required as a matter of fact when relying on the testimony of a single identifying witness. There is need to find other independent evidence to prove not only that the sexual act occurred but also that it was perpetrated by the accused. The court may however proceed to rely on the evidence of the victim, even without corroboration, if satisfied that the victim is truthful and there is no possibility of error in her identification of the nature of the act and of the perpetrator of the act. I have considered the testimony of the victim and her demeanour as she testified. Her testimony alone is sufficient to support the conviction of the accused because I am satisfied that she is truthful and there is no possibility of error in her identification of the nature of the act and of the perpetrator of the act.

Nevertheless, I find corroboration in the fact that the accused chose to lie and offer an incredible explanation for the circumstances surrounding the sheep which was slaughtered at his home in a purported ritual cleansing of the abominable act of sexual intercourse between him and his granddaughter. Although there is a discrepancy between the testimony of PW4 Maliyamungu Mathias, the paternal Uncle of the victim, who said that when confronted, the accused denied the accusation and that of PW6 Joyce Wile, the mother of the victim, who said the accused admitted the offence and offered a sheep for cleansing after being slapped, the explanation offered by the accused in his defence that the sheep belonged to a one Sunday who happened to have left it with him that morning, and that it was grabbed by force and slaughtered is unbelievable. Grabbing a sheep which is neither the property of the perpetrator of the abominable act nor offered by such perpetrator would be inconsistent with the ritualistic nature of the purported cleansing. I am more inclined to believe that it belonged to the accused and that he offered it for slaughter, albeit reluctantly after being assaulted. For the reasons stated above, in disagreement with the assessors, I find that the last ingredient of the offence too has been proved beyond reasonable doubt. I therefore find the accused guilty and convict him for the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*.

Dated at Arua this 12th day of January, 2017.

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Stephen Mubiru
Judge.

16th January 2017

10.22 am

Attendance

Ms. Mary Ayaru, Court Clerk.

Ms. Jamilar Faidha, State Attorney, for the prosecution.

Mr. Samuel Ondoma for the convict on State Brief.

The convict is present in Court.

SENTENCE AND REASONS FOR SENTENCE

Upon the accused being convicted for the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, the learned State Attorney prosecuting the case prayed for a deterrent custodial sentence, on grounds that; the maximum penalty for the offence is death, the convict was a person in authority over the victim under an obligation to protect the victim but instead defiled her. He has not been remorseful throughout the trial yet he caused the victim physical and psychological pain. The offence is rampant in the region and the convict should serve a deterrent sentence as a warning to the public and to enable him reform and as a measure for the protection of children.

In response, the learned defence counsel prayed for a lenient custodial sentence on grounds that; the convict is a first offender at the age of 78 years. He has a large family of a wife, ten children of his own and six dependent children of his late brothers. He has been on remand for three years now and suffers from an eye problem and ulcers. Because of the existing dispute over land, a long custodial sentence will result in other people grabbing his land. In his *allocutus*, the convict prayed for lenience on grounds that; he is the only surviving son of his parents his other three brothers having died leaving with him their orphans to look after as their sole bread winner. He prayed for a short custodial sentence to enable him re-unite with the family.

According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, is death. However, this punishment is by sentencing convention reserved for the most egregious forms of perpetration of the offence such as where it has lethal or other extremely grave consequences. Since in this case death was not a very likely or probable consequence of the act, I have discounted the death sentence.

Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of life imprisonment. Only one aggravating factor prescribed by Regulation 22 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, is applicable to this case, i.e. the victim was defiled repeatedly by an offender who is supposed to have taken primary responsibility of her. However, for reasons stated later in this sentencing order, I do not consider the sentence of life imprisonment to be appropriate in this case.

When imposing a custodial sentence on a person convicted of the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulates under Item 3 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors or reduced on account of the relevant mitigating factors.

Although the manner in which this offence was committed did not create a life threatening situation, in the sense that death was not a very likely immediate consequence of the act such as would have justified the death penalty, they are sufficiently grave to warrant a deterrent custodial sentence. At the time of the offence, the accused was 63 years old and the victim 15 years old. The age difference between the victim and the convict was 48 years. He abused a fiduciary relationship, abused the trust of the mother of the victim and the victim herself. He took advantage of a particularly vulnerable child she has watched grow into puberty from the tender age of four years, an orphan, left in his care by a mother who opted to re-marry. He committed the act with threats of violence, and had exhibited similar threats of violence previously against the victim. He not only subjected the victim to physical pain but also to psychological torture. At his advanced age, the prospects of rehabilitation are likely to be very low. This case therefore is of particular gravity, reflected by the multiple features of culpability of the convict and harm to which the victim was exposed. A combination of these relevant factors should result in an upward adjustment from the starting point. However I am mindful of the decision of the Court of Appeal in *Ninsiima v Uganda Crim. Appeal No. 180 of 2010*, where the Court of appeal opined that the sentencing guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. In that case, it set aside a

sentence of 30 years' imprisonment and substituted it with a sentence of 15 years' imprisonment for a 29 year old appellant convicted of defiling an 8 year old girl.

I have considered the decision in *Kato Sula v Uganda, C.A. Crim. Appeal No 30 of 1999*, where the Court of Appeal upheld a sentence of 8 years' imprisonment for a teacher who defiled a primary two school girl. In *Bashir Ssali v Uganda, S.C. Crim. Appeal No 40 of 2003*, the Supreme Court, on account of the trial Court not having taken into account the time the convict had spent on remand, reduced a sentence of 16 years' imprisonment to 14 years' imprisonment for a teacher who defiled an 8 year old primary three school girl. The girl had sustained quite a big tear between the vagina and the anus. In *Tujunirwe v Uganda, C.A. Crim. Appeal No 26 of 2006*, where the Court of Appeal in its decision of 30th April 2014, upheld a sentence of 16 years' imprisonment for a teacher who defiled a primary three school girl. In light of the sentencing range apparent in those decisions and the aggravating factors mentioned before, I have considered a starting point of twenty five years' imprisonment.

The seriousness of this offence is mitigated by the factors stated in mitigation by his counsel and his own *allocutus*, which are; he is a first offender at the age of 78 years (the age as per the charge sheet is 63). He has a large family comprising a wife, ten children of his own and six dependent children of his late brothers. He has been on remand for three years now and suffers from an eye problem and ulcers. The severity of the sentence he deserves has been tempered by those mitigating factors and is reduced from the period of twenty five years, proposed after taking into account the aggravating factors, now to a term of imprisonment of seventeen years.

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 convict. 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 seventeen years' imprisonment, arrived at after consideration of the mitigating factors in favour of the convict, the convict having been charged on 12th November 2013 and has been in custody since then, I hereby take into account and set off three years and two months as the period the convict has already spent on

remand. I therefore sentence the convict to a term of imprisonment of thirteen (13) years and ten (10) months, 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 Arua this 16st day of January, 2017.

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Stephen Mubiru
Judge.