

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0014 OF 2015

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **EJOYI KENNEDY** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

15 This case came up on 11th April 2017, in a special session for plea bargaining. The accused was indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on 31st day of October 2014 at Malure village in Arua District, the accused had unlawful sexual intercourse with Elozoyo Margret, without her consent.

20 When the case was called, the learned State Attorney, Ms. Nyipir Gertrude reported that she had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Samuel Ondoma. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the voluntariness of the accused’s consent to the bargain and appreciation of its implication in terms
25 of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made the finding that the accused made a knowing, voluntary, and intelligent plea bargain, and after he had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

30 The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 31st October 2014, in the evening hours the victim went to a nearby market. At about 8.00 pm as the victim returned home and was nearing

her home, the accused came running from behind her and when the accused approached the victim, she moved aside to give way to the accused but to her surprise the accused suddenly stopped, got hold of her neck and began squeezing her neck. He strangled her and threw her down. She struggled with the accused and tried to make an alarm but was unable since the neck
5 was held by the accused while saying that this was her last time to live. The victim became powerless and the accused threw her down, dragged her to a nearby sim sim garden, tore off her clothes and knickers and proceeded to have sexual intercourse with her. She was almost unconscious due to strangulation. She eventually became, unconscious. The rape took place near someone's home who heard a groaning noise. He responded to the sound and using light from
10 his phone found the accused on top of the victim. As the victim was unconscious, he arrested the accused and took him to the victim's home nearby. After a few minutes the victim regained consciousness and moved, totally confused, to her home where she found the accused already under arrest. The matter was reported to the police and the victim was taken for medical examination on Police Form 3A. She was examined at Arua Regional Referral Hospital by a
15 Senior Clinical Officer Abindu Modesty. She was found to have the following injuries; bruises on the left side and tender neck. She had tenderness of the upper chest, moderate tenderness of the elbow and tenderness of the vagina area and bruises around her private parts. She was weak and in pain. The probable cause of the injuries was sexual penetration. The accused was examined on P.F 24A and was found to be 21 years old with normal mental status. The
20 respective police forms were submitted to court as part of the facts.

Considering that the manner of the attack on the victim was life threatening, the court cautioned the accused of the possibility of enhancement of the proposed sentence. After the accused confirmed that despite that possibility he was still willing to go ahead with the plea bargain, he
25 was asked whether the facts as narrated were correct.

Upon ascertaining from the accused that the facts as stated 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*. In justification of the sentence of nine (9) years' imprisonment proposed in the plea agreement, the learned State
30 Attorney adopted the aggravating factors outlined in the plea agreement which are that; - the maximum penalty for the offence is death, the offence is rampant in the region, the offence was

committed in a brutal manner, the victim was dehumanized and embarrassed and suffered both physical and psychological trauma, after being left unconscious at the scene of the attack. There is need to protect society from the accused.

5 In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that the accused is only 24 years old, a first offender, remorseful and therefore capable of reform. He is the sole breadwinner for the family and their land is on the verge of being taken. He also suffers from epilepsy and ulcers. In his *allocutus*, the convict stated that his father died, and his mother has remarried. His siblings are in
10 school and he does not know who is helping them. He needs to go back and support his younger siblings. He needs to get out of prison after the sentence and take care of himself for a good future. Their land may be taken away because his siblings are young. He is sickly, has ulcers and diabetes and feels pain all over his body. He will never commit the offence again. It was Satan who deceived him. The victim was not available in court to make her victim impact statement.

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I have reviewed the proposed sentence of nine years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also 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
20 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
25 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
30 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.

5 I have noted the fact that in none of the decisions had the accused pleaded guilty. The sentences were imposed following a conviction after a full trial. 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, and the fact that the convict
10 has already spent nearly three years on remand (having been charged on 11th November 2014), I reject the sentence proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and instead, sentence the accused to a term of imprisonment of thirteen (13) years, to be served starting today.

15 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 Arua this 19th day of April 2017.

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Stephen Mubiru
Judge.
19.04.17