

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

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OKUMU EDMOND** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 10th April 2017, in a special session for plea bargaining. The accused was
15 indicted with the offence of Simple Defilement c/s 129 (1) of The *Penal Code Act*. It was alleged
that between the month of December 2014 and January 2015 at Boma I Village, Central Ward in
Nebbi Town Council, in Nebbi District the accused had unlawful sexual intercourse with
Ayakara Lillian, a girl under the age of eighteen years.

20 When the case was called, the learned State Attorney, Ms. Gertrude Nyapir 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. Okello Oyarmoi. The court then went ahead to ascertain that
the accused had full understanding of what a guilty plea means and its consequences, the
25 voluntariness of the accused’s consent to the bargain and appreciation of its implication in terms
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.
30 The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea,
whereupon she narrated the following facts; on 15th January 2015, the victim’s father arrived

home at Nebbi Police Barracks from Kampala at 10.00 pm but did not find the Victim at home. He looked for the victim in vain. At around 6.00 am when he came out of his house, he found the victim hiding in one of the kitchens at the barracks, and he interviewed the victim who told him she spent the night at the home of the accused near the barracks and that the accused had performed sexual intercourse with her on different occasions starting from December 2014 up to the night of 15th January 2015. The matter was reported to the police and the victim was examined on P.F 3A by Oryema Stephen of Nebbi Hospital who found that the victim was approximately 15 years old, had a ruptured hymen with a tender vulva which were probably caused by sexual intercourse. The accused was also examined on P.F. 24 from the same hospital and found to be 18 years old with normal mental status. The accused was then charged accordingly. Both police forms 24 and P.F. 24 were tendered as part of the facts.

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 Simple Defilement c/s 129 (1) of The *Penal Code Act*. In justification of the sentence of five (5) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement. The learned defence counsel adopted the mitigating factors outlined in the plea agreement too.

In his *allocutus*, the convict stated that he is an orphan since both his parents died. At home he is the bread winner. He prayed for forgiveness for what I did since life in prison is too hard. He did not know that the girl was in school since they never discussed that. The victim was not available in court to make her victim impact statement.

I have reviewed the proposed sentence of five 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 *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the court of appeal in its judgment of 8th February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the case of *Lubanga v. Uganda C.A. Cr. Appeal No. 124 of 2009*, in its judgment of 1st April 2014, the court of appeal upheld a 15 year term of

imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 190 of 2004*, in its judgment of 6th February 2006, the Court of Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the offence defilement of a 13 year old girl
5 but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal No. 36 of 2010* the Court of appeal in its judgment of 6th July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old
10 accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

The aggravating factors in this case are that; the offence attracts a maximum punishment of life imprisonment; the victim was only 14 years old at the time of the offence and in school. I have
15 also considered the age difference between the accused and the victim. On the other hand, the mitigating factors are that; the accused was 21 years old at the time of the offence, has dependants and has admitted the offence by readily pleading guilty. He is also a first offender and has been on remand for two years and two months.

20 Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to a term of imprisonment of five (5) years, to be served starting today.

25 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.

30

.....

Stephen Mubiru
Judge
19th April 2017.