

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0098 OF 2015**

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

**VERSUS**

10 **MUNGURIEK DENNIS** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case came up on 11<sup>th</sup> April 2017, in a special session for plea bargaining. The accused was  
15 indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on  
23<sup>rd</sup> January 2015 at Vuk village, Pagwata Parish, Parombo sub-county in Nebbi District, the  
accused had unlawful carnal knowledge of Beroparwoth Joan, without her consent.

When the case was called, the learned State Attorney, Mr. Emanuel Pirimba reported that he had  
20 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.

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The court then invited the learned State Attorney to narrate the factual basis for the guilty plea,  
whereupon he narrated the following facts; on 22<sup>nd</sup> January 2015 at around 8.00 pm, the victim  
went to a video hall within her village. At about 11.00 pm she left the hall and started the journey

home. She met the accused who was walking with two other persons. He asked her where she was going at that time of the night while standing in front of the victim the other two friends left. The accused got hold of both hands of the victim, twisted them behind her back and threw her down. He proceeded to have sexual intercourse without her consent. She raised an alarm which  
5 was answered by two people who found him in the act. They were both naked. The victim was found to be unconscious and had defecated on herself. Both were taken to the LC Chairperson and the accused was taken to Parombo Police Post. The victim remained unconscious at the home of the L.C.1 Chairman. On 23<sup>rd</sup> January 2015 the victim was taken to Parombo Health Centre III she was found to be of the apparent age of 18 years. She was sickly looking and in  
10 pain, limping, swollen tender neck with black spots around the neck. She was 16 weeks pregnant. She had bruises on the labia region and buttocks which were soiled with faeces and the probable cause was penile injury. She was walking with difficulty. The accused was examined and found to be of sound mind and 20 years. In his charge and caution statement taken by Okee Billy Boss on 25<sup>th</sup> of January 2015, he admitted having performed the act. The respective police  
15 forms were submitted to court 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 Rape c/s 123 and 124 of the *Penal Code Act*. In justification of the sentence of twelve (12) years' imprisonment proposed in the plea agreement, the learned  
20 State 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 only 18 years old, dehumanized, suffered both physical and psychological trauma to the level of becoming unconscious. There is need to protect society from the accused. She was pregnant at the time and her pregnancy was placed at risk.

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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 a first offender and remorseful, he is an orphan who lost his mother and father, has chest and back pains, has a twelve year kid who needs protection and he has spent two years on remand. In his *allocutus*, the  
30 convict stated that he is an orphan who lost both his parents. He lived with his grandmother who is now dead. He was left alone with his young siblings. Their paternal uncle has sold all their

land. He does not want his siblings to live there. The victim was not available in court to make her victim impact statement.

I have reviewed the proposed sentence of twelve 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 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.

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 has already spent slightly over two years on remand (having been charged on 29<sup>th</sup> January 2015, 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 twelve (12) years' imprisonment, to be served starting today.

5 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 19<sup>th</sup> day of April, 2017.

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Stephen Mubiru  
Judge.  
19.04.2017.

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