

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0123 OF 2015

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **ATABUA WILLIAM** **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 Aggravated Defilement c/s 129 (3) and 4 (b) and (c) of The *Penal Code Act*. It was alleged that on 26th March 2015 at Nyirivu village in Arua District, the accused ha unlawful sexual intercourse with Amaniyo Patricia, a girl below the age of 14 years.

When the case was called, the learned State Attorney, Ms. Nyipir Gertrude reported that she 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. 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 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; the victim was 13 years old at the time. She is a cousin to the accused and they were both living in the same homestead. On 26th March 2015 at

around 8.00 pm, the victim was sent to go and call the accused from his house for supper but the accused instead told the victim to take his food in his house. The victim took the food. When she was about to leave the accused grabbed her and threw her down on the bed. He removed her clothes and started to have sexual intercourse with her. Since the victim took so long in the house
5 of the accused, one of the victim's sisters was sent to call her and she found the accused on top of the victim. He got off the victim and ran away. The matter was reported to the parents of the victim who reported to the police. The victim was examined on P.F 3A from Arua Regional Referral Hospital by Dr. Afayo Victor. She was found to be a juvenile below 18 years with 28 teeth. She had a wound in her private part and the hymen was ruptured and the possible cause
10 was penile penetration. The suspect was examined on P.F 24 and was found to be 19 – 20 years old with normal mental status. Both police forms 24 and P.F 3A were tendered as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his
15 own plea of guilty for the offence of Aggravated Defilement c/s 129 (3) and 4 (a) of *The Penal Code Act*. In justification of the sentence of nine (9) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement. Learned defence counsel adopted the mitigating factors outlined in the plea agreement too. In his *allocutus*, the convict stated that he had left himself in the hands of the
20 Court because as a child who has done something wrong and admits seeking for mercy, it is for the court to give its judgment.

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
25 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*
30 *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 but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal*
5 *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 is punishable by death, it is rampant in the region, the victim and the accused are cousins, and the victim was only twelve years old while the accused was twenty years old. On the other hand, the mitigating factors are that; the
15 accused is a first offender, remorseful; he has readily pleaded guilty and is a relatively young man capable of reform. 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 two years on remand, 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
20 imprisonment of nine (9) years, to be served starting from 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.

25

Dated at Arua this 19th day of April 2017.

.....
Stephen Mubiru
Judge.
19.04.2017.