

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0137 OF 2015**

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

**VERSUS**

10 **OKUMU HARI** ..... **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 indicted with the offence of Aggravated Defilement c/s 129 (3) and 4 (a) of *The Penal Code Act*.  
15 It was alleged that on 11<sup>th</sup> June, 2014 at Abok village, Ganda Parish, Panyimur sub-county in Nebbi District, the accused performed an unlawful sexual act on Yikparwoth Scovia. A girl under the age of 14 years.

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.

30 The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the victim is the younger sister to the wife of the

accused and he was staying with her. On 2<sup>nd</sup> July 2015, the accused went to Lake Albert leaving the victim and the accused at home. The victim was ten. At around 2.00 pm the accused called the victim to take him fire for lighting a cigarette. Instead the accused got hold of the victim and threw her on the bed, removed her skirt and performed sexual intercourse with her. He warned her not to report to her sister. She remained laying on the bed because of pain. She was found there by her sister. When asked the reason why she was laying on the bed, she told her sister she was suffering from malaria. The following day the wife of the accused noticed the victim was not walking and sitting well. Upon being asked she told her sister that the accused had performed sexual intercourse with her. On checking she found bruises on her private parts, the vulva was swollen and tender. The case was reported to Panyimur police post. The accused was arrested and both were taken to Nebbi Hospital. The accused was found to be of normal mental status with a disability in the knee, a locked knee joint. He was found to be 18 years and the victim was found to be approximately 10 years old and she had a ruptured hymen but was mentally sound. The examination was done on 3<sup>rd</sup> July 2016 at Panyimur Health Centre III. 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 own plea of guilty for the offence of Aggravated Defilement c/s 129 (3) and 4 (a) *The Penal Code Act*. In justification of the sentence of six (6) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement. The learned defence counsel too adopted the mitigating factors outlined in the plea agreement. In his *allocutus*, the convict stated that he became disabled at the age of twelve years. He also has the problem of a painful eye, and children who are young and are supposed to go to school who now do not have any assistance. Both his parents are dead and he used to take care of the children. Their mother left in 2012. He had married another wife and she returned to her parents' home after the incident. The children are now scattered. He prayed for a lenient sentence. The victim was not available in court to make her victim impact statement.

I have reviewed the proposed sentence of six 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 8<sup>th</sup> 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*  
5 *2009*, in its judgment of 1<sup>st</sup> 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 6<sup>th</sup> 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  
10 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 6<sup>th</sup> 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  
15 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 victim was only 10 years old at the time of the offence, and the accused a brother in law to her mother while the accused was 40 years at the  
20 time. I have therefore considered the age difference of 30 years between the accused and the victim. On the other hand, the mitigating factors are that; the accused is a person with physical disability, has dependants, he has readily pleaded guilty, he is a first offender and has spent nearly two years on remand.

25 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 three 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 imprisonment of six (6) years, to be served starting today.

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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.

5 Dated at Arua this 19<sup>th</sup> day of April 2017.

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Stephen Mubiru  
Judge.  
19.04.2017.