

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0107 OF 2015

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OKWERE ALFRED** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 11th 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 during the night of 3rd January 2015 at Kizaza village, Olyejo Parish, Pakwach sub-county in Nebbi District the accused performed a sexual act on Awekonimungu Sarah a girl aged 12 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 was a pupil at Paroketo Primary School.

The accused had been staying with the parents of the kid though they were not wedded, at Kizaza village in Pakwach, Nebbi District. On 2nd January 2015, the victim went to sleep together with other children as her mother had gone to a funeral at Barlele Trading Centre in Pakwach Sub-county. In the morning at about 5.00 am the victim found someone on top of her having sexual
5 intercourse. The victim raised an alarm calling her brothers, the assailant jumped off and fled the scene leaving his pair of shorts and shirt. The clothes were taken to the LC where the matter was reported. The elders and the LCs forwarded the matter to Akela Police Post after having arrested the accused. Both the victim and the accused were examined on PF 3A and 24A respectively. The victim was examined at Panyigoro Health Centre III on 3rd January 2015. The findings were
10 that the victim was 12 years based on the birth certificate. She was found to be distressed and anxious and psychologically disturbed. She was crying and traumatised. The hymen was freshly ruptured with minor abrasions / lacerations. The probable cause was vaginal penetration. This was done by a nursing officer Alijole. The accused was examined on P.F 24 A at the same health centre and was found to be of sound mental status. He was not abnormal. Both police forms 24A
15 and 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) of *The Penal Code Act*. In justification of the sentence of six (6) years' imprisonment proposed in the plea
20 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 the victim was his wife. He has one child with the victim whom she brought to see him in prison, though he has not paid dowry yet. He was involved in a motor accident and has pain in his chest. He prayed for a sentence that he can serve
25 and return home to look after his child. 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
30 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 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 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 a sentence of death. I have also considered the age difference of 16 years between the accused and the victim. On the other hand, the mitigating factors are that; the accused is 30 years old, has dependants and the family of the victim have expressed a lack of interest in cooperating with the prosecution in pursuing the case. The accused has also readily pleaded guilty and is a first offender.

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 7th 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 a term of imprisonment of six (6) years, to be served starting 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.

Dated at Arua this 19th day of April 2017.

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Stephen Mubiru
Judge. 19.04.2017.