

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0119 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OKUMU WILFRED** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 13th 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) and (c) of *The Penal Code Act*. It was alleged that on 9th November 2015 at Nyamukindo village in Nebbi District, the accused performed an unlawful sexual act with Afoyorwoth Manuela, a girl below the age of fourteen years, who was under his guardianship and care.

When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he 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 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. 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 he narrated the following facts; the accused and the victim were living together at the

home of the accused. The victim's mother was married to the accused. On 8th November 2015, the victim's mother went at the neighbours' to check on the condition of a sick child and left the victim and the accused behind. The condition of the child worsened and they proceeded with the mother of the child to a clinic that night. During that night the accused and the victim who were
5 left home the accused grabbed her and had sex with her. The victim reported to a neighbour who in turn reported to the mother of the victim. It was reported to the LC who reported to the police where the accused recorded a charge and caution statement and he admitted having sexual intercourse with her. Both were examined at Nebbi Hospital and the victim's hymen was found broken. The accused was examined and found to be sound mentally. The girl was aged 13 years.
10 The accused was 40 years. Both police forms 24A and 3A as well as the charge and caution statement of the accused were tendered as part of the facts.

Considering the victim was under the guardianship and care of the accused at the material time, as his step-father and the age difference of 27 years between her and the accused, the court
15 cautioned the accused of the possibility of enhancement of the proposed sentence of eight (8) years' imprisonment stipulated in the plea agreement. After the accused confirmed that despite that possibility he was still willing to go ahead with the plea bargain, he was asked whether the facts as narrated were correct

20 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) and (c) of *The Penal Code Act*. In justification of the sentence of eight (8) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement. Learned defence counsel too adopted the mitigating factors outlined in the plea
25 agreement. In his *allocutus*, the convict stated that his mother is very weak and his father is dead. He had three children with the first wife who died. He prayed for lenience so that he could go home to take care of them and three orphans that he was taking care of at the time of arrest. The complainant was not available to make a victim impact statement.

30 I have reviewed the proposed sentence of eight 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 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 accused had been entrusted with the temporary guardianship and care of the victim which he abused. I have also considered the age difference of 27 years between the accused and the victim. On the other hand, the mitigating factors are that; the accused has readily pleaded guilty, he is a first offender and has been on remand for slightly over two years (having been first remanded on 12th November 2015). Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I reject the sentence proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and instead, sentence the accused to a term of imprisonment of eleven (11) 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.