

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0159 OF 2016**

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

**VERSUS**

10 **AYIMANI MAHAZIL** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case came up on 13<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 (c) of *The Penal Code Act*.  
15 It was alleged that during the night of 9<sup>th</sup> February 2016 at Arua Hill Cell in Arua District, the accused had unlawful sexual intercourse with Rafa Rabi, a girl under the age of eighteen years while he was a person in authority over her.

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. 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 he narrated the following facts; The victim of the case had a mental disability and

was epileptic. The accused was a cousin to the victim and they lived in the same home. The accused was on several occasions left with the victim while the mother was away and he would have sexual intercourse with the victim and warn her not to tell anyone about it. On 9<sup>th</sup> October 2015 at around 8.00 am, the accused met the victim at the Trading Centre, asked for sex and took her to the bush where he had sexual intercourse with her. The accused was arrested and both were subjected to medical examination. He was found to be of sound mental status and aged 55 years. He was physically disabled with a missing lower limb. The victim was examined and found to be 14 years old, physically fit but the mental status was unsound; she had poor concentration, pressure of ideas and epileptic. The hymen was ruptured and the probable cause was vaginal penetration and a fresh wound was found at the lower fornix. Both police forms 24A 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 (c) *The Penal Code Act*. In justification of the proposed sentence of eight (8) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; the offence is punishable by death, and the accused took advantage of the mental disability of his cousin to sexually exploit her. In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which briefly are that; he is a first offender, remorseful and readily pleaded guilty to the indictment. He is also physically disabled and has been on remand for over one year (having been charged on 3<sup>rd</sup> March 2016). In his *allocutus*, the convict stated that he left his children at home and he does not know where they are. The victim was not available in court to make her victim impact statement.

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I have reviewed the proposed sentence of eight (8) 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

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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 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*,  
5 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 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  
10 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.

15 The aggravating factors in this case are that; the accused is related by blood to the victim who also was mentally retarded. I have also considered the age difference of 41 years between the accused and the victim. On the other hand, the mitigating factors are that; the accused is 55 years old; he is physically disabled and admitted the offence right from the time of arrest. He has also readily pleaded guilty and is a first offender.

20 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 one year 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  
25 of eight (8) 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.

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

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Stephen Mubiru  
Judge.  
19.04.2017.