

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0114 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **AVAGA DENNIS** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 12th 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 8th March 2013 at Ngolonyaku village in Arua District, the accused had unlawful sexual intercourse with Eyotaru Brenda, a girl under the age of fourteen years.

When the case was called, the learned State Attorney, Ms. Nyipir Gertrude reported that she had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed
20 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 of waiver of the constitutional rights specified in the first section of the plea agreement. The
25 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 accused and the victim are cousins. On 8th March 2015 the victim's parents went for a marriage ceremony and left her behind at home with her two

siblings. She decided to spend the night at the home of the accused as she was afraid of spending it at home in the absence of her parents. She slept on a mat with the accused and late in the night the accused got up and began having sexual intercourse with her. He warned her not to tell anyone about it. She did not report immediately the following day but her mother noticed a
5 change in her gait and while bathing her noticed a strange discharge from her private parts. When she questioned her about it, she revealed that the accused had performed sexual intercourse with her. On realising the victim had revealed the incident, the accused fled and hid in the bush. A search was mounted for him, he was arrested and handed over to the police. The victim was medically examined and found to be of the apparent age of 7 years. She had a thin
10 milky foul smelly discharge from her private parts. She had extensive sores on her vulva, vaginal wall and her hymen was ruptured. The accused was examined on P.F 24A and found to be an adult with normal mental status. There was a milky discharge from his urethra suggestive of a sexually transmitted disease. Both police forms 24A and 3A were tendered as part of the facts.

15 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 ten (10) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; the maximum punishment for the offence is death, the offence is
20 rampant in the region, the victim was only seven years old and a cousin to the accused. She contracted a sexually transmitted disease from the accused. The learned defence counsel adopted the mitigating factors outlined in the plea agreement which mainly are that; he readily pleaded guilty, he is remorseful, the sole bread winner for his family and has been on remand for slightly over two years (having been charged and first remanded on 19th March 2015). In his *allocutus*,
25 the convict stated that he is an orphan, sickly, he has chest pain as a result of an accident. He has a wife and a child. He will never commit the offence again. It was Satan who deceived him. The victim was not available in court to make her victim impact statement.

I have reviewed the proposed sentence of ten years' imprisonment in light of *The Constitution*
30 *(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*
5 *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
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 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
15 accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

I have considered the aggravating factors which include the age difference of 12 years between the accused and the victim, the tender age of the victim, the fact that the accused and the victim
20 are cousins and the circumstances in which the offence was committed, and that she contracted a sexually transmitted disease in the sexual encounter. On the other hand, the mitigating factors are that; the accused was a young man aged 19 years at the time of the offence, is a first offender, has a child and has also readily pleaded guilty.

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 slightly over 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 imprisonment of ten (10) years, to be served starting from 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 19th day of April 2017.

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Stephen Mubiru
Judge.
19.04.2017.