

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0098 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OYIRWOTH NASURU** **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
15 indicted with the offence of Aggravated Defilement c/s 129 (3) and 4 (a) of *The Penal Code Act*.
It was alleged that on 1st January 2016 at Akanyo Trading Centre in Nebbi District, the accused
performed an unlawful sexual act on a one Tracy, an eight year old girl.

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.

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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 8 years at the time of the offence. She,
her mother and the accused lived in the same place and the accused is related to the mother of the

victim. On 1st January 2016 at about 10.00 pm the mother left the victim sleeping and went to a nearby shop. The accused sneaked into the house and had sexual intercourse with her she tried to raise an alarm but he covered her mouth the accused was found in the act and the mother of the victim grabbed him but he overpowered her and ran away. She reported to the police and he was
5 arrested and charged. The accused was examined on P.F 24A and was found to be 18 years old with normal mental status. The victim's hymen was inflamed and was a result of sexual penetration. Both medical examinations were done at Nebbi hospital. Both police forms 24A and 3A were tendered as part of the facts.

10 Considering the very tender age of the victim, the court 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.

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 eight (8) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which briefly are that; the offence is punishable by death, the victim was 8 years and
20 the accused 18 at the time of the offence, both were related and lived in the same home, and the offence is rampant in the region. The learned defence counsel adopted the mitigating factors outlined in the plea agreement which briefly are that he has a wife and children who depend on him for their welfare, at the age of nineteen, he is capable of reform, and he is remorseful as shown when he readily pleaded guilty. In his *allocutus*, the convict stated that his mother died.
25 His father died too. He was left alone. At one time he was involved in an accident and has chest pains. The victim was not available in court to make her victim impact statement.

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
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.

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, (having been charged and remanded on 5th January 2016) I hereby reject the proposed sentence 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 ten (10) 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.

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