

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0100 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OKELLO DANIEL** **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
15 indicted with the offence of Aggravated Defilement c/s 129 (3) and 4 (d) of *The Penal Code Act*.
It was alleged that on 2nd January 2016 at Ojigo Central in Nebbi District, the accused performed
an unlawful sexual act on a one Anican Gorette, a girl below 18 years of age and at the same
time a person with disability.

20 When the case was called, the learned State Attorney, Ms. Faidha Jamilar reported that she 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
25 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.
30 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 she narrated the following facts; on 2nd January 2016 at about 4.00 pm the victim was

sleeping at her home in Wadelai when the accused entered the house where the victim was sleeping. He asked for sex but she declined. He pulled off her clothes and forcefully and had sex with her. She made an alarm but he grabbed her mouth. The mother came and found him in the house. She asked him what he wanted and the accused said he did not want to be disturbed. The
5 victim was crying and when the mother asked she revealed the act and the following day the mother reported to the police. She was examined; she was found to be 17 years old and her hymen was found to have been ruptured. She was in emotional distress. She was found to be epileptic and mentally unsound. The accused was examined on P.F 24A from Arua Regional Referral Hospital and was found to be 60 years old with normal mental status. He was
10 apprehended and charged. Both police forms 24A and 3A were tendered as part of the facts.

Considering the age difference of 43 years between the victim and the accused, and the fact of her state of mental incapacity, 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
15 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.

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 (d) of The *Penal*
20 *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 offence is rampant in the region, on the day the victim was sexually assaulted she had been through episodes of epilepsy attacks. The accused took advantage of the girl because of her mental state. He was a
25 lover to the mother of the victim. 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, he is remorseful as shown when he readily pleaded guilty. In his *allocutus*, the convict stated that it is true he sinned. It was not good to waste Court's time. He prayed for a lenient sentence like five years' imprisonment. The victim was not available in court to make her
30 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 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.

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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 6th January 2016) I hereby reject 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.

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Dated at Arua this 19th day of April 2017.

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Stephen Mubiru
Judge.
19.04.2017.