

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0167 OF 2016**

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

**VERSUS**

**ABERNINGA FRANCIS** ..... **ACCUSED**

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**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case came up on 12<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 (a) of *The Penal Code Act*.

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It was alleged that on 17<sup>th</sup> July 2015 at Ondreko Village in Zombo District, the accused had unlawful sexual intercourse with Pimer Silvia, a six year old girl.

When the case was called, the learned State Attorney, Ms. Jamilar Faidha reported that she had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed

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the State Attorney to introduce the plea agreement and obtained confirmation of this fact from Mr. Okello Oyarmoi holding brief for Mr. Ondoma Samuel defence counsel on state brief. 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

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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.

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The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 7<sup>th</sup> July 2015 in Zombo District, the accused who

is a neighbour called the victim to his home to pick groundnuts. He put her on a papyrus mat and removed her clothes and had sexual intercourse with her. The victim felt a lot of pain and started crying. He told her to go home and not tell anyone. The mother noticed she had red eyes and was not walking properly. The victim did not reveal anything to her mother until the following day.

5 She was in pain, she revealed she had been sexually assaulted. The accused was apprehended and handed over to the Chairman. He denied defiling the victim. A one Beatrice, Woman Member of the LC examined the victim and found her private parts swollen. She was taken to Warr Health Centre III for medical examination. She was found to be six years. Her hymen was ruptured, semen was seen on her private parts as well as lacerations. The accused was examined  
10 on P.F 24A at Arua Regional Referral Hospital and was found to be 18 years old with a normal mental status. He was handed over to Paidha police station and charged. 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  
15 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 twelve (12) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which mainly are that; the offence attracts a maximum punishment of death, it is rampant in the region, and the victim sustained physical and psychological injury. The learned  
20 defence counsel too adopted the mitigating factors outlined in the plea agreement which mainly are that; the accused is a first offender and relatively young at the age of 20 years who is capable of reform, he has been on remand for nearly two year (having been charged and first remanded on 22<sup>nd</sup> July 2015), he lost both parents while on remand and has five siblings to take care of. In his *allocutus*, the convict stated that he was in school, in P.5 in Kango Primary School, at the  
25 time he was arrested. He prayed for a lenient sentence of 9 years. The victim was not available in court to make her victim impact statement.

I have reviewed the proposed sentence of twelve years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I  
30 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 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  
5 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 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*  
10 *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 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  
15 school girl.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, 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  
20 imprisonment of twelve (12) 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 19<sup>th</sup> day of April 2016.

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Stephen Mubiru  
Judge.