

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0031 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

ADRITIA RAYMOND **ACCUSED**

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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 4th September 2015 at Ombaci village in Arua District, the accused performed an unlawful sexual act on a one Onzivuyo Christine, a girl below the age of 14 years.

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
20 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 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; on 4th September 2015 at about 1.00 at Ombaci in Arua, the mother of the victim heard the door to the kitchen where the victim slept, open. She

came out to find what was happening. She entered while flashing a torch. She found the accused on top of the victim naked. She tried to remove the accused but he resisted. He went with his clothes to the main house to alert her husband. Both came back to the scene and found the accused still at the scene naked. The complainant left to report the matter to the biological
5 mother at a neighbouring village. The victim's mother is married to the victim's mother. The accused escaped as the mother went to report. The following day he was searched for and handed over to the police. He was transferred to Arua CPS to escape the mob. The victim was examined and had a ruptured hymen and had semen she was 11 years old. The accused was examined on P.F 24A and was found to be 35 years old with normal mental status. He was arrested and was
10 charged. Both police forms 24A and 3A and a photocopy of the victim's birth certificate were tendered as part of the facts.

Considering the tender age of the victim and the circumstances in which the offence was committed, the court cautioned the accused of the possibility of enhancement of the proposed
15 sentence of nine (9) 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.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his
20 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 nine (9) 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 11 years and the accused 35 years old at the time of the offence, and the offence is rampant in the region. The
25 learned defence counsel adopted the mitigating factors outlined in the plea agreement which briefly are that he is the bread winner for his family, at his age he is still capable of reform, and is remorseful. In his *allocutus*, the convict stated that his parents died and he left three children at home. His wife was taking care of them. He left everything to court to determine the appropriate sentence. The victim was not available in court to make her victim impact statement.

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I have reviewed the proposed sentence of nine 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.

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 and a half years on remand, (having been charged and remanded on 10th September 2015) 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 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.

Dated at Arua this 19th day of April 2017.

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Stephen Mubiru
Judge.
19.04.2017.