

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0116 OF 2016**

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

**VERSUS**

10 **ASIKU ISAAC AZIKU** ..... **ACCUSED**

**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 (d) of *The Penal Code Act*.

15 It was alleged that on 2<sup>nd</sup> 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.

When the case was called, the learned State Attorney, Ms. Faidha Jamilar reported that she 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. Okello Oyarmoi holding brief for 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  
25 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  
30 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 15<sup>th</sup> December 2015, at about 1.00 pm in Yumbe District, the accused who was drinking Waragi, tricked the victim a mentally retarded to the bush to give her groundnuts. He pulled her into the bush, threw her down, removed her knickers and had sexual intercourse her while holding her mouth. He warned her not to reveal what had happened to anyone and left her at the scene crying. She left the scene while crying carrying her clothes in her hands. She reported to a one Hadija who saw semen on her private parts and reported to her mother. The case was reported to the police and the accused went into hiding until 23<sup>rd</sup> of March 2016 when he was arrested. On interrogation he admitted that he held the hand of the victim but denied having committed the offence. The victim was found to be between 11- 12 years of age. The labia minora was stained with a whitish substance, possibly semen. The hymen was partially torn. The accused was examined on P.F 24A and was found to be 40 years old with normal mental status. He was arrested and was charged. Both police forms 24A and 3A were tendered as part of the facts.

15

Considering the age difference of 28 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 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.

20

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 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 offence is rampant in the region, the victim was aged only 11 – 12 years. The accused took advantage of the girl he was old enough to be a father of because of her mental state. The learned defence counsel adopted the mitigating factors outlined in the plea agreement which briefly are that he has a wife and seven children who depend on him for their welfare, he is remorseful, a first offender, He is afflicted by Hepatitis "B" and epileptic. In his *allocutus*, the convict stated that he has three

30

children in secondary school and four in primary school. His father died and his mother is weak. He was engaged in digging in order to raise fees. He prayed for a sentence of not more than 12 years so that he can go back and look after the family. The victim was not available in court to make her victim impact statement.

5

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 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 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 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 school girl.

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 one year on remand, (having been charged and remanded on 24<sup>th</sup> March 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 (11) years, to be served starting today. Having been convicted and sentenced on his own plea of guilty, the

30

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 19<sup>th</sup> day of April 2017.

.....

Stephen Mubiru  
Judge.  
19.04.2017.

5