

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0176 OF 2016**

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

**VERSUS**

10 **MWESIGWA CHARLES** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

15 This case came up on 10<sup>th</sup> January 2018, 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*. It was alleged that on 24<sup>th</sup> July 2016 at Awulu village in Nebbi District, the accused performed an unlawful sexual act with Giramia Monica, a 9 year old girl.

20 When the case was called, the learned Resident State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Ronald Onencan. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its  
25 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 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  
30 of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned Resident State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 24<sup>th</sup> July 2016 when the victim was sent by her mother to go and buy medicine from Kayonga Trading Centre in Panyimur. The

victim took long to return and at around half past eight pm a one John and Adubu called the mother of the victim from her house and instead found the victim half naked without knickers. The two raised an alarm which was answered by Ongei Pascal who met a young girl running and this girl was the victim and had no skirt and knickers. She narrated to Pascal that it is Mwesiga Charles whom she knew very well also known as Messe found her along the way and took her under a cassava garden, removed her knickers and had sexual intercourse. She was escorted to her father's home who took her to the L.C.1 who organised his arrest. She was examined on P.F.3 and the accused on P.F 24. She was found to be of the apparent age of 9 years with no breasts and no pubic hair and the genitals were stained with sexual fluids and spots of blood. The probable cause was not indicated but they found a fresh ruptured hymen. The accused was found to be of sound mental status and an adult with fully grown pubic hair and a whole set of teeth. At the police he admitted having committed the offence, in a charge and caution statement. Both police forms 24 and P.F 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 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 five (5) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement. The learned defence counsel adopted the mitigating factors outlined in the plea agreement too. In his *allocutus*, the convict had nothing to add to what was stated in the plea agreement.

I have reviewed the proposed sentence of five 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*  
5 *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  
10 accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

The aggravating factors in this case are that; the offence is punishable by death, it is rampant in the region, the victim was ravished in her parents' home, and she was only 9 years old while the accused was 24 years old. On the other hand, the mitigating factors are that; the accused is a first  
15 offender, remorseful; he has readily pleaded guilty and is a relatively young man capable of reform. 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 one year and eight months on remand, 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  
20 term of imprisonment of five (5) 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  
25 days.

Dated at Arua this 10<sup>th</sup> day of January, 2018

.....  
Stephen Mubiru  
Judge,  
10<sup>th</sup> January, 2018.

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