

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0038 OF 2016**

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

**VERSUS**

10 **EDEMA VICTOR** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

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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 18<sup>th</sup> January 2014 at Enzeva village in Arua District, the accused performed an unlawful sexual act with Avako Gloria, a girl below the age of 14 years.

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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 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 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 Resident State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 17<sup>th</sup> January 2014 at about 9.00 pm

the victim went to a disco dance at a nearby trading centre. At 3.00 pm felt tired and decided to go back home. He was escorted by two boys who left her near her home. Shortly after they had left, the accused emerged from the bush, held her hand and pulled her back to the bush. She made an alarm. In the bush he tore her underpants and had sexual intercourse with her. The two boys heard it and returned to rescue her but the accused threatened them. The young boys ran and informed adults as to what was happening. A one Eloli Bosco ran to the scene and when the accused saw him he took off leaving his pairs of trousers, a pair of shoes and a packet of condoms. He was clearly seen because there was bright moonlight. He was reported but went into hiding. He was arrested in January 2016. The victim was examined and found to be twelve years old. She was bleeding and her vagina was swollen. This was done at Vurra Health Centre III on 11<sup>th</sup> January, 2014. He was examined on 2<sup>nd</sup> January 2016. He was found to be about 20 years ole and of normal mental status. The accused was examined on P.F 24A. 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 12 years old while the accused was 21 years old. The offence is rampant and was committed after abduction of the  
15 victim. On the other hand, the mitigating factors are that; the accused is a first offender, remorseful; he has readily pleaded guilty and is a relatively young man capable of reform. He is sickly and suffers from hepatitis B. 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  
20 entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to a 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  
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Dated at Arua this 10<sup>th</sup> day of January, 2018

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

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