

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT LUWERO

CRIMINAL SESSIONS CASE No. 0101 OF 2016

UGANDA **PROSECUTOR**

5 **VERSUS**

KASAMBA HABIBU **ACCUSED**

Before Hon. Justice Stephen Mubiru.

10 **SENTENCE AND REASONS FOR SENTENCE**

This case came up on 3rd January, 2018, for plea, whereupon the accused was indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on 12th July 2015 at Kagambe village in Luwero District, the accused had unlawful carnal knowledge of Namanda Resty, without her consent. The accused pleaded guilty to the indictment.

The learned State Attorney, Ms. Beatrice Odongo then narrated the following facts of the case; on 12th July 2015, at about 6.00 pm, the victim, Namanda Resty left her parents home at Kawumo L.C1 in Mawale Parish to visit her Auntie. While on the way, she met the accused who grabbed her hands and carried her to the nearby bush and raped her in an isolated place. She could not raise an alarm since the accused held her mouth and after the act the accused promised her shs. 1,000/= and a soda. He disappeared from the scene. She narrated the event to her friend Nakawuka Jane who called the victim's mother on phone and the mother reported to a police post. The victim was referred to Semuto Health Centre IV and on 14th July 2014 she was examined on P.F. 3A. She had bruises on the labia and her hymen was ruptured. The accused went into hiding, he was later arrested on 3rd August, 2015 and was charged with the offence of rape. On 12th August, 2015 the accused was examined at Luwero Health Centre IV and his age was established at 36 years and he was of normal mental status. The respective police forms P.F. 3A and P.F 24 A were submitted to court 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 Rape c/s 123 and 124 of the *Penal Code Act*. In justification of the sentence of thirty (30) years' imprisonment the learned State Attorney submitted that although she had no previous record of conviction against the convict and he has pleaded guilty though, the victim was a mentally challenged person and the convict knew this but he went ahead and took advantage of this and raped the victim. This was cruel and inhuman with regard to the victim's condition. As a result of that act the victim was traumatized. The maximum punishment is death and the starting point is 35 years. He thus deserves a deterrent sentence.

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In his submissions in mitigation of sentence, defence Counsel Mr. Katamba Sowad submitted that the convict has been on remand since 17th August, 2015, about 2 years and four months now. He is remorseful. He is in his mid thirties and given an opportunity he can reform. He proposed a lenient sentence of ten years' imprisonment minus the period of remand. In his *allocutus*, the convict stated that he has four children and needs to serve his sentence and go back to find his family. He prayed for a lenient sentence.

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In sentencing the accused, I am guided by *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. Regulations 20 and 22 thereof specify circumstances by virtue of which the court may consider imposing a sentence of death in cases of this nature. None of them arose in the instant case. I have not found any other extremely grave circumstances as would justify the imposition of the death penalty. The manner in which the offence was committed was not life-threatening and neither was death a probable result of the accused's conduct. For those reasons, I have discounted the death penalty.

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The next option in terms of gravity of sentence is that of life imprisonment. However, none of the relevant aggravating factors prescribed by Regulations 20, 22 and 24 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, are applicable to this case. Similarly, that possibility too is discounted.

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In imposing a custodial sentence, Item 2 of Part I of the guidelines prescribes a base point of 35 years' imprisonment. This can be raised on account of the aggravating factors or lowered on basis of the mitigating factors. In doing so, the court must take into account current sentencing practices for purposes of comparability and uniformity in sentencing. I have therefore reviewed
5 current sentencing practices for offences of this nature. In this regard, I have considered the case of *Kalibobo Jackson v. Uganda C.A. Cr. Appeal No. 45 of 2001* where the court of appeal in its judgment of 5th December 2001 considered a sentence of 17 years' imprisonment manifestly excessive in respect of a 25 year old convict found guilty of raping a 70 year old widow and reduced the sentence from 17 years to 7 years' imprisonment. In the case of *Mubogi Twairu Siraj*
10 *v. Uganda C.A. Cr. Appeal No.20 of 2006*, in its judgment of 3rd December 2014, the court of appeal imposed a 17 year term of imprisonment for a 27 year old convict for the offence of rape, who was a first offender and had spent one year on remand. In another case, *Naturinda Tamson v. Uganda C.A. Cr. Appeal No. 13 of 2011*, in its judgment of 3rd February 2015, the Court of Appeal upheld a sentence of 18 years' imprisonment for a 29 year old appellant who was
15 convicted of the offence rape committed during the course of a robbery. In *Otema v. Uganda, C.A. Cr. Appeal No. 155 of 2008* where the court of appeal in its judgment of 15th June 2015, set aside a sentence of 13 years' imprisonment and imposed one of 7 years' imprisonment for a 36 year old convict of the offence of rape who had spent seven years on remand. Lastly, *Uganda v. Olupot Francis H.C. Cr. S.C. No. 066 of 2008* where in a judgment of 21st April 2011, a sentence
20 of 2 years' imprisonment was imposed in respect of a convict for the offence of rape, who was a first offender and had been on remand for six years.

Considering the gravity of the offence, the circumstances in which it was committed in the instant case and the fact that the complainant was labouring under a mental disability, it involved
25 a degree of violence as evident from the bruises the doctor found to be visible around the neck region, the punishment that would suit the convict as a starting point would be 20 years' imprisonment.

However, that sentence is mitigated by the fact that he has readily pleaded guilty and a convict is
30 entitled to a discount for having pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of

regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating his sentence, alongside the fact that he is a first offender, he has family responsibilities, and he is now 36 years old and with a considerable capacity to reform. The severity of the sentence he deserves has been tempered by those mitigating factors and is reduced from the period of twenty years, proposed after taking into account the aggravating factors, now to a term of imprisonment of 12 (twelve) years' imprisonment.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a accused. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, requires the court to “deduct” the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This requires a mathematical deduction by way of set-off. From the earlier proposed term of 12 (twelve) years' imprisonment arrived at after consideration of the mitigating factors in favour of the convict, he having been charged on 17th August, 2015 and has been in custody since then, I hereby take into account and set off the two years and five months as the period the accused has already spent on remand. I therefore sentence the accused to nine (9) years and seven (7) months' imprisonment, to be served starting today.

The convict is advised that he has a right of appeal against both conviction and sentence, within a period of fourteen days.

Dated at Luwero this 16th day of January, 2018.

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Stephen Mubiru

Judge.

16th January, 2018.