THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

CRIMINAL SESSIONS CASE No. 0149 OF 2017

UGANDA …… PROSECUTOR

VERSUS

O. B. (a juvenile) ……..…… JUVENILE OFFENDER

Before: Hon Justice Stephen Mubiru

DISPOSITION ORDER

When this case came up this morning for plea, the juvenile offender 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 12th May, 2017 at Gudu village in Omoro District, the juvenile offender performed an unlawful sexual act with Oroma Prossy, a girl aged 6 years. The juvenile offender pleaded guilty to the indictment.

The learned Resident Senior State Attorney, Mr. Patrick Omia has narrated the following facts of the case; on 12th May, 2017 at Gudu village, Bobi sub-county, Omoro District, the juvenile offender who lives on the same village with the victim in the case, took her to his house from where he had sexual intercourse with her. He warned the victim not to reveal the information to anyone. On 13th May, 2017, the victim having felt pain around her private parts revealed the incident to one of her sisters, Flavia Alimo who was bathing her. The information reached the mother of the victim, Joyce Akello. She reported the matter to the L.C 1 Chairperson who apprehended the juvenile offender and forwarded him to Bobi Police Station. Upon medical examination Prossy was found to be six years old with injuries around her private parts in a state of healing. The examination was done on 20th May, 2017. The juvenile offender was examined too on 23rd My, 2017 and found to be of the apparent age of 17 years. He was HIV negative and was accordingly charged. Both police forms; P.F. 3A and P.F 24A were tendered as part of the facts.

Upon ascertaining from the juvenile offender that the facts as stated were correct, he was on basis of his own plea of guilty found responsible for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*.

Submitting in aggravation of sentence, the learned State Attorney stated that the juvenile offender defiled a young child of six years and the father of the offender is an uncle to the victim's mother. By the culture of this place they are very close relatives. He should have been the one to protect the victim from any assault. The victim sustained some injuries as indicated on the police form and she also suffered pain. The maximum penalty is three years order of detention. He has been in custody for one year and two months, since 25th May, 2017. He proposed an order of two and a half years in detention.

In response, the learned defence counsel Ms. Alice Latigo prayed for lenient disposition orders on grounds that; the juvenile offender has admitted responsibility. He is remorseful and has not wasted time. He was a pupil at Abore Primary School in P.3 at the time of arrest. He has been in detention for one year, two months and two weeks. The maximum is three years. The time he has spent in detention is long enough. He had to be sentenced within three months. She proposed that in accordance with s. 94 (1) (g) and (5) of *The Children Act* the juvenile offender be bound over for twelve months.

In his *allocutus*, the juvenile offender prayed for forgiveness and promised never to commit such an offence again. Contributing to the disposition hearing, Ms. Lamwaka Susan Christine, the Assistant Welfare and probation Officer, Gulu attached to the remand home where the juvenile offender has been in custody while on remand stated that the juvenile offender has been remorseful. He has undergone counselling and different trainings that have transformed his life. He had promised never to commit this offence again. Being a school going child, she prayed that he is bound over. The institution has the capacity to supervise him together with the probation office. The father of the juvenile offender as well prayed that the juvenile offender is handed over to him since he knows that he will be of good behaviour henceforth.

According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act,* is death. However, according to section 104 (A) (1) of *The Children Act*, a death sentence is not to be pronounced on or recorded against a person convicted of an offence punishable by death, if it appears to the court that at the time when the offence was committed the convicted person was below the age of eighteen years. The alternative is provided for by section 94 (1) (g) of *The Children Act*, which states that in such instances the maximum period of detention is to be three years.

On account of children's diminished culpability and heightened capacity for reform, by statute children are different from adults for sentencing purposes. Sentencing a juvenile offender to three years in a children detention facility is the most severe criminal penalty available. Whereas the maximum punishment for a juvenile offender found responsible for an offence punishable by death is three years' detention, section 94 (1) (g) of *The Children Act* provides that detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order.

In arriving at an appropriate disposition order, the court will take into account the aggravating and mitigating factors relevant to the offence charged, the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal history of the offender, the offender's level of family support, social history, the offender's record while on remand, the offender's ability to appreciate the risks and consequences of the conduct, the degree of criminal sophistication exhibited by the offender, the degree of responsibility the offender was capable of exercising, the offender's chances of being rehabilitated, the physical, psychological and economic impact of the offense on the victim and the community, and such other factors as the court may deem relevant. Orders imposing the maximum period of detention should normally be reserved for the worst offenders and the worst cases.

Orders of that kind may be justified where the offence was committed with brutality, or where the prospects of the juvenile offender reforming through non-custodial interventions are negligible, or where the court assesses the risk posed by the juvenile offender and decides that he

or she will probably re-offend and be a danger to the public for a considerable time to come. In such cases, maximum incapacitation is desirable. In cases of a grave nature but where the court forms the opinion that they were only the consequence of unfortunate yet transient immaturity of youth, from that maximum point the sentence should be graduated and proportional to the offender and the gravity of the offence, with a view to strike a balance between the need for public safety and that of rehabilitating the juvenile offender. A distinction must be made between the juvenile offender whose crime reflects unfortunate yet transient immaturity of youth from the rare juvenile offender whose crime reflects a deep-seated depravity. In the instant case, the juvenile offender defiled a child aged only six years for which reason the gravity of the offence warrants an order of detention and I thus consider a two (2) year period of detention to be appropriate for this offender.

Against this, I have considered the fact that the juvenile offender 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 juvenile offender has pleaded guilty, as one of the factors mitigating his sentence, hence reducing it by one third to one year (1) and four (4) months.

I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to one years' detention. In accordance with section 94 (3) of *The Children Act*, to the effect that where a child has been remanded in custody prior to an order of detention being made in respect of the child, the period spent on remand shall be taken into consideration when making the order, I note that the convict has been in custody since 25th May, 2017. I hereby take into account and set off one year and two months as the period the juvenile

offender has already spent on remand. Having taken into account that period, I therefore find that the "time served" is an appropriate punishment for the juvenile offender and he should accordingly be set free unless he is being held for other lawful reason.

Having been found responsible and the disposition order made on basis of his own plea of guilty, the juvenile offender is advised that he has a right of appeal against the legality and severity of that order, within a period of fourteen days.

Dated at Gulu this 6th day of August, 2018

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Stephen Mubiru
Judge,
6th August, 2018.

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