

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 132 OF 2017

UGANDA **PROSECUTOR**

5 **VERSUS**

O. E. (a juvenile) **JUVENILE OFFENDER**

Before: Hon Justice Stephen Mubiru

10 **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 28th January, 2017 at Aremo village, Bobi sub-county in Omoro District, the juvenile offender performed an unlawful sexual act with Nyana Rachael, a girl aged 12 years. The juvenile offender pleaded guilty to the indictment.

The learned Resident Senior State Attorney, Mr. Patrick Omia then narrated the following facts of the case; on 28th January, 2017 at around 12.30 pm the juvenile offender who lived on the same village with the victim found her in a bush collecting firewood and demanded to know why she had turned down his earlier advances for a love affair on 23rd January, 2017. The victim was alone in the bush and began to run away. He ran after her and caught up with her. He forcefully had sexual intercourse with her and threatened to break her neck if she screamed. While still in the act Odong and James arrived and found him having sexual intercourse with the victim. He got up immediately but the two boys arrested him. Odong and James took the two to a local chief Mario Oyom who referred the case to the uncle of the victim Opio George Otto who led them to the police at Bobi where the offender was detained. On medical examination done on that very day, the victim was found to be 12 years old with a ruptured hymen. The offender was examined on 29th January, 2017 and was found to be approximately 17 years old and HIV negative. 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*.

5 Submitting in aggravation of sentence, the learned State Attorney stated that; the victim was twelve years old, suffered injuries as indicated on the police form. He also threatened to break her neck. The victim was traumatised. The offender has been on pre-trial remand since 10th February, 2017, that is one year, five months and three weeks. He proposed an order of two and a half years in detention.

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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 student at Lango College in senior two at the time of arrest. He has been in detention for now the second year. The maximum is three years. The time he has spent in
15 detention is long enough. She proposed that in accordance with s. 94 of *The Children Act*, he is cautioned since the one year and five months of remand is already adequate.

In his *allocutus*, the juvenile offender prayed for forgiveness. He promised not to repeat the act. He prayed court to release him so that he can go back to school. He also apologised to his
20 mother. 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 spent time at the remand home, undergone counselling and guidance and has been a counsellor at the remand home. He has received leadership guidance. He has been one of the top
25 leaders. He advises many juveniles. He is sorry for his offence. She proposed that he is cautioned since he has promised to advise his age group to respect the law and treat the girls as sisters.

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
30 *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.

5 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
10 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
15 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
20 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.

25 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
30 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 twelve years under threats of breaking her neck for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and three (3) months 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 (5) months.

I have considered further the submissions made in mitigation of sentence and in his *allocutus*, especially the fact that he is a first offender, and thereby reduce the period to one year's 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 juvenile offender has been in custody since 16th February, 2017. I hereby take into account and set off one year and six 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.

5 Dated at Gulu this 6th day of August, 2018

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Stephen Mubiru
Judge,
6th August, 2018.

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