

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 0283 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

O. R. (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 24th November, 2017 at Orua "A" village in Kitgum District, the juvenile offender performed an unlawful sexual act with Lakot Prossy, a girl aged 5 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 24th November, 2017 at Orua A village in Kitgum District, the juvenile offender who at the time was living in the same home with the victim Lakot Prossy took the victim under a mango tree at around 5.00 pm and performed a sexual act with her. He was found in the act by one Bosco Odong and Alex Ocan who reported to Christine Abur. He was arrested and forwarded to the police. Upon medical examination of the victim on 27th November, 2017 at Kitgum Hospital, she was found to be five years old with bruises around her genitals. The juvenile offender too was examined on the same day from the same medical unit and found to be of the apparent age of 16 years. He was charged accordingly. 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 and the victim were step sister and brother. Their mothers were co-wives. It is therefore a serious matter. He defiled his own step sister who he was supposed to be protecting from any attack. He has been on remand for close to seven months. He proposed an order of the maximum
5 period of detention and a half years in detention, subject to deduction of the period for which he has been in detention.

In response, the learned defence counsel Ms. Harriet Otto prayed for lenient disposition orders on grounds that; the juvenile offender is a first offender and he has no criminal record. He is
10 remorseful as indicated by the fact that he has pleaded guilty. He is just sixteen years old and a young person who can reform and be a useful person in society. He is epileptic, and he cannot get treatment in the remand home. He is an orphan. Him and the victim are related. I pray for lenience. He was in primary five in Pawidi Primary school. He has missed three terms. She proposed nine months' detention. In his *allocutus*, the juvenile offender prayed for forgiveness
15 for the offence he committed and promised never to repeat it again. He undertook not victimise her again.

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
20 *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.

25

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
30 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.

5 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
10 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.

15 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
20 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
25 rare juvenile offender whose crime reflects a deep-seated depravity. In the instant case, the juvenile offender defiled a child aged only five years for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and four (4) months period of detention to be appropriate for this offender.

30 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 eight (8) 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 and three months' 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 20th December, 2017. I hereby take into account and set off eight months as the period the juvenile offender has already spent on remand. Having taken into account that period, I therefore sentence the convict to a term of detention at a juvenile detention facility of seven (7) months, to be served starting today.

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

.....
Stephen Mubiru
Judge,
6th August, 2018.