

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 183 OF 2017

UGANDA **PROSECUTOR**

5 **VERSUS**

O. J. (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 1st February, 2017 at Layibi Centre "A" and "B" sub-ward, Pece Division in Gulu District, the juvenile offender performed an unlawful sexual act with Auma Gloria, a girl aged 13 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 1st February, 2017 at 11.30 am the victim left their home at Layibi Centre A within Gulu Municipality to go and fetch water. On her way she met the offender who asked her to go to his room that there was someone who wanted to speak to her on phone. While in his room the offender told the victim that the phone was on his bed behind the curtain which she should pick. He followed her and had sexual intercourse with her. Her brother Okello Phillips whom she had left at home having waited for her for long began looking for the victim and found her in the room of the juvenile while they were in the act of having sexual intercourse. The offender fled the scene leaving the victim behind and the brother. He reported to their father Ouma Walter who reported the case to Aywee Police Post. The offender was arrested and indicted. Upon medical examination, the victim was found to be 13 year old having been born on 25th August, 2003. There is a child health care card to that effect (immunisation card). The offender was found to be 18 years with full dental formula and fully developed secondary

characteristics. Both police forms; P.F. 3A and P.F 24A and the immunisation card were tendered as part of the facts.

5 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*.

10 Submitting in aggravation of sentence, the learned State Attorney stated that; at the time of the act the victim was just 13 years old and had as such been introduced to an act of sexual intercourse at a young age. She was a pupil of Labour Line Primary School in P.4. He has been in detention for one year and six months, since 8th February, 2017. He proposed a custodial order of two years' duration.

15 In response, the learned defence counsel Ms. Harriet Otto prayed for lenient disposition orders on grounds that; the juvenile offender has pleaded guilty and not wasted time. He is very remorseful. He has spent one year and six months on remand. At the time of arrest he was in senior three at Gulu Senior Secondary School. He is still a young person and if given time to go back he has learnt a lesson on remand and can still be useful. She prayed for lenience and proposed that under section 94 of *The Children Act*, he should be cautioned and released.

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In his *allocutus*, he prayed for forgiveness for the acts he committed. He will never do this again since he has learnt a lesson. He was a student and wants to go back to school. He apologised to his parents for what he did. Contributing to the disposition hearing, Ms. Lamwaka Susan Christine, the Assistant Welfare and probation Officer, Gulu attached to the remand home where 25 the juvenile offender has been in custody while on remand stated that while at the remand home he has been a remorseful child and has kept peace while at the remand home. She has seen him interact with friends and advise them not to commit offences once off remand. He has gone through counselling and guidance and has been one of the leaders. He is a student and loves studies and he is praying that he is given an opportunity to go back to school. She proposed that 30 he should be cautioned and when he gets out he will be a better leader in the community. Section 94 (1) of *The Children Act* should be invoked.

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 thirteen by trickery for which reason the gravity of the offence warrants an order of detention and I thus consider one (1) year and five (5) 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).

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 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 juvenile offender has been in custody since 8th February, 2017. I hereby take into account and

set off one year and five 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.

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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.

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

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Stephen Mubiru
Judge,
6th August, 2018.

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