THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

CRIMINAL SESSIONS CASE No. 0080 OF 2018

UGANDA …… PROSECUTOR

VERSUS

O. D. (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 during the month of July, 2017 at Gaya Pukwany village in Pabbo, the juvenile offender performed an unlawful sexual act with Atto Innocent, a girl aged 9 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 27th July, 2017 the juvenile offender, who lives in the neighbourhood of the home of the victim entered the house where the victim was sleeping at night and had sexual intercourse with her. The following morning the victim who was walking with difficulty informed Scovia and Akot that she had sustained the injuries from several acts of intercourse committed by Olanya David. She was examined by her parents who found her private parts swollen and with injuries. The matter was reported to Pabbo Police post and the juvenile offender was detained. Upon medical examination, the victim was found to be approximately ten years old and the private parts were injured. The vulva was soiled with pus and had an offensive smell. The offender was found to be approximately 17 years old, HIV negative and in a good mental condition on 28th July, 2017 at Pabbo Health Centre III. 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 victim was ten years old, she was subjected by the same offender to repeated acts of sexual intercourse and by the time it was noticed she had injuries around her private parts and had developed pus. He proposed a detention order of two and half years and the period of remand of close to one year be deducted.

In response, the learned defence counsel Mr. Tony Kitara prayed for lenient disposition orders on grounds that; the juvenile offender has admitted responsibility. He is remorseful and has not wasted time. Even from his demeanour he looks one who regrets the act. At the time he was arrested was in P.6 at Pabbo primary school. He is capable of reform. He is an orphan. He has several relatives who have turned up and that is a sign that he can be offered better parenting. I pray for a lenient sentence. She proposed that under section 94 (1) (d) of *The Children Act* he should be bound to be of good behaviour.

In his *allocutus*, he prayed for forgiveness for the offence he committed. He promised never do this 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 admitted the offence and has been remorseful at the remand home. He has received counselling and guidance. He understands the dangers of committing the offence and promises to help other children out if released. He has been on remand for one year and five months. He is among the leaders at the remand home. She recommend that he is placed on probation. He is 17 years old now. He was born on 5th May, 2002 for 8 months to be supervised by the probation officer according to section 94 (1) (f) of *The Children Act*. He should be cautioned.

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 nine years and repeatedly for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and six (6) 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 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 1st August, 2017. I hereby take into account and set off eleven months as the period the juvenile offender has already spent on remand.

Having taken into account that period, I consider that a detention order of four months of what would otherwise be left of the period of detention will not serve any additional useful purpose. Instead in accordance with section 94 (1) (f) of *The Children Act*, I impose an order of probation of three (3) months starting today. He is placed under the supervision of the District probation officer and the magistrate's court having jurisdiction in the district or area for the time being in which the juvenile offender resides or will reside. In the event of violation of nay of these conditions, the juvenile offender is to be taken back into custody to serve a period of four (4) months' detention.

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.