

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT GULU**  
**CRIMINAL SESSIONS CASE No. 067 OF 2018**

**UGANDA** ..... **PROSECUTOR**

5 **VERSUS**

**I. S. (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 2<sup>nd</sup> December, 2016 at Zaire village in Kitgum District, the juvenile offender performed  
15 an unlawful sexual act with Abalo Irene, a girl under the age of 14 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 2<sup>nd</sup> December, 2016 at Zaire village Akurumo Parish, Orom sub-county in Kitgum  
20 District, at 8.00 pm the juvenile offender who was staying in the same village with the victim's parents went to the house where the victim was sleeping because she was sickly and performed a sexual act with her. She cried and that attracted the attention of Lakwang Lina who helped in arresting the offender. He was forwarded to Orom Police Post where he was charged. The victim was examined by a medical personnel on 5<sup>th</sup> December, 2016 and she was found to be of the  
25 apparent age of five years. She had a reddened vaginal opening and she was HIV negative while the offender was examined on 16<sup>th</sup> December, 2016. He was estimated to be 16 years old, HIV negative and mentally normal. 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  
30 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 subjected the victim who was just five years to a sexual act and utilised the unfortunate situation she was in as she was sick. He exploited her weakness. He had been given food in that home that evening and so he had been hosted there. He found the victim on the bed and performed a sexual act. He is a reckless young man who is also not bothered by the hospitality extended to him. He has been on remand since 21<sup>st</sup> December, 2016, hence one year, seven months and fourteen days. He prayed for an appropriate order that fits the justice of the case.

In response, the learned defence counsel Ms. Harriet Otto prayed for lenient disposition orders on grounds that; the juvenile offender remorseful and has pleaded guilty thereby not wasting the court's time. He has spent a year and seven months on pre-trial remand. This is sufficient time for him. At the time of arrest he was a pupil of P.5 at Halain Primary School in Kitgum and has missed out four terms of school. He is also an orphan. She prayed for lenience, that he be cautioned and be set free. In his *allocutus*, the juvenile offender prayed for forgiveness and he is given a chance to go back to school. He promised not to repeat it 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 offender said he was 15 years old at the time he was received at the remand home. He is an orphan and a P.5 pupil. He is a humble child while at the remand home which is a sign of remorsefulness. He has been counselled and guided and is among the leaders of the remand home. He has been helpful to his colleagues and is given chance he will not commit a similar offence. She recommend that he is bound over to be of good behaviour for a period of six months according to section 94 (1) (b) of *The Children Act* as they organise to resettle him with his family.

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  
5 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  
10 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  
15 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  
20 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  
25 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  
30 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 five years who at the time was sickly. He took  
5 advantage of a helpless child and abused the hospitality of her parents 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.

Against this, I have considered the fact that the juvenile offender pleaded guilty. The practice of  
10 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  
15 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  
20 it by one third to one year (1) and seven (7) 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 two months' detention. In accordance with section 94 (3) of *The Children Act*, to the effect that where  
25 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 21<sup>st</sup> December, 2016. 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 find that the "time served" is an appropriate  
30 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 7<sup>th</sup> day of August, 2018

.....  
Stephen Mubiru  
Judge,  
7<sup>th</sup> August, 2018.

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