THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

CRIMINAL SESSIONS CASE No. 177 OF 2017

UGANDA …… PROSECUTOR

VERSUS

C. B. (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 on 7th July, 2016 at Popany village in Lamwo District, the juvenile offender performed an unlawful sexual act with Auma Sunday, 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 7th July, 2016 at Popany village in Lamwo District, the juvenile offender went to the house where the victim Sunday Auma and other children were sleeping during the night and performed a sexual act with her. She cried and this drew the attention of one Mary Labol which led to the arrest of the offender who was then forwarded to Madi-Opei Police station and he was charged with the offence of aggravated defilement. Upon medical examination, Sunday Auma was found to be of the apparent age of 13 years. The *labia minora* was hyperaemic and she had fresh bruises which the medical personnel attributed to forceful penetration. The offender was not examined medically. The police form; P.F. 3A was 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 sneaked into the house where the victim and other children were sleeping indicating that he is reckless. He inflicted injuries on her as evidenced by the police form. He has been on remand since 20th July, 2016 which is one year and eleven months now. He prayed for an appropriate order that fits the justice of the case.

In response, the learned defence counsel Mr. Tony Kitara prayed for lenient disposition orders on grounds that; the juvenile offend pleaded guilty and we pray that is found to be a sign of remorse. He has not wasted time. At the time of his arrest he was in P.6 at Madu Pei. He is a child who can be turned into a useful citizen. The age of the victim was 13 while he was 16 at the time of the offence. He has undergone rehabilitation and counselling. He is a victim of a broken family. The mother and father separated and at the time he lived with the mother. In court now is his uncle who has said that he will take the offender to Kitgum Town under his care and guidance. He has travelled all the way from Kitgum to attend these proceedings. He has been on remand for about two years and that should be found to be sufficient punishment. He proposed that under section 94 (1) (c) of *The Children Act*, he should be granted a conditional discharge.

In his *allocutus*, the juvenile offender prayed that the court forgives him and he is given a chance to go back to school. His uncle Mr. Ociti John Kennedy Opwony prayed that the court releases the juvenile offender to him so that he can take care of his studies. 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 stated he was 15 years old at the time he was received at the remand home. He has been a quiet and humble child. He never portrayed any bad character. They have counselled and guided him and he has been sorry for the offence and feels guilty and asked for forgiveness and is prepared to apologise to the victims. He is among the top leaders of the remand home. He has been so resourceful. He has spent two years and three weeks on remand. If given chance to return to the community, he will be a law abiding citizen. He wants to return to school and study to become a teacher. She recommend that that he is released to his maternal uncle and that in addition a conditional discharge as per s. 94 (1) of *The Children Act* will suffice.

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 at the age of 15 years defiled a thirteen year old girl in the safety of her parents' home for which reason the gravity of the offence warrants an order of detention and I thus consider a two (2) years' 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 (4) 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 20th July, 2016. I hereby take into account and set

off two years 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.

Dated at Gulu this 7th day of August, 2018

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Stephen Mubiru
Judge,
7th August, 2018.