

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 083 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

O. F. (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 during the month of August, 2017 at Hope Junior School Lamin Ladera in Omoro District, 15 the juvenile offender performed an unlawful sexual act with Lakica Maualla, a girl aged 8 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; during the month of August, 2017 at Lamin Ladera Children's home under the 20 management of Watoto Child Care Ministry, the juvenile offender who was under the care of that home, performed a sexual act with Lakica Manuela a child who also was under the care of that children home. The victim informed one of the children within the home Pamungu Esther who in turn informed the Senior Mother Aloyo Gladys Edith who took action leading to the arrest of the juvenile offender. Upon medical examination the victim was found to be 8 years old 25 with a ruptured hymen and the juvenile offender was found to be 16 years old and HIV negative but he was positive for Hepatitis "B" and he was accordingly indicted. 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) (b) of *The Penal Code Act*.

Submitting in aggravation of sentence, the learned State Attorney stated that; the juvenile offender being approximately 16 years old defiled a victim of 8 years and introduced her to a sexual act. She has been traumatised. He abused the generosity of the Watoto Child Care Ministry who took him under their care. He is therefore an ungrateful person who was poisonous
5 to the young girls in the home. He has been on pre-trial remand for about seven months and ten days having appeared in court on 22nd December, 2017. His act also tends to scare away needy children from being kept at that home if that kind of behaviour is not curtailed. He proposed an order of detention for two years.

10 In response, the learned defence counsel Ms. Harriet Otto prayed for lenient disposition orders on grounds that; the juvenile offender has pleaded guilty being remorseful and he has not wasted court's time. He has spent seven months and ten days on remand. He was a pupil in P.7 at Hope for Junior Primary School. He is also an orphan and has been living with his needy mother. Being a young person who has been on remand for this long he has been counselled and needs to
15 be released to be a responsible citizen. She proposed that under section 94 of *The Children Act* he be discharged.

In his *allocutus*, the juvenile offender prayed for forgiveness. He apologised to the parents of the victim and the management of the home and promised not to commit the same act again.
20 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 is 16 years old. He lost his father and it is his first time at the remand home and while there he lived a quiet life. He also underwent counselling and guidance and he confessed being guilty and remorseful for what he did. He
25 asked for forgiveness. The authorities and the guardians have been asked for forgiveness. He was a leader at the remand home and maintained peace with his colleagues. Given a chance he will return to the school and he promises not to repeat the offence. She recommend that he is bound over for 8 months under s. 94 (1) (b) of *The Children Act* and handed over to his adult relatives in court. On her part, Ms. Langoya Caroline the Social worker attached to the children home
30 where the offence was committed stated that the home had forgiven the juvenile offender for the

act and they shall continue to support him while he stays with his parents. They will find him another school and help him meet the school requirements.

5 On her part, the mother of the juvenile offender, Ms. Apio Mary mother stated that she prays for forgiveness on the offender's behalf. She undertook to talk to him as a mother. He lives with her after school. It is a boarding school. He committed the offence while at school. At home he is well behaved and never strays from home. She has talked to him since he was arrested. At the beginning he denied but later on he admitted. She told him that what he did was wrong and that he should not do it again and he promised not to do it again. Lastly, the maternal uncle of the
10 juvenile offender Mr. Kitara James stated that the offender lost his father when he was still very young. He prayed that he is given a chance to go back to school. They shall be close to him in order to monitor him.

According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s
15 129 (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
20 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
25 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.

30

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 an eight year old girl for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and three (3) 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* 5 [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 (1) year and four (4) months.

I have considered further the submissions made in mitigation of sentence and in his *allocutus*, 10 especially the fact that he is a first offender, and thereby reduce the period to eleven 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 22nd December, 2017. I hereby take into account 15 and set off seven 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 20 of six (6) 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 addition, in accordance with section 94 (1) (d) of *The Children Act*, I impose an order binding the juvenile offender over to be of good behaviour for a period of six (6) months starting today.

25 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 orders, within a period of fourteen days.

30 Dated at Gulu this 7th day of August, 2018

.....
Stephen Mubiru
Judge,
7th August, 2018.



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN
AT GULU**

TO:

- 1. The probation Officer, Gulu District**
- 2. The Family and Children Court, Gulu District**

ORDER OF RELEASE ON PROBATION

WHEREAS on the **7TH** day of **AUGUST** 2018, **OTIM FRANCIS** the **Juvenile Offender** in Criminal Session Case No.**0130** of the Calendar Year for **2018** was found responsible and adjudged a Juvenile Offender before me: Honourable Justice **MUBIRU STEPHEN, a Judge of the High Court of Uganda,** for the offence of **AGG. DEFILEMENT CONTRARY TO SECTION 129 (3) & (4) (a)** of the Penal Code Act and is placed on probation as of this date for a period of **SIX (6) MONTHS.**

THIS IS TO AUTHORISE, REQUIRE YOU, and to place the said **OTIM FRANCIS** under your supervision for the duration of that period as the District probation officer and the Family and Children's Court having jurisdiction in the district or area for the time being in which the juvenile offender resides or will reside, together with this **Warrant** and there carry the afore said order into execution according to Law.

During the period of probation, the juvenile offender is ordered to comply with the following conditions of probation;-

1. in accordance with section 94 (1) (d) of *The Children Act*, he is bound over to be of good behaviour for a period of **SIX (6) MONTHS** starting today.

I hereby accept probation in lieu of detention and agree to comply with the conditions imposed. These conditions of probation have been read and explained to me, and I understand the purpose and scope of these conditions and what is expected of me during the probation period. I also understand that if I violate any of the conditions of probation the Court may revoke probation and I will be required to serve the period of **SIX (6) MONTHS'** detention originally imposed.

5

10

.....

JUVENILE OFFENDER

In the presence of;

.....

PROBATION AND SOCIAL WELFARE OFFICER

15

GIVEN under my Hand and the Seal of the court this **7TH day** of **AUGUST, 2018.**

20

.....

JUDGE