

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 184 OF 2017

UGANDA **PROSECUTOR**

5 **VERSUS**

O. W. (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 two counts of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*. It was alleged in count 1 that during the month of August, 2017 at Hope Junior School Lamin Ladera in Omoro District, the juvenile offender performed an unlawful sexual act with Lakica Maualla, a girl aged 8 years. It was alleged in count 2 that during the month of August, 2017 at Hope Junior School Lamin Ladera in Omoro District, the juvenile offender performed an unlawful sexual act with Lakica Maualla, a girl aged 8 years. The juvenile offender pleaded guilty to the first count of the indictment and not guilty to the second one. However, when the case came up today for hearing evidence in respect of the second count, the juvenile offender chose to change his plea in respect of the second count as well and pleaded guilty.

The learned Resident Senior State Attorney, Mr. Patrick Omia then narrated the following facts of the case in respect of the first count; on 2nd may, 2017 at around 10.00 am at Akonyi Bedo village, Onyama sub-county, Gulu District, a one Lamara Patience ran to her mother Night Akumu and informed her that the juvenile offender was having sexual intercourse with Vivian Lagum. Night responded and went to the house of the offender where he found him laying on top of the victim while performing a sexual act. He had covered himself with a blanket which Night removed. Night Akumu struggled with the offender who wanted to escape from the house. She later locked the house while she went to call people and when she returned the offender had broken the door open and escaped. The matter was reported to the police that very day. Later the

offender was arrested. Upon medical examination, the victim was found to be four years old. The examination was done on 3rd May, 2017 from Gulu Regional Referral Hospital. She had bruises around her private parts. The offender was examined on the same day and found to be about 17 years old and HIV negative. He had no injuries on the body and was mentally stable.

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In respect of the second count, the facts he narrated are that; on 2nd May, 2017 at Akonyi Bedo village, Pakwelo Parish Onyama sub-county, Gulu District, a one Lamara Patience who at the time was five years saw the juvenile offender perform a sexual act with Lagum Patience and reported to her mother, Night Akumu and also informed her that the offender had been having sexual intercourse with her in April and May in the same house where that day he performed a sexual act with Vivian. The offender was arrested and forwarded to the police. Upon examination on 4th May, 2017 from Gulu Regional Referral Hospital she was found to be age d 5 years with signs of penetration around her private parts. The three police forms; P.F. 3A and P.F 24A were tendered as part of the facts.

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Upon ascertaining from the juvenile offender that the facts as stated were correct, he was on basis of his own plea of guilty adjudicated responsible for the offence of Aggravated Defilement c/s 129 (3) and (4) (b) of *The Penal Code Act* in respect of each of the two counts.

20 Submitting in aggravation of sentence in respect of the first count, the learned State Attorney stated that; the offender was about 17 years old and ravaged a child aged four years. They were neighbours. His act threatens the relationship of their parents. The victim sustained injuries and indicated in the medical report. By the act he introduced a child of that tender age to sex and the child is still apprehensive of him. She has suffered trauma and she might live with it for the entire time. The maximum is three years' custodial order. He has been on remand since 24th May, 25 2017, a period of one year and two months. He proposed an order of detention for two and a half years. The period spent on remand should be deducted. He has since attained adulthood.

In respect of the second count, he submitted that; the offender lived in the same homestead with the victim in count two. He was related to the victim since his mother brought him to that home. He abused the hospitality of the homestead. These were repeated acts as Lamara Patience

reported. It involved two kids whom he was supposed to be protecting as a fairly older child in the home. The victim sustained injuries documented in the medical report. She is not well to-date as was reported by that father. The children are also fearful of the offender to the extent that they do not want to see his face. This has caused trauma in the mind of the two victims. The offender
5 being a juvenile at that time, the maximum is three years' detention. He has been in detention for one year and three months. He thus proposed two and a half years from which the period spent on remand should be deducted.

In response, defence counsel Mr. Tony Kitara submitted in mitigation in respect of the first count
10 that; the juvenile offender does not deny having committed that offence and this is a sign that he is remorseful. At the time he committed the offence he was a P.5 pupils at Akony Bedo primary School and since then he has missed three terms. We believe that he can still become a useful citizen having benefited from rehabilitation. He is a victim of a broken relationship as the mother and father are separated. He has been on remand for one year and three months. He is here for an
15 offence he committed as a child and his having attained adulthood should be ignored. He thus proposed that he is given a lenient sentence, under s. 94 (c) of *The Children Act* which provides for a conditional discharge.

In respect of the second count he submitted that; he did not readily plead guilty to the second
20 count because he thought it was said he committed both offences at the same time. This is evidence that had he understood it he would have pleaded guilty at the same time. This is a sign of remorsefulness and he is willing to start a fresh journey in his life had we pray that he is given that opportunity. He is the victim of a broken family and at the time of his arrest he was a pupil of P.5 at Akony Bedo Primary School. The RSA raised the issue of trauma to the victims. The
25 paternal uncle of the juvenile has come from Masindi to attend this court session. I have had a discussion with him and he is willing and has accepted the juvenile offender to be handed over to him and is willing to take him back to school. He prayed for lenience in making orders for the two counts and pray that the orders run concurrently under section 94 (1) (f) of *The Children Act*, i.e. an order of probation and since he is re-locating, to be under the supervision of the probation
30 officer of Masindi District.

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.
5 Being a young person who has been on remand for this long he has been counselled and needs to 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 so that he may return to school. On
10 her part, the juvenile offender's mother Ms. Acielma Raciú stated that since his son had pleaded for forgiveness she too prays for the same so that he may go back to school to study. She came with him into her current marriage when he was still very young. Her current husband will teach him how to behave himself as the father who brought him up. Her brothers, the juvenile offender's uncles, will come and they will discuss the issue together. The juvenile offender's
15 father is a serial drunkard and does not take care of his other children. The juvenile offender's grandmother is very old but he will live with his uncles.

The mother of the victim in count 1, Ms. Akumu Night, stated that; the juvenile offender is a son to the wife of his brother in law who came with a woman who already had the juvenile offender
20 from another relationship. The husband to the mother of the victim is the elder brother to her husband. She prayed that the juvenile offender should be sent back home, his parents should take responsibility that he will never repeat the same. The mother should sign a commitment that the boy will never live with them in the village and that the mother takes her back to his father in Masindi. He should not come back to the village as he will do worse things. The two victims
25 used to complain of pain in their private parts whenever he bathed them until later she got to learn of the repeated sexual assaults. The juvenile offender should not return to live with them. The juvenile offender has a father and the mother came with him. He cannot live within close proximity of the victims anymore.

30 The grandfather of the victim in the second count, Mr. Kolo Kakot, stated that the juvenile offender should go back to his father. He refused to study when his brother paid school fees for

him. The mother of the juvenile offender should be advised to apologise when her son misbehaves. She has been adamant all through. The court should provide them with a document to enable them access medical services so that the victims' health may be monitored. At school they are referred to as wives of the juvenile offender. The victim urinated on herself when she
5 moved out of court and this is out of fear for having seen the offender in court. The mother of the juvenile offender should live with them in harmony.

The juvenile offenders' uncle, Mr. Okumu Roscoe stated that; the juvenile offender is a son to his sister. It is of late that he came to know of this offence. He prayed that the juvenile offender is
10 handed over to him so that he takes him to Masindi and looks after him. His father broke up with the mother when the offender was still young. He will contact his father so that he knows where his son is. He lives in a different sub-county and is not aware of this case.

Contributing to the disposition hearing, Ms. Lamwaka Susan Christine, the Assistant Welfare
15 and probation Officer, Gulu attached to the remand home where the juvenile offender has been in custody while on remand stated that the juvenile should not return to the community and look for alternatives. One of the bothers will take care. The offender has been remorseful, he has been counselled, he is sorry and now knows the dangers of committing the offence. He is a leader. A custodial sentence will deter him from school, but if handled according to section 94 (1) of *The*
20 *Children Act*, he will be supervised by the probation officer of Masindi District. She recommend that the juvenile is placed under custody of his uncle. He should be bound over for six months in accordance with section 94 (1) (b) of *The Children Act* and on probation under section 94 (1) (f) of *The Children Act*. His interests as a child too should be considered. Future visits to the family where her mother lives should be considered and should be permitted.

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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
30 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 two toddlers, one of them repeatedly, for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and eight (8) 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 (1) year 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 (1) year and three (3) 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 11th May, 2017. I hereby take into account and set off one year and two months as the period the juvenile offender has already spent on remand.

Having taken into account that period, I consider that an order of detention for one month 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 twelve (12) months starting today, in respect of each of the counts. The two orders are to run concurrently. He is placed under the supervision of 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. 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, in respect of each of the counts. The two orders are to run concurrently. For his own personal safety and for the emotional well-being of the victims, the juvenile offender is further restrained from visiting the home where the offences were committed until each of the victims attains the age of eighteen years. In the event of violation of any of these conditions, the juvenile offender is to be taken back into custody to serve a period of one (1) year's 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 the orders, within a period of fourteen days.

Dated at Gulu this 8th day of August, 2018

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Stephen Mubiru
Judge,
8th August, 2018.

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