

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 0122 OF 2018

UGANDA **PROSECUTOR**

VERSUS

APIO NANCY **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case has come up for hearing today 8th August, 2018. The accused is indicted with the offence of Aggravated Defilement c/s 129 (3) and 4 (b) of The *Penal Code Act*. It is alleged that on 9th September, 2017 at Agagura "B" Ward in Pader District, while being a person who is HIV positive, the accused performed an unlawful sexual act with Onencan Shadick, a boy under the age of eighteen years.

When the case was called, the learned Resident Senior State Attorney, Mr. Omia Patrick intimated to court that he had successfully negotiated a plea bargain with the accused and her counsel. The court then invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Ms. Harriet Otto. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the voluntariness of the accused's consent to the bargain and appreciation of its implication in terms of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made the finding that the accused made a knowing, voluntary, and intelligent plea bargain, and after she had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; on 9th September, 2017 the accused who was resident

at Agagura "B" Ward in Pader District performed a sexual act with Onencan Shadick who is a nephew to the husband of the accused. The accused had lured him to his house and made him to have sex with her in the absence of her husband. The victim reported this to his mother and told her the accused had had sex with him twice. the matter was reported to Agagura Police Post where the accused was charged. She was examined on 12th September, 2017 and was found to be HIV positive. She was also found to be about 18 years old (pre-molar had fully erupted). The victim was examined on the same day and was found to be about 16 years old. He was HIV negative at the time. Both police forms 3A and 24A were tendered in court as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Aggravated Defilement c/s 129 (3) and 4 (b) of *The Penal Code Act*. In justification of the sentence of five (5) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement, mainly that she was HIV positive when she enticed the victim into the sexual act. In his submissions in mitigation of sentence, the learned defence counsel too adopted the mitigating factors outlined in the plea agreement, mainly that she is a first offender and only 18 years old, hence capable of reform.

In her *allocutus*, the convict prayed for lenience. She is an orphan. She has siblings at home and there is no one attending to them. Her uncle who took over their care when she was arrested passed away in October last year. She was in detention by then. She only became aware that she is HIV positive after being arrested.

I have reviewed the proposed sentence of five years' imprisonment in light of the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the court of appeal in its judgment of 8th February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the case of *Lubanga v. Uganda C.A. Cr. Appeal NO. 124 of 2009*, in its judgment of 1st April 2014, the court of appeal upheld a 15 year term of

imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 190 of 2004*, in its judgment of 6th February 2006, the Court of Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the offence defilement of a 13 year old girl but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal No. 36 of 2010* the Court of appeal in its judgment of 6th July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

The aggravating factors in this case are that; the accused was HIV positive at the time of the offence. On the other hand, the mitigating factors are that; the accused is 18 years old, has dependants and has admitted the offence by readily pleading guilty. The age difference between her and the victim is only two years and she is a first offender. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. I note that the convict has been in custody since 27th September, 2017, I hereby take into account and set off a period of ten months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of four (4) years and two (2) months, to be served starting today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, 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