

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT LUWERO

CRIMINAL SESSIONS CASE No. 0144 OF 2015

UGANDA **PROSECUTOR**

5 **VERSUS**

KAMBUGU AKIM **ACCUSED**

Before Hon. Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

10 When this case came up on 3rd January, 2018, for plea, the accused was indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 16th January, 2018. Today, there are three prosecution witnesses in attendance ready to testify but the accused has chosen to enter into a plea bargain with the prosecution. It is alleged that on 9th November, 2014 at Namasujju "B" village in Nakaseke
15 District, the accused had unlawful sexual intercourse with Nankanja Florence, without her consent.

When the case was called, the learned Resident State Attorney, Mr. Ntaro Nasur reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then
20 allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Kamugisha Augustine. 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
25 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 he 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; the accused who was 25 years old at the time went to the home of Nakintu Florence, found the victim a one Nankanja Florence who was mentally disabled though she was 23 years old at the time. He had sexual intercourse with her. her mother became suspicious and went behind the garden and found the girl with watery substance on her dress. Immediately he called the accused who was the person nearby and when questioned he admitted and prayed for forgiveness. The matter was reported to the police of Kasangombe. The accused was arrested and brought to the police. The victim was examined at Nakaseke Hospital and it was found that her hymen was ruptured and she had seminal fluid on her, was mentally disturbed and was HIV +ve. The accused too was examined and found to be 25 years old, mentally stable but HIV-ve. The respective police forms have been submitted to 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 Rape c/s 123 and 124 of the *Penal Code Act*. In justification of the sentence of eight (8) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; - the maximum penalty for the offence is death, and the victim is an imbecile. In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; the accused has pleaded guilty and he is still young and capable of reform. In his *allocutus*, the convict stated that he did not wish to add to the mitigating factors stated in the plea agreement.

I have reviewed the proposed sentence of eight years' imprisonment in light of *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 *Kalibobo Jackson v. Uganda C.A. Cr. Appeal No. 45 of 2001* where the court of appeal in its judgment of 5th December 2001 considered a sentence of 17 years' imprisonment manifestly excessive in respect of a 25 year old convict found guilty of raping a 70 year old widow and reduced the sentence from 17 years to 7 years' imprisonment. In the case of

Mubogi Twairu Siraj v. Uganda C.A. Cr. Appeal No.20 of 2006, in its judgment of 3rd December 2014, the court of appeal imposed a 17 year term of imprisonment for a 27 year old convict for the offence of rape, who was a first offender and had spent one year on remand. In another case, *Naturinda Tamson v. Uganda C.A. Cr. Appeal No. 13 of 2011*, in its judgment of 3rd February 5 2015, the Court of Appeal upheld a sentence of 18 years' imprisonment for a 29 year old appellant who was convicted of the offence rape committed during the course of a robbery. In *Otema v. Uganda, C.A. Cr. Appeal No. 155 of 2008* where the court of appeal in its judgment of 15th June 2015, set aside a sentence of 13 years' imprisonment and imposed one of 7 years' imprisonment for a 36 year old convict of the offence of rape who had spent seven years on 10 remand. Lastly, *Uganda v. Olupot Francis H.C. Cr. S.C. No. 066 of 2008* where in a judgment of 21st April 2011, a sentence of 2 years' imprisonment was imposed in respect of a convict for the offence of rape, who was a first offender and had been on remand for six years.

A plea of guilty offered readily before commencement of trial usually results in a discount of 15 anywhere up to a third of the sentence that would otherwise be imposed after a full trial. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, and the fact that the convict has already spent nearly two years on remand (having been charged on 2nd March, 2015), I accept the sentence proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and accordingly 20 sentence the accused to a term of imprisonment of eight (8) years, 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.

25 Dated at Luwero this 16th day of January, 2018.

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Stephen Mubiru
Judge.
16th January, 2018.

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