

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 0103 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

O. H. (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 one count of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*. It was alleged that on 5th February, 2018 at Pece Pawel Central in Gulu District, the juvenile offender performed an unlawful sexual act with Aber Vivian, a girl aged five (5) 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 5th February, 2018 the juvenile offender who lived in the same homestead with the parents of the victim where the mother of the victim was a tenant, performed a sexual act with the victim and was found in the act by one Lamwaka Mbabazi Chance. The offender first disappeared from home and returned later after some days. He was arrested on 15th February, 2018 and forwarded to Gulu Central police Station where he was charged. The victim was examined on 11th February, 2018 and found to be of the approximate age of five years. There were bruises around her private parts which were attributed to a blunt object. The juvenile offender was found to be 15 years old. The two 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 basis of his own plea of guilty adjudged 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 offender performed the act on a baby of five years. He also disappeared from home for close to ten days after committing the offence. At the time of the act the parents of the victim were tenants at the home and this strained the relationship of landlord and tenant. As a result the tenant were chased
5 from that place as if they were the ones at fault. The child suffered injuries as noted in the medical report. The maximum order of detention is three years. He has been in detention since 21st February, 2018, hence five months and about two weeks. He proposed that the court orders him to be in detention for two and a half years.

10 In response, defence counsel Ms. Alice Latigo submitted in mitigation that; the juvenile offender has been remorseful and has pleaded guilty. He was a pupil in P.6 at Mother Anjileta Primary School within Bar-Dege Division in Gulu Municipality. He lives with the father who separated with the mother when the juvenile was less than one year old and the mother lives in Fort Portal He is young and capable of reform. I pray for lenience. As he has admitted the offence, the
15 medical evidence indicates bruises on the vagina but the hymen was intact. She deduced that there are no lasting injuries, the five months at the remand home is long enough. She proposed that he is released on probation for eight months in line with section 94 (f) of *The Children Act*.

In his *allocutus*, the juvenile offender prayed for forgiveness. He promised will never do this
20 again. He prayed for forgiveness from the mother of the victim and from his father. He intends to go back to school. In her victim impact statement, the victim's mother Lakot Franker stated that she was not happy about what the juvenile offender did. It was not his first time to dcommit such an act. The first incident involved an even younger victim but he never learnt from it. She left her young child (the victim) with a sister and later she received the information that the juvenile
25 offender had defiled her. She went to the step mother of the offender and reported to her. The offender was inside the house and overheard her. He disappeared from the home. They could not handle the issues the following morning. The juvenile offender disappeared for close to one week. She was later told he was at Kyengera Market near the Pece Prison. She went to the market where she found him watching videos. She arrested him and brought him home so that
30 his father could talk to him or punish him. His father instead welcomed him with love and told him to eat and sleep. He did not handle the issue. The following morning she went to his father

who told her to do anything she wanted with his son because he had returned well. She told her husband but the father of the offender entered his house and did not speak to him. When her husband left the father of the offender came out. She reported to the police who told her to alert them when the juvenile offender returned. They came and arrested him. The offender needs to be
5 punished. The father of the offender evicted her after his son was arrested. He broke her door open and told her he did not want to see her at his home. She called her husband and found an alternative house at Kyengera. The victim now lives with her grandmother at Pece Acot.

The father of the juvenile offender, Mr. Odora Robert, apologised to the mother of the victim. He
10 stated further that in his family this has never happened. He did not deny what has been stated by the victim's mother but he did not chase her from his houses. He decided to make the tenant to leave. He had entrusted the mother of the victim to be the custodian of the house. He is ashamed of the act of his son. He will take him to a boarding school or to the village. He will counsel him. He was living in Amuru at the time where he works with the Local Government. The juvenile
15 offender lives with his step mother who appears not to have taken control of him. He will now take him and live with him. He apologised once again to the mother and prayed that she forgives the juvenile offender.

Contributing to the disposition hearing, Ms. Lamwaka Susan Christine, the Assistant Welfare
20 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 has both parents alive but they separated while he was young and the mother is in Fort Portal He lives with a step mother. He is a pupil in P.6 and he is 15 years old. At the remand home he appeared remorseful. He is in an active stage of adolescence which requires a lot of effort to counsel and guide by the father. He
25 has spent five months on remand. The juvenile offender prays for forgiveness from the complainants and court. She therefore proposed that he is bound over for twelve months to be of good behaviour in accordance with section 94 (1) (b) of *The Children Act*.

According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s
30 129 (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.

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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.

15 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.

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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

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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 a toddler while he was on bail for a similar offence for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and seven (7) 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 five (5) 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 21st February, 2018. I hereby take into account and set off five months as the period the juvenile offender has already spent on remand.

Having taken into account that period, I consider that an order of further 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. 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. During the period of probation, the juvenile offender is to live with his father who is not to hand over custody of the juvenile offender to any other person during that period. For his own personal safety and for the emotional well-being of the victim, the juvenile offender is further restrained from visiting the home where the offence was committed or being in the immediate physical presence of the victim until she 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 orders 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 10th day of August, 2018

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Stephen Mubiru
Judge,
10th August, 2018.



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

TO:

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

ORDER OF RELEASE ON PROBATION

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WHEREAS on the **10TH** day of **AUGUST** 2018, **O. H.** the **Juvenile Offender** in Criminal Session Case No.**0103** 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 **TWELVE (12) MONTHS**.

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THIS IS TO AUTHORISE, REQUIRE YOU, and to place the said **O. H.** 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 **TWELVE (12) MONTHS** starting today.
2. He is to remain in the custody of his father Mr. Odora Robert for the duration of that period.
3. He is not to be within the physical presence of the victim until she is 18 years old.

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 **ONE (1) YEAR'S** detention originally imposed.

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JUVENILE OFFENDER

In the presence of;

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PROBATION AND SOCIAL WELFARE OFFICER

GIVEN under my Hand and the Seal of the court this **10TH day** of **AUGUST, 2018.**

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JUDGE