

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT GULU**  
**CRIMINAL SESSIONS CASE No. 0110 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 26<sup>th</sup> September, 2017 at Lacor village in Gulu District, the juvenile offender performed an unlawful sexual act with Aloyo Prisca, a girl aged six (6) 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 26<sup>th</sup> September, 2017 at Lacor Trading Centre, Layibi Division in Gulu Municipality, the juvenile offender who was living with his step mother in the neighbourhood to the victim's parents' home met the victim at the borehole. Both had gone to collect water at about 2.00 pm. He sent the victim to pick a jerrycan from the offender's home which is close to the borehole. When the victim entered the house, the offender followed her, closed the door to the house and performed a sexual act with the victim on his parents' bed. He thereafter pushed the victim through the window after warning her that he will cut her to pieces with an axe should she informed anybody about the act. The victim went home crying because she had injuries and told her mother that the offender had had sex with her even prior to the act of that day. She had feared to tell the mother earlier. Her mother is Brenda Atim. The mother reported the matter to the police, the offender was arrested and charged. The victim was examined on that very day, 26<sup>th</sup> September, 2017 and found to be 6 years old. She had bruises around her face. The hymen was ruptured. There were *introitus* and the vagina was hyperaemic which he attributed to sexual

intercourse. He signed and stamped. The offender was also examined on the same day and his age was estimated at 15 years. He was mentally normal and there were no injuries on him. There were blood stains on his underwear and he found semen around the penis. The examination was done on the very day of the act. He was HIV negative. 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) (b) of *The Penal Code Act*.

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Submitting in aggravation of sentence, the learned State Attorney stated that; the victim was six years old. they were neighbours just like in the other case. The victim reported that the offender had been abusing her before. This was a repeated act. He is also not a first offender. He clearly he has a high appetite for defiling children of that age. He lacks parental guidance. The parents have abandoned him to the world. The victim suffered injuries, He pushed her through the window and sustained injuries to the face. The offender is better placed to be in custody. He is poisonous. Everywhere he goes he defiles. There is no guarantee that if released he will not defile again. In this case he was granted bail and he defiled another child while on bail. Any opportunity he gets to be out he is dangerous to children. Children should be protected from such a person. He was remanded on 10<sup>th</sup> October, 2017 and granted bail on 10<sup>th</sup> January, 2018 and committed another offence in the same month. He thus proposed that the juvenile offender should be placed in detention for three years.

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In response, defence counsel Ms. Alice Latigo submitted in mitigation that; the juvenile offender is remorseful and has pleaded guilty. He had been on remand for three months. He is a victim of separated family and lives with the step mother in Pece, the father lives in Atiak and mother in Fort Portal. He is 15 years old and can change. The father is in court He regrets the act and that is why he has pleaded guilty. I pray that he is released on probation for eight months in line with section 94 1 (d) of *The Children Act*. He should be bound to be of good conduct. The father should take personal responsibility.

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In his *allocutus*, the juvenile offender prayed for forgiveness and promised never commit a similar offence again. His father, Mr. Odora Robert, observed that he has a big task but he is now ready to face the challenge. Contributing to the disposition hearing, Ms. Lamwaka Susan Christine, the Assistant Welfare and probation Officer, Gulu attached to the remand home where  
5 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. While 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 has spent five months on remand. He prays for forgiveness  
10 from the complainants and court. I pray that he is bound over for twelve months to be of good behaviour in accordance with section 94 (1) (b) of *The Children Act*. At the time of committing the offence, they lived at Lacor Nurses quarters. He was given bail and still committed another offence. The juvenile however is sorry for his actions. It portrays dangers to young girls who are innocent and vulnerable. If not properly handled by the father, the juvenile he will be worse than  
15 expected. He should be a child of self control. He should engage in church activities. I recommend that he bound for seven months to be of good behaviour and probation for 8 months in accordance with section 94 (1) (b) of *The Children Act*. The father should take responsibility of his good upbringing.

20 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 offence was committed the convicted person was below the age of eighteen years. The  
25 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 children are different from adults for sentencing purposes. Sentencing a juvenile offender to  
30 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.

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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 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 after trickery and the manner in which the offence was committed involved a degree of violence, 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.

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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*, 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 was remanded on 10<sup>th</sup> October, 2017 and granted bail on 10<sup>th</sup> January, 2018. He has been in custody since 21<sup>st</sup> February, 2018. I hereby take into account and set off eight 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, since this is the second offence for which he has been adjudged responsible during this session, 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 (12) 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  
5 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  
10 severity of the orders, within a period of fourteen days.

Dated at Gulu this 10<sup>th</sup> day of August, 2018

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Stephen Mubiru  
Judge,  
10<sup>th</sup> August, 2018.

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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 **10<sup>TH</sup>** day of **AUGUST** 2018, **O. H.** the **Juvenile Offender** in Criminal Session Case No.**0110** 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**.

**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 **SIX (6) 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;

.....  
**PROBATION AND SOCIAL WELFARE OFFICER**

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

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**JUDGE**