

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 0114 OF 2018

UGANDA **PROSECUTOR**

VERSUS

ALIMOCAN PASKA **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case has come up for hearing today 8th August, 2018. The accused had initially been indicted with the offence of Aggravated Trafficking in Children c/s 4 (a) of *The Prevention of Trafficking in Persons Act*. It was subsequently amended to Abduction C/s section 126 (b) of *The Penal Code Act*. It is alleged that the accused on 25th February, 2018 at Kochgoma in Nwoya unlawfully took Lakica Irene, a baby aged 3 days old, out of the custody of her mother, Hellen Lakica, without the said mother's consent.

The trial commenced today 6th September, 2018 with the admission of evidence of one witness and the testimony of the victim's mother, after which the accused opted to change her plea. The indictment had accordingly been read to her and she has pleaded guilty.

The learned Resident Senior State Attorney, Mr. Patrick Omia has then narrated the following facts of the case; on 24th February, 2018 at around 1.00 am the accused went to Kwochgoma Health Centre IV with wrapped pieces of cloth and told the nurse on duty that she wanted to be accommodated because she had come from Lacor where she had delivered a premature. She slept on the bed next to that of the complainant who had delivered two days before at the same health unit. The following morning when the complainant was going to buy some items the accused told her to go and buy her airtime and the complainant left her child on the bed . On her return, the accused and the complainants child were missing. The matter was reported to the health workers at the facility and then to Koch Goma police station whereupon the police officer mounted a search for the accused. At around 1.00 pm she was arrested from her home in Pakia

village Lii Parish, Lii sub-county in Nwoya District and the baby was recovered. She was charged and the baby handed over to the complainant. Upon ascertaining from the accused that the facts as stated are correct, she has been convicted on basis of her own pleas of guilty, for the offence of Abduction C/s section 126 (b) of *The Penal Code Act*.

Submitting in aggravation of sentence, the learned State Attorney has stated that; the act of the accused taking away a child two days old risked the life and health of the child. Her intention was to permanently deprive the parents of the child of their child and to make her grow up not knowing her parents which is a fundamental right. The accused is about twenty years old who could have looked for male to have a child. She had a husband. She should not have used a shortcut. That act must be strongly condemned. The maximum penalty is seven years' imprisonment. She has spent about six months on remand, since 2nd March, 2018. He proposed that the court sentences her to five years' imprisonment from which the six months should be deducted.

In response, the learned defence counsel Mr. Tony Kitara prayed for a lenient sentence on grounds that; it is on record that the accused was indicted under the wrong law. It took the court two major amendments to arrive at the charges that were read to her. She has pleaded guilty. It wasailable and triable by a grade one Magistrate. Being indicted with a capital offence has been very traumatising. He prayed that the court be pleased to reprimand the convict. She is remorseful. She did not harm the baby. She had no ill intention of harming the baby. Five years is on the higher side. He proposed that one year's imprisonment would be sufficient.

In her *allocutus*, the convict prayed to be sentenced to community service and for forgiveness. She has a young child at home. She gave birth on 2nd March, 2017. She has two children, one five years old and the other a year old. She needed the child she abducted to show to her husband. When she left her husband he thought she had conceived and she wanted to get back to him with a child. She had lied to him that she had conceived. She had left him for one year. She will never do it again. She apologised to the mother and asked her to forgive her.

In her victim impact statement, the mother of the abducted child stated that she would have forgiven the convict but she initially denied having committed the offence. The convict wanted to play with her psychology thinking she was a first time mother, not knowing that she had four other children. Since she has apologised to her, she may be given a lenient punishment. What is forgiven on earth is also forgiven in heaven.

The offence for which the two accused A1 and A2 have been convicted is punishable by the maximum penalty of seven years' imprisonment under section 129 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of the worst cases of Abduction. I do not consider this to be a case falling in that category. I have considered the aggravating factors being the infancy of the victim whose life and well being was imperiled by being removed from her mother's care. Accordingly, in light of those aggravating factors, I have adopted a starting point of twenty three years' imprisonment.

From this, the convict is entitled to a discount for having 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 convict readily pleaded guilty, as one of the factors mitigating her sentence. In light of her plea and persuaded by the English practice, I propose at this point to reduce the sentence by one third only from the starting point of three years to a period of two years' imprisonment.

The seriousness of this offence is mitigated by a number of factors. The fact that the convict is a first offender, did not intend to harm the child, is contrite for her action and is a relatively young mother of two, she deserves more of a rehabilitative than a deterrent sentence. The severity of the

sentence she deserves for those reasons has been tempered and is reduced further from the period of two years' imprisonment, proposed after taking into account her plea of guilty, now to a term of imprisonment of one year.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing an accused. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, requires the court to “deduct” the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This requires a mathematical deduction by way of set-off. From the earlier proposed one (1) years' imprisonment arrived at after consideration of the mitigating factors in favour of the convict, she having been on remand since 2nd March, 2018I hereby take into account and set off six months as the period the convict has already spent on remand. I therefore sentence her to six (6) months' imprisonment to be served starting today.

Having been convicted and sentenced on her own plea of guilty, the convicts is advised that she has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Gulu this 6th day of September, 2018

.....
Stephen Mubiru
Judge,
6th September, 2018.