

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 012 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

RWOTOMIYO JACKSON **JUVENILE OFFENDER**

Before: Hon Justice Stephen Mubiru.

10 **PROCEEDINGS**

23rd November, 2018.

12.27 pm

Attendance

15 Mr. Akejo Moses, Court Clerk.
Mr. Patrick Omia Resident Senior State Attorney, for the prosecution.
Ms. Harriet Otto, Counsel for the juvenile offender on state brief
The juvenile offender is present in court

20 **Juvenile offender:** I speak Acholi.

Court: the indictment is read and explained to the juvenile offender in the Acholi Language.

Juvenile offender: I have understood the indictment. It is a false allegation.

Court: A plea of guilty is entered.

25
Stephen Mubiru
Judge
23rd November, 2018.

State Attorney: The following are the facts of the case; on 15th June, 2017 at Pawatomero
village in Nwoya District, the victim Apiyo Franka aged 11 was left home
30 by her mother together with her siblings when the juvenile offender came
picked the victim and had sexual intercourse with her. The mother
searched for her and found her in the house of the offender. He was found
to be about 18, HIV negative. The victim was found to be 13 years old
with a ruptured hymen.

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State Attorney: I pray to tender in the two medical forms.

Defence Counsel: I have no objection.

Court: They are received as part of the facts and are marked P. Ex 1 and P. Ex. 2.

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Stephen Mubiru
Judge
23rd November, 2018.

10 **Juvenile Offender:** I have understood the facts. The facts are correct.

Court: The juvenile offender is found responsible for the offence of Aggravated Defilement c/s 129 (3) (4) (a) of *The Penal Code Act* on basis of his own plea of guilty.

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Stephen Mubiru
Judge
23rd November, 2018

Resident State Attorney: cases of defilement are rampant. the victim was picked from her
20 parents home by the juvenile offender. He had no respect for the home. they were neighbours and the victim trusted him as such. He ought to have protected her.

Defence Counsel: the juvenile offender has pleaded guilty being remorseful he is s first
25 offender, remorseful, juvenile. He has a swollen right leg. He has been prison for one year and four months. He is the eldest son to the parents helping them to look after the other siblings

Allocutus of the Juvenile Offender: I have swollen leg and from prison I am not being treated.

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DISPOSITION ORDER

The accused has been convicted on his own plea of guilty for the offence of Aggravated Defilement c/s 129 (3) and 4 (d) of *The Penal Code Act*, pursuant to a plea bargain. I have
35 considered the submissions of the learned State Attorney in aggravation of sentence, those of

defence counsel in mitigation of sentence as well as the *allocutus* of the accused, all justifying the proposed sentence of six (6) years' imprisonment proposed in the plea agreement.

I have reviewed the proposed sentence in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. 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 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 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.

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.

Orders of that kind may be justified where the offence was committed with brutality, or where
5 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
10 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
15 juvenile offender defiled a child aged only two years 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.

Against this, I have considered the fact that the juvenile offender pleaded guilty. The practice of
20 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
25 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
30 it by one third to two (2) years.

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 year and seven 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 22nd June, 2017. I hereby take into account and set off one year and five months as the period the juvenile offender has already spent on remand. Having taken into account that period, I therefore sentence the juvenile offender to the time served. Sufficient punishment.

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Having been found responsible and the disposition order 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 that order, within a period of fourteen days.

15 Dated at Gulu this 23rd day of November, 2018

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Stephen Mubiru
Judge,
23rd November, 2018.