

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0070 OF 2018

UGANDA **PROSECUTOR**

5

VERSUS

AYO TABU alias EMMANUEL **ACCUSED**

10 **Before: Hon Justice Stephen Mubiru.**

SENTENCE AND REASONS FOR SENTENCE

This case has come up today 23rd November, 2018 in a special session for plea bargaining. The
15 accused is indicted with the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. It is alleged that on 3rd August, 2017 at Acet Trading Centre, in Omoro District, the accused performed an unlawful sexual act with Apiyo Winnie, a girl aged 13 years.

When the case was called, the learned State Resident Attorney, Ms. Catherine Nakaggwa has
20 reported that she successfully negotiated a plea bargain with the accused and his counsel. The court has invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Okot Edward. The court has ascertained that the accused has 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
25 of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there is 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 has executed a confirmation of the agreement, has gone ahead to receive the agreement to form part of the record. The accused has then been allowed to take plea whereupon a plea of guilty has been
30 entered.

The court has invited the learned Resident State Attorney to narrate the factual basis for the guilty plea, whereupon she has narrated the following facts; on 3rd August, 2017 Omoro district,

the victim aged 13 had gone to that trading centre to grind maize. She left the flour at the roadside and went to buy a polythene bag. The accused picked the flour and took it to his house. When she followed him he grabbed her, threw her down and had sexual intercourse with her. The mother found them red handed and the matter was reported to the police. On arrest and
5 medical examination, the accused was found to be aged 18, mentally sound and HIV negative. The victim had bruises in her private parts and her hymen was torn. The respective medical examination reports too have been admitted as part of the facts.

Upon ascertaining from the accused that the facts as stated are correct, he has been convicted on
10 his own plea of guilty for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. In justification of the sentence of six (6) years' imprisonment proposed in the plea agreement, the learned Resident State Attorney has stated that; these cases are rampant in the area. It was pre-mediated, he confiscated the maize flour and that gave him an opportunity to commit the offence. Learned defence counsel has stated the key mitigating factors considered to
15 have been that; he has pleaded guilty and is remorseful. His age at 18 was a young age. By way of *allocutus*, the accused has stated that; he prays for lenience and he will never repeat the act. He has learnt a lesson. He should be given a chance to go back to school.

I have reviewed the proposed sentence in light of *The Constitution (Sentencing Guidelines for
20 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 *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the court of appeal in its judgment of 8th February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the
25 case of *Lubanga v. Uganda C.A. Cr. Appeal No. 124 of 2009*, in its judgment of 1st April 2014, the court of appeal upheld a 15 year term of imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 200 of 2004*, in its judgment of 6th February 2006, the Court of Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the
30 offence of defilement of a 13 year old girl but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal No. 36 of 2010* the Court of appeal in its judgment of 6th

July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old accused, who had spent two years on remand, for
5 defiling and impregnating a fifteen year old school girl.

A plea of guilty offered readily before commencement of trial usually results in a discount of 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
10 this nature, I consider the sentence proposed in the plea agreement entered into by the accused, his counsel, and the State Attorney to be appropriate.

In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that
15 the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict has been in custody since 11th August, 2017 and I hereby take into account and set off one year and three months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of four (4) years and eight (8) months, to be served starting today.

20 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 Gulu this 23rd day of November, 2018

.....
Stephen Mubiru
Judge,
23rd November, 2018.