

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0198 OF 2017

UGANDA **PROSECUTOR**

5

VERSUS

LAKWOR ROBERT **ACCUSED**

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

SENTENCE AND REASONS FOR SENTENCE

15 This case has come up today 23rd November, 2018 in a special session for plea bargaining. The accused is indicted with the offence of Rape c/s 123 and 124 of *The Penal Code Act*. It is alleged that between 10th and 11th May, 2017 at Owner Paminrut village, Amuru District, the accused had unlawful carnal knowledge of Amono Monica without her consent.

20 When the case was called, the learned State Resident Attorney, Ms. Catherine Nakaggwa has 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. Silver Oyet Okeny. 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 10th May, 2017 in Amuru at 6.00

pm the victim aged 44 years went to the home of a neighbour to buy cassava and did not find her but found the accused. On her way back home the accused followed her, chased her, dragged her to a nearby bush and raped her. She was rescued and the accused on arrest was found to be aged 32 years and mentally sound. He was HIV negative. The victim was found to be 44 years old and her genitals were normal. 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 his own plea of guilty for the offence of Rape c/s 123 and 124 of *The Penal Code Act*. In justification of the sentence of ten (10) years' imprisonment proposed in the plea agreement, the learned Resident State Attorney has stated that; the Victim was 44 years old and the convict was 34. He should have respected her as an older person. Learned defence counsel has stated the key mitigating factors considered to have been that; he was 32 years old and capable of reform. He has six children and can still be useful to them. His willingness to plead guilty is a sign of remorse. By way of *allocutus*, the accused has stated that; he prays for forgiveness. He suffers from ulcers.

I have reviewed the proposed sentence in light of *The Constitution (Sentencing Guidelines for 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 *Kalibobo Jackson v. Uganda C.A. Cr. Appeal No. 45 of 2001* where the court of appeal in its judgment of 5th December 2001 considered a sentence of 17 years' imprisonment manifestly excessive in respect of a 25 year old convict found guilty of raping a 70 year old widow and reduced the sentence from 17 years to 7 years' imprisonment. In the case of *Mubogi Twairu Siraj v. Uganda C.A. Cr. Appeal No.20 of 2006*, in its judgment of 3rd December 2014, the court of appeal imposed a 17 year term of imprisonment for a 27 year old convict for the offence of rape, who was a first offender and had spent one year on remand. In another case, *Naturinda Tamson v. Uganda C.A. Cr. Appeal No. 13 of 2011*, in its judgment of 3rd February 2015, the Court of Appeal upheld a sentence of 18 years' imprisonment for a 29 year old appellant who was convicted of the offence rape committed during the course of a robbery. In *Otema v. Uganda, C.A. Cr. Appeal No. 155 of 2008* where the court of appeal in its judgment of 15th June 2015, set

aside a sentence of 13 years' imprisonment and imposed one of 7 years' imprisonment for a 36 year old convict of the offence of rape who had spent seven years on remand. Lastly, *Uganda v. Olupot Francis H.C. Cr. S.C. No. 066 of 2008* where in a judgment of 21st April 2011, a sentence of 2 years' imprisonment was imposed in respect of a convict for the offence of rape, who was a first offender and had been on remand for six years.

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 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 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 25th May, 2017 and I hereby take into account and set off one year and six months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of eight (8) years and six (6) months to be served starting today.

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.

Dated at Gulu this 23rd day of November, 2018

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Stephen Mubiru
Judge,
23rd November, 2018.