

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0133 OF 2017

UGANDA **PROSECUTOR**

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VERSUS

ODONG NICHOLAS **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 Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. It is alleged that on 28th April, 2017 at Laliya village, Bungatira sub-county, Guklu District, the accused performed an unlawful sexual act with Apiyo Flavia, a girl aged 4 years.

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. Okot Edward. The court has ascertained that the accused has full understanding of what a guilty plea means and its consequences, the
25 voluntariness of the accused’s consent to the bargain and appreciation of its implication in terms 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
30 record. The accused has then been allowed to take plea whereupon a plea of guilty has been 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; in the month of January, 2017 at Lalia village, the victim aged four years was left home by her mother and later when the mother returned, the victim complained that her private parts were painful. The victim complained that it had been done to her multiple times. The mother reported and upon arrest he was examined and found to be about 18 years old mentally sound and HIV negative. She was examined and found to be 4 years and bruises in her private parts. The hymen was intact. The respective medical examination reports too have been admitted as part of the facts.

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10 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 Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. In justification of the sentence of nine (9) years' imprisonment proposed in the plea agreement, the learned Resident State Attorney has stated that; the age difference of 14 years. He was a neighbour and thus breached the trust of the parents. Learned defence counsel has stated the key mitigating factors considered to have been that; he has admitted guilt. He is also a young man. He was a juvenile at the time he committed the offence. Has been on remand one year and 8 months now. He is epileptic. By way of *allocutus*, the accused has stated that; he prays for lenience so that he can go back to school.

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20 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 *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 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 offence defilement of a 13 year old girl but had spent three years on remand before sentence. In

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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 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 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.

Considering that the convict was a juvenile at the time he committed the offence the maximum punishment of which would have been three years' detention in light of section 94 (1) (g) of *The Children*, and 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 years, i reject the plea agreement. This is because the circumstances of this case would have justified not more than one years and six months' detention. Already he has been in adult detention for one year and nine months. That period of detention serves as sufficient punishment for the offence. He should therefore be set free forthwith on account of "time served" unless there are other lawful reasons to keep him in custody.

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 disposition order, 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.

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