

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0012 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **ADUBANGO CHARLES** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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This case came up on 10th January 2018, in a special session for plea bargaining. The accused was indicted with the offence of Simple Defilement c/s 129 (1) of The *Penal Code Act*. It was alleged that on 22nd February 2016 at Palley West Village in Nebbi District the accused had unlawful sexual intercourse with Kayenparwoth Saviour, a girl under the age of eighteen years.

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When the case was called, the learned Resident State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then invited the Resident State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Ronal Onencan. The court then went ahead to ascertain that the accused had 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 of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was 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 had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

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The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 22nd February, 2016 as the victim was going to

the garden, she met the accused whom she came to know during an introduction ceremony. He walked beside her and attempted to engage her in a conversation. The accused met his friends and they tried to stop the victim but she refused. Later she proceeded to the garden to uproot cassava. The accused and his friends followed and they sat in the garden. After a short while the
5 accused moved to the victim grabbed her and in her attempt to make an alarm the accused blocked her mouth, wrestled her down removed the knickers and had sexual intercourse with her. The accused was found on top of the victim and he fled immediately. He was followed up to his home. The father of the accused advised them to go the L.C. who reported to Ndeu Police Post in Ndeu sub-county. The accused was arrested and admitted having committed the offence in his
10 charge and caution statement. Both were examined; the accused in Nebbi on 23rd February, 2016. He was of the apparent age of 28 years and of normal mental status The victim was examined at Paminya Health Centre III and found to be between 16 - 17 years old. The vulva was soiled with silvery mucus and the hymen was already ruptured for a long time and there was no other physical injury. The examination was on 22nd February, 2016. Both police forms 24
15 and P.F. 24 were tendered as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Simple Defilement c/s 129 (1) of The *Penal Code Act*. In justification of the sentence of three (3) years' imprisonment proposed in the plea agreement, the
20 learned State Attorney adopted the aggravating factors outlined in the plea agreement, being; this type of offence is on the rise in the region, the accused should have protected the girl rather than ravished her and there is need to protect the girl child, . The learned defence counsel adopted the mitigating factors outlined in the plea agreement too, being; the accused is a first offender, he has been on remand for two years, he has four children two of whom are sickly, and their mother left
25 the home. The accused did not wish to say anything additional in his *allocutus*, The victim was not available in court to make her victim impact statement.

I have reviewed the proposed sentence of three years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also
30 reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Abot Richard v. Uganda C.A. Crim. Appeal No. 190 of 2004*, where 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 and that of *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
5 year old accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

The aggravating factors in this case are that; the offence attracts a maximum punishment of life imprisonment; the victim was only 16 - 17 years old at the time of the offence. The accused was
10 28 years old at the time and I have considered the age difference between the accused and the victim. On the other hand, the mitigating factors are that; the accused has dependants and has admitted the offence by readily pleading guilty. He is also a first offender and has been on remand for nearly one year.

15 Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to a term of imprisonment of three (3) years, 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 Arua this 10th day of January, 2018

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Stephen Mubiru
Judge,
10th January, 2018.