

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT LUWERO

CRIMINAL SESSIONS CASE No. 0406 OF 2015

UGANDA PROSECUTOR

VERSUS

MUGONYA KISIRI RONALD ACCUSED

Before Hon. Justice Stephen Mubiru

SENTENCE AND REASONS FOR SENTENCE

When this case came up on 3rd January, 2018, for plea, the accused was indicted with the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 16th January, 2018. Today, there are two prosecution witnesses in attendance ready to testify but the accused has chosen instead to enter into a plea bargain with the prosecution. It is alleged that during the month of May, 2014 at Nakaseke Town Council in Nakaseke District, the accused being a person in authority over the victim, performed an unlawful sexual act with Nakitende Patience, a girl aged 14 years.

When the case was called, the learned Resident State Attorney, Mr. Ntaro Nasur reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Kamugisha Augustine. 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.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the accused was working as a cook and at the same time as mathematics teacher in Nakaseke Parents' Primary School. On the material day, the accused called the victim at his home to pick some money and when the victim went to his house the accused forcefully grabbed her and had sexual intercourse with her. Thereafter the victim went and reported the matter to the school administration who took it over and reported to the police. The accused was arrested. She was examined on P.F.3A and was found to be 14 years old and with the hymen ruptured. Although the examination took place after two months. The accused was examined and found to be 29 years of age and of normal mental status. Both police forms; P.F. 3A and P.F 24A 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 Aggravated Defilement c/s 129 (3) and (4) (c) of *The Penal Code Act*. In justification of the sentence of six (6) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; the maximum penalty for the offence is death, the convict was a person in authority over the victim and the victim was only 14 years old.

In response, the learned defence counsel prayed for a lenient custodial sentence on grounds that; the convict is a first offender at the age of 34 years. He has a family with three children. He has been on remand for close to four years now and suffers from paralysis in the right leg. He has readily pleaded guilty and is remorseful. In his *allocutus*, the convict prayed for lenience on grounds that he needs help because of the paralysis. He had a blood clot in the past and he now suffers occasional headaches.

According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, is death. However, this punishment is by sentencing convention reserved for the most egregious forms of perpetration of the offence such as where it

has lethal or other extremely grave consequences. Since in this case death was not a very likely or probable consequence of the act, I have discounted the death sentence.

Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of life imprisonment. Only one aggravating factor prescribed by Regulation 22 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, is applicable to this case, i.e. the victim was defiled repeatedly by an offender who is supposed to have taken primary responsibility of her. However, for reasons stated later in this sentencing order, I do not consider the sentence of life imprisonment to be appropriate in this case.

When imposing a custodial sentence on a person convicted of the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 3 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors or reduced on account of the relevant mitigating factors.

Although the manner in which this offence was committed did not create a life threatening situation, in the sense that death was not a very likely immediate consequence of the act such as would have justified the death penalty, they are sufficiently grave to warrant a deterrent custodial sentence. At the time of the offence, the accused was 30 years old and the victim 14 years old. The age difference between the victim and the convict was 16 years. He abused a fiduciary relationship of the trust with the victim. However I am mindful of the decision of the Court of Appeal in *Ninsiima v Uganda Crim. Appeal No. 180 of 2010*, where the Court of appeal opined that the sentencing guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. In that case, it set aside a sentence of 30 years' imprisonment and substituted it with a sentence of 15 years' imprisonment for a 29 year old appellant convicted of defiling an 8 year old girl.

In her victim impact statement, the victim's guardian Nassanga Mary stated that she is the one meeting school fees requirement for the victim. The victim is now in senior three. She was diagnosed with syphilis as a result of the sexual act but she was treated and is now well. The

guardian has no problem with the proposed sentence, although the accused threatened to harm her on release and that he would burn the school. If he can retract that threat before court, she would have no problem with the proposed sentence. The accused was said to have made that utterance when he was recording his statement at Nakaseke Police Station. The convict having denied that accusation and there being no evidence of it on the police file, the convict was given the benefit of the doubt.

I have considered the decision in *Kato Sula v. Uganda, C.A. Crim. Appeal No 30 of 1999*, where the Court of Appeal upheld a sentence of 8 years' imprisonment for a teacher who defiled a primary two school girl. In *Bashir Ssali v. Uganda, S.C. Crim. Appeal No 40 of 2003*, the Supreme Court, on account of the trial Court not having taken into account the time the convict had spent on remand, reduced a sentence of 16 years' imprisonment to 14 years' imprisonment for a teacher who defiled an 8 year old primary three school girl. The girl had sustained quite a big tear between the vagina and the anus. In *Tujunirwe v. Uganda, C.A. Crim. Appeal No 26 of 2006*, where the Court of Appeal in its decision of 30th April 2014, upheld a sentence of 16 years' imprisonment for a teacher who defiled a primary three school girl.

In light of the sentencing range apparent in those decisions, the aggravating and mitigating factors mentioned before and the mandatory requirement of Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* as applied in Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, I have considered the proposed sentence proposed in the plea agreement to be appropriate in the circumstances. I accordingly sentence the convict to a term of imprisonment of six (6) years, to be served starting today.

Having been convicted on his own plea of guilty, the convict is advised that he has a right of appeal against the severity and legality of the sentence, within a period of fourteen days.

Dated at Luwero this 16th day of January, 2018.

.....

Stephen Mubiru

Judge.

16th January, 2018.

