

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0079 OF 2018**

UGANDA PROSECUTOR

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VERSUS

OCHIENG DAVID ACCUSED

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

SENTENCE AND REASONS FOR SENTENCE

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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) (d) of *The Penal Code Act*. It is alleged that on 2nd January, 2017 at Kirombe Alokulum village, Layibi Division in Gulu District, the accused performed and unlawful sexual act with Aryemo Susan, a girl aged 16 years, who is a person with disability.

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. Walter Ladwar Okidi. 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; on 2nd January, 2017 at Kironde village in Gulu District, the victim, who is a patient of epilepsy, was home alone when the accused led her to the nearby bush and had sexual intercourse with her. He was found by Oloya and reported to the parents of the victim. The matter was reported to Gulu Police Station. He was arrested and on examination he was found to be 33 years old and mentally sound. The victim was found to be 16 years old and mentally sub-normal with a recently ruptured hymen. The respective medical examination reports too have been admitted as part of the facts.

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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) (d) of *The Penal Code Act*. In justification of the sentence of seven (7) years' imprisonment proposed in the plea agreement, the learned Resident State Attorney has stated that; the age difference between the convict and the victim of 17 years. The convict took advantage of the vulnerability of the victim as a patient of epilepsy. Learned defence counsel has stated the key mitigating factors considered to have been that; the age of the victim being 16 and the remorsefulness of the accused and willingness to change, mitigate the offence. By way of *allocutus*, the accused has stated that; he is a parent with responsibilities of paying fees.

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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

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offence 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 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.

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 10th January, 2017 and I hereby take into account and set off one year and ten months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of five (5) years and two (2) 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

Stephen Mubiru

Judge,

23rd November, 2018.