

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT LUWERO

CRIMINAL SESSIONS CASE No. 0299 OF 2014

UGANDA

PROSECUTOR

VERSUS

SEGAWA BAKALI

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) (a) of the *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 18th 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 on 3rd February, 2014 at Natigi village in Nakaseke District, the accused performed an unlawful sexual act with Nakato Winnie, a girl aged 8 years.

When the case was called, the learned Resident State Attorney, Ms. Beatrice Odongo reported that she 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 Gastone. 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 she narrated the following facts; the accused was residing at Naktiki village Ngoma sub-county in Nakaseke District. On 3rd February 2014 at about 4.00 pm he went to the complainant's home in his absence, where he found the victim seated alone at the veranda. He grabbed the victim by the hand and took her to a nearby bush where he asked for sex from the victim in exchange for three sweets. He placed the victim down and had sexual intercourse after giving her the first sweet. After the act the accused added the other two sweets and asked the victim to dress up and go back home. The victim reported her ordeal to the father when he returned and handed over the two sweets to the father who then reported the case to Ngoma Police Station and the accused was arrested and charged with aggravated defilement. The victim was examined at Ngoma Health Centre IV on 4th February 2014 by Dr. Mukozi Muhereza where she was found to be between 7 - 8 years and also had bruises on the inner aspect of the left thigh. He stamped and signed the police form 3A. The accused was also examined at Ngoma Health Centre IV on 4th February 2014 and his mental status was normal and his age was 49 years. The doctor signed and stamped the medical form. 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) (a) of *The Penal Code Act*. In justification of the sentence of seven (7) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; the offence is rampant within the district, the victim was only eight years old and the offence caused injury and trauma to the victim.

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 52 years. He has been on remand for four years. He was also looking after his mother and had three children. In his *allocutus*, the convict stated he had nothing to add onto what had already been stated in mitigation.

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 49 years old and the victim 8 years old. The age difference between the victim and the convict was 41 years. He was old enough to be the grandfather of 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 the victim impact statement, the police officer who investigated the case indicated that he had been in touch with the victims and they found the sentence proposed in the plea agreement appropriate. I have also seen the convict in the dock and he looks so emaciated and as a result, much older than his stated age. He also has readily pleaded guilty and appears remorseful.

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 sentence proposed in the plea agreement to be appropriate in the circumstances. I accordingly sentence the convict to a term of imprisonment of seven (7) 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 18th day of January, 2018.

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Stephen Mubiru
Judge.

18th January, 2018.