

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0038 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **DROMA NATAL** **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 Aggravated Defilement c/s 129 (3) and 4 (a) of *The Penal Code Act*. It was alleged that on 30th July 2016 at Vurra village in Arua District, the accused had unlawful sexual intercourse with Gasi Monica, a girl below the age of 14 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 State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Ronald 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 Resident State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on the night of 30th July, 2016 the victim

and her young sisters went to sleep and the accused followed thereafter and went to have sexual intercourse with the victim. She woke up from sleep and began shouting. This attracted the mother of the victim who responded. The accused on seeing the victim's mother got up and ran into a nearby cassava garden. He was chased by the victim's mother but failed to arrest him. the
5 accused had removed his clothes while having sexual intercourse and that is how he was traced and arrested. He admitted in his charge and caution statement that he had sex with the victim. She was examined from Logiri Health Centre III. She was of the apparent age of 9 years. The genitals were swollen, the clitoris red and hymen ruptured. The cause was possible sexual intercourse. The examination was done 1st August, 2016. He was examined from the Municipal
10 Health Centre III on P.F 24A and was found to be 19 years old and of normal mental status.. Both police forms 24 and P.F 3A 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*
15 *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. The learned defence counsel adopted the mitigating factors outlined in the plea agreement too. In his *allocutus*, the convict had nothing to add to what was stated in the plea agreement.

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I have reviewed the proposed sentence of six years' imprisonment 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
25 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
30 a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 190 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 *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
5 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.

10 The aggravating factors in this case are that; the offence is punishable by death, it is rampant in the region, the victim was ravished in her parents' home, and she was only 9 years old while the accused was 19 years old. On the other hand, the mitigating factors are that; the accused is a first offender, remorseful; he has readily pleaded guilty and is a relatively young man capable of reform. Having considered the sentencing guidelines and the current sentencing practice in
15 relation to offences of this nature, and the fact that the convict has already spent five months on remand, 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 six (6) 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.

Dated at Arua this 10th day of January, 2018

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Stephen Mubiru
Judge,
10th January, 2018.