

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI
CRIMINAL SESSIONS CASE No. 0083 OF 2017

UGANDA **PROSECUTOR**

5 **VERSUS**

LEKU CAESAR **ACCUSED**

Before Hon. Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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When this case came up this morning of 12th February, 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 during the afternoon starting at 2.30 pm. This afternoon, 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 21st September, 2014 at Luzzi Zone in Luwero District, the accused performed an unlawful sexual act with Mutonyi Jesca, a girl aged 12 years.

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The court has invited the Principal State Attorney Mr. Okello Richard to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Ndahura Edward. 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 Principal State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; the victim was 11 years old at the time

of the incident. She was a pupil at Pakele Army Primary School in Primary four. On the night of 29th January 2017 at 1.00 am the victim was sleeping in the house with her younger sister when the accused entered into the house, undressed the victim and started to have sex with her. She woke up and was able to identify the accused but she could not make an alarm because he had squeezed her neck. After some time the accused walked out of the house. The following morning the victim reported the incident to the father and subsequently the accused was arrested and taken to Pakele Police Post from where he was taken to Adjumani Hospital for examination and estimated to be about 20 years old at the time and of normal mental status. The examination was done by Dr. Lubaga Davis a medical officer on 30th January, 2017. Similarly the victim was also examined on 29th January 2017 from Adjumani Hospital by Dr. Joseph Idaru and found that she was below 13 years, the hymen was ruptured indicating that she was sexually assailed. She was also tested for HIV and she was found to be negative on 30th January 2017. On basis of this he was accordingly charged. Both police forms P.F. 24A, P.F 3A and the HIV test results slip were tendered as part of the facts.

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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 six (6) years' imprisonment proposed in the plea agreement, the learned Principal State Attorney submitted that the age of the victim at 11 years only, the crime is rampant, it happened in her parents' home. The learned defence counsel in mitigation submitted that the convict has not waste court's time. He has no past criminal record. He appears remorseful and still a youth who has many productive years ahead. He can still be useful to society. In his *allocutus*, the convict state that he is sorry for what he did, he was enslaved by Satan. The punishment should enable him return to society. He is not married yet and he is an orphan. He prayed for a punishment that will not waste his future life.

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 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. 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 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.

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Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, and the fact that the convict has already spent one year on remand, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the Principal State Attorney and in accordance thereto, sentence the accused to a term of 20 imprisonment of six (6) years, 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.

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Dated at Adjumani this 12th day of February, 2018

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Stephen Mubiru
Judge,
12th February, 2018.

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