

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0174 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OCIBA GADAFI** **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 10th September 2016 at Mamba village in Nebbi District, the accused performed an unlawful sexual act with Akello Zulaika, a girl aged 3 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 10th September 2016, the victim was

left at her parents' home in Maba village Pajor Parish in Nebbi District. The accused came and carried away the victim to his parent's house with the promise that the accused was going to shave her hair. While in the house he told her to lie down on empty sack. He removed his trousers and pushed his penis into her private parts and had sexual intercourse with the victim.

5 As a result of the pain she started crying. The sister to the accused responded and found the door closed through the window, saw the accused having sexual intercourse. The sister immediately informed the mother of the victim who was at her home and came to the scene but could not find the accused. The mother examined the victim in her private parts and found semen and some bleeding. The father of the victim was informed and the victim was taken to the hospital, the

10 accused was on the run but was later arrested by the L.C.1 and in his Charge and caution statement admitted the offence. The victim was examined at Erusi Health Centre three and the accused was examined in Nebbi Hospital. The examination shows that she was about three years old and upon examination of the genitals they found some mild impuraemia of the labia majora and mild frictional force was the cause. A lab test was carried out on 14th September 2016 and

15 the accused was examined on 15th September at Nebbi General Hospital. 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*

20 *Code Act*. In justification of the sentence of ten (10) 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 say in addition to what is contained in the plea agreement.

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I have reviewed the proposed sentence of ten 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

30 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*,
5 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
10 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.

15 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 3 years old while the accused was 20 years old. Her trust was abused by the accused using false pretences. On the other hand, the mitigating factors are that; the accused is a first offender, he has readily pleaded guilty and is a relatively young man capable of reforming. He is an orphan, has a child of his
20 own and is remorseful. 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 and four 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 ten (10) years, to be served starting today. Having been convicted
25 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.