

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI
CRIMINAL SESSIONS CASE No. 0053 OF 2017

UGANDA **PROSECUTOR**

5 **VERSUS**

LEKU AZIMU **ACCUSED**

Before Hon. Justice Stephen Mubiru

10 **SENTENCE AND REASONS FOR SENTENCE**

When this case came up on 12th February, 2018, for plea, the accused was indicted with the offence of Rape c/s 123 and 124 of the *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 20th February, 2018. Today, one prosecution witness had
15 been examined in chief but before the cross-examination could commence, the learned Resident State Attorney prosecuting the case Ms. Bako Jacqueline sought leave to amend the indictment which when granted, she amended the indictment to one of Simple Defilement c/s 129 (1) of *The Penal Code Act*. It was alleged that on 16th April, 2016 at Gbalala village in Moyo District, the accused performed an unlawful sexual act with Asio Janet, a girl below the age of 18 years.
20 When the indictment was read to him afresh, the accused pleaded guilty.

The learned Resident State Attorney has narrated the following facts of the case; on 16th April 2016, at around 9.00 pm, the victim who was with the sister of the accused called Concy went to a disco at Gbgalala. While at the disco the accused asked the victim to escort him to his uncle's
25 place for something. When the victim accepted, when they got to a big tree, the accused told the victim to undress and lie down. He had sexual intercourse with her and warned her not to tell anyone otherwise he would kill her. When the victim returned home she did not find anyone at home since her father Ayiga Geoffrey and brother Eruaga Francis had gone to attend a funeral. When they returned from the funeral on 20th April, 2016 the victim informed Eruaga about what
30 the accused did to her whereupon he informed her father Ayiga who went together with the victim to the home of the accused where they left the victim and proceeded to report the case to

Ndirindiri Police Post. The victim was issued with police form 3A where she was examined from Logoba Health Centre III on 22nd April, 2016 by a clinical Officer called Kizza Francis where she was found to be 15 years old going to 16. Her genital was found to be moist with a broken hymen. The accused was arrested and taken to Moyo police station where he was charged with rape which has now been amended to Simple Defilement. He was examined on Police Form 24A where he was found to be above 18 years and mentally normal. The accused having confirmed those facts to be true, he has been convicted on his own plea of guilty for the offence of Simple Defilement c/s 129 (1) of the *Penal Code Act*.

10 Submitting in aggravation of sentence, the learned Resident State Attorney has stated that; although the convict has no previous record, the offence is rampant. The convict does not appear to be remorseful. She prayed for a deterrent sentence and proposed two years' imprisonment. On his part, Counsel for the accused on state brief, Mr. Ndahura Edward, prayed for a lenient custodial sentence on grounds that; the convict has not wasted court's time. He has pleaded guilty. He has no criminal record. He is a first offender. Pleading guilty is a sign of remorsefulness. The circumstances were that he was under a mistaken belief that he had been given a wife. He is only twenty one years old. At the time of the offence he was barely an adult. He prayed for lenience and that two years' imprisonment would be adequate.

20 In his *allocutus*, the convict prayed for a lenient sentence because; he is the one taking care of his old mother and himself. He left school because of hardship and in order to support his younger siblings remain in school. His mother and father cannot do much to support his younger siblings. He prayed for a punishment that will enable him to go out and support them. He learned that some of them have dropped out of school. It is true he was with the girl at the disco. When he returned home, later the girl was brought to his home because he parents said she had been wasted by going to the disco. She was brought to him by her parents, relatives and brothers and in the presence of his parents. A meeting was convened and the girl was left at his home. It was a Tuesday. Her father said he had brought her to him as a wife and the convict was asked whether he loved her and he replied in the affirmative. When she was asked she too replied in the affirmative. The convict was given a condition of not beating her. The convict lived together with her from Tuesday up to Thursday. She picked a quarrel with the convict's brother in the

convict's absence and she went and reported to her father. Her father came back to the convict's home with the mother and relatives of the victim. The convict was awoken from sleep, he brought out chairs for them. He began greeting them but some of them were not willing to greet him. The father asked the convict why he had chased her away when she has been brought him
5 as his wife. The convict told them he had been away when the incident happened. His father and mother too were absent. Only his auntie was present. The girl explained what happened. As they were still negotiating two policemen came and he was hand cuffed. She had married two other men before and right now she is married to another man.

10 In her victim impact statement, Asio Janet stated that the convict should be given the punishment as proposed. She was taken to his home and the whole day he never talked to her, he just abandoned her. He was not interested. Her parents took her to him as a wife. She liked to be a wife but he was not interested. Her parents decided to take her to him because they had had sex before. It is not true that she had three other men before him. He is not the first man to have sex
15 with her. He is the second man who had sex with her but nevertheless he should be punished. On his part, her father Mr. Ayiga Geoffrey stated that he did not give the accused his daughter as a wife. He took the girl to the accused because it was the second time he was involved in such conduct. He had before, defiled Mr. Ayiga's niece who was 13 years. Mr. Ayiga reported to the police immediately after taking the girl to the home of the convict. He should be given a severe
20 punishment because what he did it to the niece he has now done to his daughter. In his view, the convict deserves seven years' imprisonment.

I have considered the proposed sentences in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. According to Item 1 of Part IV thereof
25 (Sentencing range for defilement), the starting point when imposing a custodial sentence for the offence of Simple defilement is 15 years' imprisonment, which can be reduced or increased depending on the mitigating and aggravating factors applicable to the specific case. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Uganda v. Aringanira Isaac, H. C. Criminal Session Case No. RUK. 17 of*
30 *2011*, where a 23 years old man was convicted as a first offender after trial, for the offence of Simple Defilement of a 14 year old girl. He was HIV positive and on drugs but was remorseful,

and capable of reforming. He was nevertheless on 13th December 2012 sentenced to 15 years' imprisonment despite having been on remand for one year and eight months. In *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002*, a sentence 5 years' imprisonment was meted out to 29 year old convict, who had spent two years on remand, for defiling and
5 impregnating a fifteen year old school girl.

The only aggravating factor as provided for by Regulation 35 of The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 which are relevant to the instant case are; the accused at the time of the offence was aged 18 years while the victim was 15 0 16
10 years and hence an age difference of 1-2 years between the accused and the victim. Accordingly, in light of that single aggravating factor, I have adopted a starting point of five years' imprisonment. The convict not having had opportunity to refute or challenge the statement regarding his pat involvement in conduct of a similar nature, I have disregarded that a accusation when considering an appropriate sentence. I have also taken note of the contradictory versions of
15 the events that surrounded the commission of the offence and it would appear to me that the more probable occurrence was that the parents of the victim took her to the home of the accused out of frustration and anger, and in a way contributed to the convict's misconception that he had been offered the victim for marriage.

20 The seriousness of this offence is mitigated by a number of factors. The mitigating factors as provided by Regulation 36 of the Sentencing Guidelines which are relevant to the instant case are; the remorsefulness of the convict, being a first offender, a relatively young man with no previous relevant or recent conviction and his plea of guilty. The age difference between the convict and the victim too is so close. The convict was a young adult, who needs to be guided.
25 He deserves more of a rehabilitative than a deterrent sentence. The severity of the sentence he deserves for those reasons has been tempered and is reduced further from the period of five years' imprisonment, proposed after taking into account his plea of guilty, now to a term of imprisonment of three years.

30 It is mandatory under Article 23 (8) of *The Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a accused. Regulation 15 (2) of *The*

Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, requires the court to “deduct” the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This requires a mathematical deduction by way of set-off. From the earlier proposed term of three (3) years’ imprisonment
5 arrived at after consideration of the mitigating factors in favour of the convict. I note that the convict has been in custody since 26th April, 2016, a period of one year and ten months. I therefore sentence the convict to a term of imprisonment of one (1) year and two(2) months to be served starting today.

10 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 Adjumani this 20th day of February, 2018

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Stephen Mubiru
Judge,
20th February, 2018