

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI
CRIMINAL SESSIONS CASE No. 0149 OF 2016

UGANDA **PROSECUTOR**

5 **VERSUS**

NYUMA DANIEL alias LOBI **ACCUSED**

Before Hon. Justice Stephen Mubiru

SENTENCE AND REASONS FOR SENTENCE

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When this case came up on 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 on 27th February, 2018. Yesterday there were three prosecution witnesses in attendance ready to testify but the Indictment was amended to that of Simple Defilement c/s 129 (1) of *The Penal Code Act* and accused chose to change his plea and the indictment was read to him afresh. It was alleged that on 28th June, 2015 at Loa village in Adjumani District, the accused performed an unlawful sexual act on Asukpe Celina, a girl under the age of 18 years. The accused pleaded guilty to the amended indictment.

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The learned Principal State Attorney, Mr. Okello Richard then narrated the following facts of the case; on 28th of June 2015, as the victim and her sister Asara Beatrice were selling alcohol by the riverside at Muchi Bank at Lubanga Pir Landing site, the accused came and asked the victim to give him one bottle of alcohol. When the victim gave it to him he directed the victim to call a one Denya. He joined the accused and they began drinking together. He demanded for one more bottle yet he had not paid. The victim demanded that he first pays for the first one. The accused refused to pay and it is Denya who paid. The victim and her sister decided to go home. At a deserted place in a bush they realised the accused was following them. He pulled Asara Beatrice while threatening to kill both. Asara escaped and ran away and the accused turned on the victim, pushed her down and when she got up, she pushed the accused down and ran. The accused got up and ran after the victim, got hold of her and pushed her down,. He held her neck and began scratching her and tore her underpants and began having sex with her. The victim made an alarm

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but no one came to her rescue. The accused succeeded to have sex with her and thereafter wanted to take her further in the bush where he told her if anyone calls her and responds he would kill her and that she should not go home alive. He ordered her to sit down and asked her whether she knows him and whether she knows how somebody can die. Before she could respond she heard
5 voices of people coming to the scene and she raised a loud alarm which prompted the accused to run away. He turned round, got hold of the victim and began strangling her. People arrived in the company of Zachary Martin and when he saw them approach he ran away. He was captured by Zachary Martin and he was escorted to Adjumani Police station. At the police he was charged with rape which has been amended to Simple Defilement. The victim was examined on police
10 form 3A and the accused was also examined on P.,F24A. The victim was examined on 29th June 2015. 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 Simple Defilement c/s 129 (1) of *The Penal Code Act*.
15 Submitting in aggravation of sentence, the learned Principal State Attorney stated that although he had no previous criminal record of the accused, the manner in which he committed the offence endangered the victim's life and he thus prayed for a deterrent sentence. He proposed the maximum to deter him from further committing similar offences and this will enable the victim recover physically and psychologically.

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In response, the learned defence counsel Mr. Lebu William prayed for a lenient custodial sentence on grounds that; the convict pleaded guilty because he is deeply remorseful. The circumstances of the offence indicate that he was under the influence of alcohol sold to him by the victim. He is only 25 years old now. He has a future although not married. A short one will
25 make him reform. The sentence proposed by the prosecution is excessive and will be too harsh. A young life should not be wasted in prison. The presumption is that the victim did not suffer so much injury even socially and continues with her education. He proposed a lenient sentence of five years. In his *allocutus*, the convict chose not to say anything additional to what had been submitted by his advocate.

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In her victim impact statement, the victim stated that the convict should be given a heavy punishment. He threatened her and was ready to strangle her to death. Mr. Tako Christopher, her cousin on his part stated that the victim's father died and the mother got married leaving her four children, including the victim, in the house and he is the one now taking care of them. The
5 convict deserves the maximum punishment. He had raped before. He is not a good person and should be kept away

According to section 129 (1), the maximum penalty for the offence of Simple Defilement is life imprisonment. In terms of Regulation 25 of *The Constitution (Sentencing Guidelines for Courts
10 of Judicature) (Practice) Directions, 2013*, when sentencing in non-capital offences, the court is required to consider imposing a sentence of imprisonment for life where any other custodial forms of punishment is inadequate. A sentence of life imprisonment may as well be justified by extreme gravity or brutality of the crime committed, or where the prospects of the offender reforming are negligible, or where the court assesses the risk posed by the offender and decides
15 that he or she will probably re-offend and be a danger to the public for some unforeseeable time, hence the offender poses a continued threat to society such that incapacitation is necessary (see *R v. Secretary of State for the Home Department, ex parte Hindley [2001] 1 AC 410*). There are cases where the crimes are so wicked that even if the offender is detained until he or she dies it will not exhaust the requirements of retribution and deterrence. It is sometimes impossible to say
20 when that danger will subside, and therefore an indeterminate sentence is required (see *R v. Edward John Wilkinson and Others (1983) 5 Cr App R (S) 105 at 109*). However, since proportionality is the cardinal principle underlying sentencing practice, I do not consider the sentence of life imprisonment to be appropriate in this case.

25 I have taken into account *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. According to Item 1 of Part IV thereof (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. The sentencing guidelines
30 however have to be applied bearing in mind past precedents of courts in decisions where the

facts have a resemblance to the case under trial (see *Ninsiima v. Uganda Crim. C.A Criminal Appeal No. 180 of 2010*).

I have thus reviewed current sentencing practices for offences of this nature. In this regard, I
5 have considered the case of *Uganda v. Aringanira Isaac, H. C. Criminal Session Case No. RUK. 17 of 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
10 *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 impregnating a fifteen year old school girl.

The manner in which this offence was committed in the instant case created a life threatening
15 situation, in the sense that death was a very likely immediate consequence of the act. Although not justifying a sentence of life imprisonment, the facts are sufficiently grave to warrant a deterrent custodial sentence. At the time of the offence, the accused was 23 years old and the victim below 18 years old. Although he denied having strangled the victim or threatened her with death, the medical evidence, exhibit P. Ex. 1, corroborates the victim's version that there was an
20 attempt on her life by strangulation and that the convict made verbal threats of killing her. She was attacked from a deserted, isolated place and had not it been for the timely intervention of her rescuers, death was a very probable consequence of this offence. Accordingly, in light of those aggravating factors, I have adopted a starting point of twenty five years' imprisonment,

25 Against this, I have considered the fact that the convict has pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in
30 sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and

purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict has pleaded guilty, as one of the factors mitigating his sentence but because it has come
5 on a day fixed for hearing and not at the earliest opportunity, I will not grant the convict the traditional discount of one third (eight years) but only a fifth (five years), hence reduce it to twenty years.

I have considered further the submissions made in mitigation of sentence and in his *allocutus*,
10 specially the fact that he is 25 years old and thereby reduce the period to fifteen years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. I note that the convict has been in
15 custody since June, 2015. I hereby take into account and set off two years and eight months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of twelve (12) years and four (4) months, to be served starting today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has
20 a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Adjumani this 1st day of March, 2018

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Stephen Mubiru
Judge,
1st March, 2018.