

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0177 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **KAPONDO CHARLES** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

15

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 19th September, 2016 at Thetho village in Nebbi District, the accused ha unlawful sexual intercourse with Kayeny Pamungu Dorcus, a girl below the age of 14 years.

20

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.

30

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 19th September, 2016 the victim's

Aunt sent her and the accused who is a family friend to go and uproot cassava in the garden. While in the garden the accused made sexual advances which the victim rebuffed. The accused thereafter forced the victim into sexual intercourse and told her not to tell anyone. On the same day the victim began feeling pain in her private parts and told the sister what the accused had done to her. The information reached the aunt and her husband. It was reported to Parombo police post. He was arrested and was charged. The police visited the scene and subjected both the accused and the victim to medical examination in Parobo Health Centre III on 20th September, 2016 for the victim. She was found to be of the apparent age of 12. Upon examination of the vulva it was tender and the probable cause was a blunt object possibly sex. The accused was examined in Nebbi on 26th September, 2016 and he was found to be above 18 years old and of normal mental status. In the Charge and caution statement he said that she was his first wife. 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 Code Act*. In justification of the sentence of five (5) 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 stated that he has problems at home, he has two children whose mother died. His mother takes care of them. His mother has leprosy on the leg and hands. His children are in a nursery school right now while he has been in prison for two years.

I have reviewed the proposed sentence of five 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
5 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
10 accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

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 12 years old while the
15 accused was above 18 years old. The offence is rampant On the other hand, the mitigating factors are that; the accused is a first offender and is 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 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
20 by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to a term of imprisonment of five (5) 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
25 days.

Dated at Arua this 10th day of January, 2018

.....
Stephen Mubiru
Judge,
10th January, 2018.

30