

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA SITTING AT ARUA  
CRIMINAL CASE No. 0003 OF 2018**

5 **UGANDA** ..... **PROSECUTOR**

**VERSUS**

**ODAMA KENNEDY** ..... **ACCUSED**

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**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case came up on 23<sup>rd</sup> March, 2018 in a special session for plea bargaining. The accused was  
15 indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on  
7<sup>th</sup> day of July, 2016 at Olaka village in Arua District, the accused had unlawful sexual  
intercourse with Candiru Beatrice, without her consent.

When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he  
20 had successfully negotiated a plea bargain with the accused and his counsel. The court then  
allowed 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  
25 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 State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 6<sup>th</sup> July, 2016 at around 8.00 pm after supper the victim and her two children went to sleep while the husband went to cure tobacco. The accused came at around 5.00 am and opened the door and gained entry into the house where the victim and her children were sleeping. He put out the lamp and pushed the kid aside and proceeded to the victim, undressed her and pushed his penis into the victim's vagina and that is when the victim awoke. She began screaming and her son called Dennis began crying. The accused threatened to kill her and the boy if she did not consent. He squeezed the neck of the victim and forcefully had sexual intercourse with her. The victim bit his hand on the right side. After the act the accused rushed out and the victim got out. As the accused was running, he was sighted by Embati Nelson who came to the home of the victim to ask her what the problem was. He was told that the accused had just been raping the victim. Embati went to the home of the accused but only found the father. He reported to the father of the accused and then to the L.C. The accused was traced for and then arrested. He was taken for medical examination together with the victim at Logiri Health Centre III and the accused to Arua Regional Referral Hospital where Dr. Ambayo found him to be 18 years old and mentally sound. The victim was examined at Logiri Health Centre III and was found to be of the apparent age of 30 years, her petticoat was soiled with semen, she was physically exhausted and had generalised tenderness on the neck, the mouth and head. There was a wound on the upper right limb. The genitals were bruised with stains of blood and some wound on the vagina and semen on the finger. The respective police forms were submitted to court 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 Rape c/s 123 and 124 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 which are that; - the maximum penalty for the offence is death, the offence is rampant in the region, the victim suffered both physical and psychological trauma. There is need to protect society from the accused.

In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that the accused was only 18 years old at the time of the offence, a first offender, remorseful and therefore capable of reform and wishes to go back to school. In his *allocutus*, the convict stated that his father and mother were around at the  
5 time of arrest and they are weak. The victim was not available in court to make her victim impact statement.

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  
10 reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Kalibobo Jackson v. Uganda C.A. Cr. Appeal No. 45 of 2001* where the court of appeal in its judgment of 5<sup>th</sup> December 2001 considered a sentence of 17 years' imprisonment manifestly excessive in respect of a 25 year old convict found guilty of raping a 70 year old widow and reduced the sentence from 17 years to 7 years' imprisonment. In the case of  
15 *Mubogi Twairu Siraj v. Uganda C.A. Cr. Appeal No.20 of 2006*, in its judgment of 3<sup>rd</sup> December 2014, the court of appeal imposed a 17 year term of imprisonment for a 27 year old convict for the offence of rape, who was a first offender and had spent one year on remand. In another case, *Naturinda Tamson v. Uganda C.A. Cr. Appeal No. 13 of 2011*, in its judgment of 3<sup>rd</sup> February 2015, the Court of Appeal upheld a sentence of 18 years' imprisonment for a 29 year old  
20 appellant who was convicted of the offence rape committed during the course of a robbery. In *Otema v. Uganda, C.A. Cr. Appeal No. 155 of 2008* where the court of appeal in its judgment of 15<sup>th</sup> June 2015, set aside a sentence of 13 years' imprisonment and imposed one of 7 years' imprisonment for a 36 year old convict of the offence of rape who had spent seven years on remand. Lastly, *Uganda v. Olupot Francis H.C. Cr. S.C. No. 066 of 2008* where in a judgment of  
25 21<sup>st</sup> April 2011, a sentence of 2 years' imprisonment was imposed in respect of a convict for the offence of rape, who was a first offender and had been on remand for six years.

In none of the above decisions did the accused pleaded guilty. The sentences were imposed following a conviction after a full trial. A plea of guilty offered readily before commencement of  
30 trial usually results in a discount of anywhere up to a third of the sentence that would otherwise be imposed after a full trial. 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 nearly two years on remand, I accept the sentence proposed in 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 five (5) years, to be served starting  
5 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 Arua this 23<sup>rd</sup> day of March, 2018

Stephen Mubiru

Judge,

23<sup>rd</sup> March, 2018.