

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA SITTING AT ARUA  
CRIMINAL CASE No. 0112 OF 2017**

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

**VERSUS**

10 **ABINDUGA CHRISTOPHER** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

15 This case came up on 23<sup>rd</sup> March, 2018 in a special session for plea bargaining. The accused was indicted with the offence of Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on 3<sup>rd</sup> day of January, 2017 at Dimbeni village in Yumbe District, the accused had unlawful sexual intercourse with Cheniru Zura, without her consent.

20 When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he 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. Onencan Ronald. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the  
25 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.

30 The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 13<sup>th</sup> January, 2017 at around 2.00 pm the victim went to the river to wash her clothes. While there the accused asked her to help him with soap and she gave it to her. He did not return the soap promptly and she followed her to where he was  
5 bathing. He drew out a knife and asked for sexual intercourse and threatened to stab her if she refused. The victim conceded and the accused proceeded to have sexual intercourse with her. The victim returned home and confided in one of her in-laws who later told the husband about the rape. The matter was reported to the police and the accused was arrested. Both the accused and the victim were examined. The victim was on 12<sup>th</sup> January, 2017 examined medically and was  
10 found to be above 25 years. She was not mentally sound as she was not consistent with her story. Other tests were negative. The accused was examined on the same date and found to be 19 years old, physically fit and mentally sound. The respective police forms were submitted to court as part of the facts.

15 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 four (4) 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 offence was  
20 committed with threats of stabbing, the victim was dehumanized and embarrassed and 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 19 years old, a first  
25 offender, remorseful and therefore capable of reform. His mother is weak and the accused was the only boy at home available to fetch water for her. The accused stopped in P.3 and wants to get back to school. In his *allocutus*, the convict prayed that he is allowed to go back to school. He lost his father. I was still in school in primary three at Bidi Primary School. The victim was not available in court to make her victim impact statement.

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I have reviewed the proposed sentence of nine 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 *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 *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 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 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.

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In none of the decisions above did the accused plead guilty. The sentences were imposed following a conviction after a full trial. A plea of guilty offered readily before commencement of 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 one year and a month 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 four (4) 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 days.

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Dated at Arua this 23<sup>rd</sup> day of March, 2018

5                      Stephen Mubiru

Judge,

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