

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0128 OF 2015**

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **EDEMA GEORGE** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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This case came up on 23rd March, 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 14th April, 2015 at Baruku Cell in Arua District, the accused performed an unlawful sexual act with Ayirwoth Bahati, a girl below the age of 14 years.

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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.

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The court then invited the learned Resident State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; the accused and the mother of the victim operate business at Vurra Cell, Arua Hill Divison, Arua Municipality. On 14th April, 2015 at
5 around 8.00 pm the victim came to her mother's place of work and the accused was present in the house drinking alcohol, and watching television. As the mother was serving customers the accused called the victim and carried her on his lap, opened her thighs and inserted his fingers into the private parts. The accused was caught by one Chadiru Cynthia with his hands inserted into the victim's private parts and Cynthia reported to the mother of the victim. The accused
10 pushed away the victim and began quarrelling with the people around. He denied having committed the act but the victim affirmed and the natter was reported to the police. The accused was examined on 21st April, 2015 using P.F 24A and was found to be physically normal, 35 years old and mentally normal at Arua Regional Referral Hospital. The victim was found to be 6 years old and normal with no developed sexual features. On the genitals there was a freshly
15 ruptured hymen and no abnormal discharge or other injury. The probable cause was a blunt force trauma. This was done by Dr. Afayo Victor. 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
20 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 had nothing to add to what was stated in the plea
25 agreement.

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
30 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 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 accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

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The aggravating factors in this case are that; the offence is punishable by death, it is rampant in the region, the victim was only 6 years old while the accused was 35 years old. On the other hand, the mitigating factors are that; the accused is a first offender, remorseful and has readily pleaded guilty. 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 hereby accept 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 today.

25 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 Arua this 23rd day of March, 2018

30 Stephen Mubiru
Judge,

23rd March, 2018.