

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0185 OF 2016**

5 **UGANDA** **PROSECUTOR**

VERSUS

DATA RASULU **ACCUSED**

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Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

15 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 23rd May, 2016 at Busia village in Nyambiri Parish, Koboko District, the accused performed an unlawful sexual act with Noway Stella Ayoyo, 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
25 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
30 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.

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 23rd May, 2016 the accused asked the victim to join him in tracing for his lost sewing needle. She complied but they failed to find it.

5 The accused then asked her to accompany him to a nearby bush in search for a herb for skin disease. While in the bush, he undressed her and put her to the ground and had sexual intercourse with her. He clasped her mouth in that process and after the act he hurriedly left the scene. While the victim was still in the bush the family members searched for her intending to send her to the well. The father of the victim Moses saw her come out of the bush and on inquiry the victim told

10 her it was the accused who took her to the bush and that it was the fourth time it had happened in the same bush. He was arrested and taken to Busia Police Post and detained. She was examined at Koboko Hospital and she was found be 10 years old based on dental development. She was of normal mental status and the hymen was ruptured. The probable cause was penile penetration. The examination was done on 24th May and the accused too was examined on P.F 254A on 24th

15 May and found to be of normal mental status. 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*

20 *Code Act*. In justification of the sentence of seven (7) 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*, in addition to what was stated in the plea agreement, the convict stated that at the time of arrest he was in school in Nayimbiri primary School. His mother is

25 handicapped. He has younger siblings one of whom is epileptic and he was helping him himself.

I have reviewed the proposed sentence of seven 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 10 years old while the accused was 21 years old. On the other hand, the mitigating factors are that; the accused is a first offender, remorseful; he has readily pleaded guilty and is a relatively young man capable of reform. He has been on remand for a period of one year and eleven months. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, 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 seven (7) years, to be served starting today.

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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.

30 Dated at Arua this 23rd day of March, 2018

Stephen Mubiru

Judge,

23rd March, 2018.