

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0025 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **DRALEKU ISAAC** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

15 This case came up on 4th April, 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 10th July, 2016 at Busia village in Koboko District, the accused performed an unlawful sexual act with Alosa Mercy, a girl aged 13 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
25 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
30 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 he narrated the following facts; on 9th July, 2016 at Busia village in Koboko District the accused met with the victim Mercy Alosa and he initiated a love affair with

her. On 10th July at 10.30 pm in the same village, the accused and the victim met and the accused took her to the house of a one George and had sexual intercourse with her. She left the house and arrived home at dawn. The father of the victim on realising that the victim did not spend the night at home assigned Bayiga Charles to interrogate her and she disclosed that she had spent the night at the home of the accused and they had had sexual intercourse. The father of the victim and Bayiga Charles went and arrested the accused and he was detained at Busia Police post then transferred Koboko Police Station. He admitted in his charge and caution statement and the two were examined medically. The accused was examined on P.F 24 A and was found to be normal and of the apparent age of 19 years. The examination was done at Koboko Health Centre on 13th June 2016 and the victim too was examined at the same Health Centre IV and was found to be of the apparent age of 13 years. She appeared to be in a good health condition and her mental status was stable, the genitals had no wounds but a whitish discharge was seen. He did not indicate the cause of the above. They extracted a virginal swab for microscopic examination where they found pus cells and semen. This was done by the Medical Clinical Officer of Koboko Health Centre IV on 13th July, 2016. Both police forms 24 and P.F 3A together with the charge and caution statement of the accused 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 and added that the accused had a wife now deceased and she left two children unattended to. The parents of the accused are deceased. He has been on remand for one year and eight months. The age difference between the accused and the victim was six years. The only brother he had was at Kinyara and the children are no longer in school. In his *allocutus*, the convict asked for lenience because he suffers from hepatitis "B" and he was sorry for what he did which he vowed never to do again.

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 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.

The aggravating factors in this case are that; the offence is punishable by death, it is rampant in the region, the victim was only 13 years old while the accused was 19 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.. 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 on remand, I consider the sentence proposed in the plea agreement entered into by the accused, his counsel, and the State Attorney a little on the high side considering the circumstances in which the offence was committed, the period he has spent on remand, the fact that he has consistently since arrest admitted the offence, his family situation and his medical condition. I have therefore decided to vary it by lowering it a little. I therefore 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.

5 Dated at Arua this 4th day of April, 2018

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Stephen Mubiru
Judge,
4th April, 2018.