

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0010 OF 2016**

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

**VERSUS**

10 **ADIA PETER** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

15 This case came up on 4<sup>th</sup> April, 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 28<sup>th</sup> day of March, 2014 at Polotia village in Arua District, the accused had unlawful carnal knowledge of Enzaru Gloria, 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. 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.

30 The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; the victim and the accused had been cohabiting for some years and had two children aged five and three years respectively and the victim was his

second wife. Due to domestic violence by the accused, they had to separate. The victim left the children with the mother of the accused. On 28<sup>th</sup> March, 2014 around midnight, the victim was on her way back home from a video show where she had gone with her brothers. On her way she met the accused and by-passed him and upon realising it was the victim the accused turned round and followed her telling her to stop but she refused and continued walking away. The accused moved faster, caught up with her and forced her to stop. The accused demanded for a refund of the goats he had paid for impregnating her. The victim told him to go to the brothers who received them. He then began demanding for sex. He forced the victim off the road into the bush while the victim was raising an alarm. In the bush he tore off the knickers and proceeded to have forceful intercourse with her. She fought back in vain. After the act the accused grabbed her pair of knickers and took them away threatening that he would use them to bewitch her. She tried to retrieve the knickers from him but failed. She went home and reported the matter to her elder brother that very night. The following day she went to Logiri Police post and reported. The accused was later arrested and upon interrogation admitted having had sex with the victim because she had asked for it. Both were examined on P.F 3A and 24A. The accused was examined on 7<sup>th</sup> April 2014 by Dr, Akusa Hannington and found to be of normal mental status. The victim was examined at Logiri Health Centre III on 29<sup>th</sup> March, 2014. Her clothes were found to be soiled with mud and she also had soiled underpants. She was mentally normal at the time of the examination. There were bruises in the mouth and soft tissue injury on the breasts. A mark of human bite on the left arm below the shoulder and the genitals had bruises and on the labia majora and minora and the probable cause was forceful sexual intercourse. 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 three (3) 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 is 35 years old has two wives, two biological children and six others of his late siblings, has been four years on remand and suffers from chest pain. In his *allocutus*, the convict stated that he has two wives and only one is at home the second one has remarried. Two of his eight children are in P.7 and one has repeated P.7 twice for lack of school fees. His mother has died and she has been looking after his children of the second wife. Feeding is difficult for them as he is not at home due to his incarceration. He also feels chest pains which he developed while in prison. The victim was not available in court to make her victim impact statement.

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I have reviewed the proposed sentence of three 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 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 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  
5 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 three (3) 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.

15 Dated at Arua this 4<sup>th</sup> day of April, 2018

.....  
Stephen Mubiru  
Judge,  
4<sup>th</sup> April, 2018.