

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0002 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **ANGUBO MOSES** **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 Rape c/s 123 and 124 of The *Penal Code Act*. It was alleged that on 26th day of July, 2016 at Payowi village in Olali Parish, Ogoko sub-county, Arua District, the accused had unlawful carnal knowledge of Abiria Annet, 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 it became apparent that there was no carnal knowledge involved in the impudent acts. The indictment was accordingly amended to the offence of Indecent Assault c/s 128 (1) of The

Penal Code Act. It was alleged that on 26th day of July, 2016 at Payowi village in Olali Parish, Ogoko sub-county, Arua District, the accused indecently assaulted a woman, Abiria Annet. The accused pleaded guilty to the amended indictment.

5 The learned State Attorney was called upon to narrate the facts of the case and he narrated the following facts; on 26th July, 2016 at around 10.00 pm at night, the victim and the accused and others were passing time at a Trading Centre called Fuluruva that in the course of that leisure the accused called for the victim who was outside the to join them. The accused bought a sachet of Waragi for the victim and shortly after he told the victim they should go out of the bar and this
10 was seconded by a friend called Matwa who said that the victim should accompany the accused outside. While there the accused pulled the victim behind the bar and asked for sexual intercourse. The victim resisted and the accused then forcefully got hold of the victim, wrestled her down and tore her underpants and in the process the finger nails tore the victim's private parts. The victim began bleeding and the accused ran away and the victim reported the matter to
15 a one Matua and shortly thereafter the accused came in back into the bar but at that time he denied having committed the offence. The matter was reported to the victim's mother and the accused was arrested and both the accused and the victim were subjected to medical examination; the victim on 2nd August, 2016 and it was discovered that in the genitals there was a six degree tear and surgery was done to repair the tear. This was done by Dr. Odara Emmanuel at
20 Arua Regional Referral Hospital. The accused was examined on 1st August at Arua Regional Police Clinic by Dr. Amabyo Richard. 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
25 own plea of guilty for the offence of Indecent Assault c/s 128 (1) of The *Penal Code Act*. In justification of the sentence of five (5) years' imprisonment proposed in the plea agreement, the learned State Attorney had relied on the aggravating factors outlined in the plea agreement which related to the indictment of rape.

In mitigation of sentence, the learned defence counsel had relied the mitigating factors outlined in the plea agreement which too which related to the indictment of rape and so did the convict in his *allocutus*.

5 I have reviewed the proposed sentence of five years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. and found it to be on the higher side. 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 and a half years on remand, I reject the sentence proposed in the submitted plea agreement
10 entered into by the accused, his counsel, and the State Attorney and instead sentence the accused to a term of imprisonment of two (2) 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
15 days.

Dated at Arua this 4th day of April, 2018

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Stephen Mubiru
Judge,
4th April, 2018.

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