

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0037 OF 2017**

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

**VERSUS**

10 **ABALA CHARLES** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

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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 Aggravated Defilement c/s 129 (3) and 4 (a) of *The Penal Code Act*. It was alleged that on 2<sup>nd</sup> January, 2017 at Isoko village in Arua District, the accused performed an unlawful sexual act with Abiria Harriet, a girl under 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 he narrated the following facts; on 2<sup>nd</sup> January, 2017 at around 5.00 am,

the victim who was aged below 14 years was returning home with her friends from a disco dance. On the way back home, the other friends branched for a short call leaving the victim along the road. The accused came and told the victim that her brother was calling for her. She followed him back to the disco and along the way the accused pushed the victim down and  
5 forcefully had intercourse with her and after the act the victim reported the matter to her father who in turn reported to the police and the accused was traced for and was charged. The two were taken for medical examination at Arua Regional Police Clinic. The victim was found to be twelve years old. She was developing secondary sexual characteristics, breasts and pubic hair. Her clothes were dirty. In her genitals they found bleeding, inflammation of the introitus and the  
10 hymen was freshly ruptured. The examination was by Dr. Madrama Charles on 3<sup>rd</sup> January, 2017. The accused too was examined on the same date and was found to be of the apparent age of 19 years. His genitals had a blood stain. He was normal mentally and HIV negative. Both police forms 24 and P.F 3A were tendered as part of the facts.

15 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  
20 plea agreement too and added that the accused has spent one year and two months on remand. He is married with three children going to school, the parents are deceased. His only brother died while he was in prison. He left five children. He is now 22 years and remorseful.

I have reviewed the proposed sentence of five years' imprisonment in light of *The Constitution*  
25 (*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 8<sup>th</sup> 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  
30 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 1<sup>st</sup> 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 6<sup>th</sup> 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  
5 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 6<sup>th</sup> 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  
10 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 12 years old while the accused was 19 years old. On the other  
15 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  
20 appropriate an in accordance thereto sentence the accused to a term of imprisonment of five (5) 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  
25 days.

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

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

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