

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0110 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OLUM MARK** **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 8th day of April, 2017 at Meliaderi village in Adjumani District, the accused had unlawful carnal knowledge of Tarapke Lucia, 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
25 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.

30 The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the victim is Tarapke Lucia who was 75 years old at

the time of the offence and a widow. The accused is aged 42 years and he lived with the victim on the same village. On 8th April, 2017 at around 3.00 am when the victim heard a knock continuously at her door. She asked who was knocking and the accused responded. I am the one Olum Mark. The accused proceeded to open the door, entered inside and pulled out the victim
5 out of the house. He held the victim tightly by the neck while squeezing it to prevent her from making an alarm and proceeded to have sexual intercourse with her. The accused then walked away and was clearly seen by the victim because of the bright moonlight. The victim began crying and informed the neighbours who responded. They went to the next home of the accused and he was found outside his compound. He was arrested and brought back to the scene and in
10 the morning he was taken to Pakelee Police Post and to Adjumani where he was charged with rape and taken for medical examination at Adjumani Hospital on Police Form 3A for the victim and 24 A for the accused. The findings were that the accused was an adult, he was in good general condition without any disabilities and appeared normal. This was done on 10th April, 2017 at Adjumani Hospital. On Police Form 3A the victim was examined and it was found that
15 he was sexually assaulted by a drunk man in her house at around 3.00 am. She was fair as far as her physical condition was concerned. Her mental condition was ok. On the genitals were found abrasions, bruises at the vaginal introitus and the hymen was ruptured long ago. This was done by Dr. Joseph Idori Atiya a medical officer at Adjumani Hospital. During the plea negotiation. It was agreed that the accused was drunk on that day and had been began living with the victim and
20 the children of the accused live with the victim to-date. 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
25 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.

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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 44 years old has five children, is remorseful and has been eleven months on remand. In his *allocutus*, the convict prayed for a lenient sentence since at the time the offence took place he had an affair with the victim and on that day he was drunk but she was not willing. The victim was not available in court to make her victim impact statement.

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 5th 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 3rd 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 3rd 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 15th 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 21st 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.

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

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
5 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.

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Dated at Arua this 4th day of April, 2018

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Stephen Mubiru
Judge,
4th April, 2018.