

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

CRIMINAL SESSIONS CASE No. 0062 OF 2016

UGANDA PROSECUTOR

5 **VERSUS**

CLEVER PAUL RUSOKE ACCUSED

Before Hon. Justice Stephen Mubiru

SENTENCE AND REASONS FOR SENTENCE

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When this case came up this morning, for plea, the accused was indicted with the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing. After the testimony of two prosecution witnesses, he chose to change his plea and the indictment was read to him afresh. It was alleged
15 that on 10th April, 2015 at Musajalumbwa Central Division, Kampala District, the accused performed an unlawful sexual act with Rahma Muhammad, a girl aged 10 years. The accused pleaded guilty to the indictment.

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The learned State Attorney then narrated the following facts of the case; the victim was aged 10 years and was residing with her mother Rahma Muhammad at Musajalumbwa Central Division, Kampala District. The accused was employed by Amina Umaru who was residing together with the mother of the victim in the same compound. The victim went out to play on 10th April, 2015. the accused grabbed her hand, took her to an abandoned motor vehicle in the compound, covered her mouth with clothes and began defiling her. The victim regained her energy and not back to
25 the house where she told her mother what had happened,. The mother reported to Kasaato Police Post and later forwarded to Kampala Police Station and the victim was forwarded for medical examination. On 10th April, 2015 Oligo Michael a medical Clinical Officer at Mayfair Clinic examined the victim and his findings were that the victim was 10 years old, her hymen was

partially ruptured, had inflammations on the vulva and the probable cause was superficial injuries. He filled and signed the same. On 14th April, 2015 No. 43471 D/Cpl Mukalazi requested for the accused to be examined and the Medical Clinical Officer examined him. He was found to be 28 years old. He had delusional ideas. Psychiatric examination was recommended.

5 He was found to be HIV negative. He was found digging at the same home when he was arrested. Although medically insane he was not legally insane as he ran away from the scene. He was charged. Both police forms; P.F. 3A and P.F. 24A as well as the sero-status slip were tendered as part of the facts.

10 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*. Submitting in aggravation of sentence, the learned State Attorney stated that; he is presumed to be a first offender. He has been on remand from 22nd April, 2015, hence three years and eight months. The victim was aged only ten years then. The convict was working in the same
15 compound where the victim lived. He took advantage of her by virtue of proximity. Defilements are rampant and strong warning is required. She prayed for a deterrent sentence.

In response, the learned defence counsel prayed for a lenient custodial sentence on grounds that; he is a first offender, and has not wasted a lot of court's time. He has spent three years on
20 remand. The convict had indicated that he would serve 13 years and the period of remand be deducted. The convict chose not to say anything in his *allocutus*.

According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*, is death. However, this punishment is by sentencing
25 convention reserved for the most egregious forms of perpetration of the offence such as where it has near lethal or other extremely grave consequences. Since in this case death was not a very likely or probable consequence of the act, I have discounted the death sentence.

Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of
30 life imprisonment. None of the aggravating factors prescribed by Regulation 22 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, is

applicable to this case. A sentence of life imprisonment may as well be justified by extreme gravity or brutality of the crime committed, or where the prospects of the offender reforming are negligible, or where the court assesses the risk posed by the offender and decides that he or she will probably re-offend and be a danger to the public for some unforeseeable time, hence the offender poses a continued threat to society such that incapacitation is necessary (see *R v. Secretary of State for the Home Department, ex parte Hindley* [2001] 1 AC 410). I do not consider the sentence of life imprisonment to be appropriate in this case.

When imposing a custodial sentence on a person convicted of the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 3 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors or reduced on account of the relevant mitigating factors.

Although the manner in which this offence was committed did not create a life threatening situation, in the sense that death was not a very likely immediate consequence of the act such as would have justified the death penalty, they are sufficiently grave to warrant a deterrent custodial sentence. At the time of the offence, the accused was 28 years old and the victim 10 years old. The age difference between the victim and the convict was 18 years. The accused abused the hospitality of the victim's parents as well as the danger of contracting sexually transmitted diseases. However I am mindful of the decision of the Court of Appeal in *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, where the Court of appeal opined that the sentencing guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. In that case, it set aside a sentence of 30 years' imprisonment and substituted it with a sentence of 15 years' imprisonment for a 29 year old appellant convicted of defiling an 8 year old girl.

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. Accordingly, in light of those aggravating factors, I have adopted a starting point of twenty five (25) years' imprisonment.

Against this, I have considered the fact that the convict has pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict has pleaded guilty, as one of the factors mitigating his sentence, hence reducing by only one quarter to nineteen (19) years, considering the belated nature of the plea of guilty.

I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to sixteen (16) years' imprisonment. In accordance with Article 23 (8)

of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. I note that the convict has been in custody since 22nd April, 2015. I hereby take into
5 account and set off a period of three years and eight month as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of twelve (12) years and four (4) months, to be served starting today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has
10 a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Kampala this 14th day of January, 2019

Stephen Mubiru

15 Judge,

14th January, 2019.

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