

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0110 OF 2015**

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

**VERSUS**

10 **OKOYA CHURCHHILL ALBINO** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

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This case came up on 10<sup>th</sup> January 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 19<sup>th</sup> April 2013 at Pacego Central village in Nebbi District, the accused performed an unlawful sexual act with Kayenparwoth Tracy, a girl aged 6 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 she narrated the following facts; on 19<sup>th</sup> March 2013 the victim was at

home with her two young siblings when the accused appeared at her home and requested for drinking water which the victim gave him. After drinking he grabbed the victim and took her to a bathing shelter, pulled off her knickers and proceeded to have sexual intercourse. The victim felt a lot of pain and a neighbour who too had come to bathe found him on top of the victim. The  
5 police and other people were alerted and the accused was arrested and handed over to the police. Female neighbours checked the victim's parts and found bruises. The victim was examine on P.F. 3 on 19<sup>th</sup> April 2013 at Pakwach Health Centre IV. She was found to be six years old and the vulva had fresh bruises but the hymen was not ruptured. Probable cause was a blunt cause probably a penis and deep penetration failed because of the small size of the vagina. The accused  
10 was examined on P.F 24A on 20<sup>th</sup> April 2013 at Pakwach Health Centre IV. He was of the apparent age of 25 at the time with normal mental status. He was arrested and was charged. Both police forms 24 and P.F 3A were tendered as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his  
15 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 ten (10) 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 plea agreement too. In his *allocutus*, in addition to the mitigating factors stated in the plea agreement,  
20 the convict added that both his parents died and he has to take his children back to school.

I have reviewed the proposed sentence of ten 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  
25 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 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  
30 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 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 accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

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The aggravating factors in this case are that; the offence is punishable by death, it is rampant in the region, the victim was ravished in her parents' home, and she was only 6 years old while the accused was 25 years old. Her trust and hospitality was abused by a person old enough to be her father. On the other hand, the mitigating factors are that; the accused is a first offender, he has readily pleaded guilty and is sickly with chest pains and he is a single parent with school-going children. 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 five years on remand, I hereby accept 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 ten (10) 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.

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Dated at Arua this 10<sup>th</sup> day of January, 2018

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Stephen Mubiru  
Judge,  
10<sup>th</sup> January, 2018.

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