

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0120 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OROMBI ALEX** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 11th April 2017, 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*.
15 It was alleged that on 28th November 2015 at Ambere village in Nebbi District, the accused performed an unlawful sexual act with Anyonda Dorothy, a girl below the age of fourteen years.

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
20 allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Samuel Ondoma. 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
25 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 he narrated the following facts; on 28th November 2015, the victim’s mother was not around. It was around 6.50 – 7.00 pm. The victim was left playing with other children in the

compound. Shortly thereafter the victim was heard crying in the victim's house by a one Okumu who on coming out to see what was happening found the accused zipping up and the victim was still crying. Okumu carried the victim to a lady nearby to see what had happened as the accused had fled. The victim was found with a whitish discharge in her private parts which was found to be semen. The local council Chairman was notified and they were referred to the police who traced for and arrested the accused. In his charge and caution statement which was recorded by D/IP Okee Billy Boss he admitted having formed intention of having sexual intercourse with the victim but did not commit the act. The matter was referred to Nebbi Hospital. The victim was examined on 29th November 2015 and the findings were that she was of the apparent age of 3.5 years, there was no tear or bruise in the genitals. The general observation was that the underpants were wet and the child looked worried and anxious. The accused was examined on P.F.24 and on his mental status he was found to be sound the sero-status was negative. The examination was done by Ringtho Willy. Both police forms 24A and 3A as well as the charge and caution statement of the accused were tendered as part of the facts.

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Considering the age of the victim, that she was practically a baby, and the age difference of 35 years between her and the accused, the court cautioned the accused of the possibility of enhancement of the proposed sentence of eight (8) years' imprisonment stipulated in the plea agreement. After the accused confirmed that despite that possibility he was still willing to go ahead with the plea bargain, he was asked whether the facts as narrated were correct

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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 eight (8) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement. Learned defence counsel too adopted the mitigating factors outlined in the plea agreement. In his *allocutus*, the convict stated that he is an orphan and both his parents died. He is epileptic. He at one time suffered an accident and he has a weak chest which is painful. In his victim impact statement, the victim's uncle stated that the accused deserves a sentence of not less than 15 years since the victim was a very young child and the nature of the offence, considering the age of the victim, was equal to murder.

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I have reviewed the proposed sentence of eight 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 *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the court of
5 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
10 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'
15 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; at the age of 3.5 years, the victim was practically a baby. I have also considered the age difference of 35 years between the accused and the victim. On the other hand, the mitigating factors are that; the accused has readily pleaded guilty, he is a first offender and has been on remand for nearly two and a half years (having been first
25 remanded on 2nd December 2015). However this was a beastly attack on a baby that deserves a deterrent sentence. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I reject the sentence proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and instead, sentence the accused to a term of imprisonment of fourteen (14) 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.

5 Dated at Arua this 19th day of April 2017.

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Stephen Mubiru
Judge.
19.04.2017.