

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0164 OF 2016**

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

**VERSUS**

10 **DRASIKU MOSES** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case came up on 13<sup>th</sup> 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 14<sup>th</sup> May 2016 at Oli D Cell in Arua District, the accused had unlawful sexual intercourse with Nakafeero Ramaza, a girl under the age of fourteen years.

When the case was called, the learned State Attorney, Mr. Emanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed  
20 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; the victim at the time of the offence was 11 years old and a pupil in High scope International day kindergarten and primary school where the accused

was a Librarian. On 14<sup>th</sup> May 2016, the accused took some revision papers to the victim's home where she was staying with her sister and he helped the victim revise and also assisted in marking as the victim prepared for PLE. After the lesson, the accused convinced her to have sexual intercourse in her room using condoms and left after the sex. The used condom was left in the room and later that evening was recovered by the elder sister as she cleaned the room. When the victim was asked about it she revealed the circumstances in which she had engaged in sexual intercourse with the accused. The matter was reported to the police. The accused was arrested and charged. Both were examined. The victim was found with torn genitals. She was in her menstrual period with a torn hymen. The accused was examined and found to be of normal mental status and aged 20 – 24 years old. Both police forms 24A and the 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 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. The learned defence counsel too adopted the mitigating factors outlined in the plea agreement. In his *allocutus*, the convict stated that he apologized before the family members, asked for forgiveness and regretted the crime. He is one of three children. His late brother was shot dead in South Sudan and left two girls who dropped out of school and are now house girls. His brother is now a boda boda rider. His mother died when he was in P.3. There is no one to help his father. He suffers from ulcers and typhoid. He undertook not commit offences like this anymore. He went to a PTC but dropped out only to be offered a job as a Librarian at a private school where he committed the offence. The victim was not available in court to make her victim impact statement.

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 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 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 accused was in a fiduciary relationship with the victim. I have also considered the age difference of 11 years between the accused and the victim. On the other hand, the mitigating factors are that; the accused is 23 years old, has dependants, is apologetic, admitted the offence and readily pleaded guilty. He has also a first offender that deserves a reformatory rather than a deterrent sentence. 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 three 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 eight (8) 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 days.

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Dated at Arua this 19<sup>th</sup> day of April 2016.

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Stephen Mubiru  
Judge.  
19.04.2017.