

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0145 OF 2014**

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

**VERSUS**

**OKELLO RICHARD** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case came up on 26<sup>th</sup> September 2016, in a special session for plea bargaining. The accused was indicted with three counts of Rape c/s 123 and 124 of The *Penal Code Act*. In the first count, it was alleged that on 15<sup>th</sup> May 2013 at Ageno village in Nebbi District, the accused had unlawful carnal knowledge of Pimer Fortunate, without her consent. In the second count, it was alleged that on the same day and at the same place, the accused had unlawful carnal knowledge of Pimerparwoth Immaculate, without her consent. In the third count, it was alleged that on the same day and at the same place, the accused had unlawful carnal knowledge of Bedayika Molly without her consent.

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. 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 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.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; on 15<sup>th</sup> May 2013, the three victims went to collect firewood in the forest. Shortly after they had gathered the firewood, the accused emerged and asked them why they were collecting firewood from his garden. He tied them up and took them to a place where he was preparing charcoal. He asked them to compensate him by cutting logs he would use to prepare charcoal. As they were cutting the logs, he changed his mind and ordered them to undress under a threat of cutting them with a panga which he was holding in his hands. They complied and undressed. He ordered them to bend down on the logs they had cut and he proceeded to have forceful sexual intercourse with each one of them in turns. He had three rounds of sexual intercourse with each of them after which he ordered them to carry their firewood and go home. He escorted them to a nearby valley and then took a different direction. The victims reported their ordeal to their parents who in turn reported to the L.C.1 and the police. The accused was traced and arrested. In his charge and caution statement he admitted being at the scene but denied committing the offences charged. All the victims and the accused were medically examined. The respective medical forms were received 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 in respect of each of the three counts for the offence of Rape c/s 123 and 124 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 which are that; - the maximum penalty for the offence is death, the accused was HIV positive at the time he committed the offence, he exposed the victims, who are young ladies, to the danger of HIV infection. He raped each of the victims as the rest watched helplessly and they suffered both physical and psychological torture.

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 has spent three years and six months on remand, he is a first offender and sickly because of his HIV status. He has five children to look after and his parents are weak and old. In his *allocutus*, the convict prayed for lenience to enable him return and care for his family. None of the victims was available in court to make her victim impact statement.

I have reviewed the proposed sentence of ten years' imprisonment in light of the *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 5<sup>th</sup> 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 3<sup>rd</sup> 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 3<sup>rd</sup> 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 15<sup>th</sup> 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 21<sup>st</sup> 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.

I have noted the fact that in none of the decisions had 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.

The plea agreement is silent on the question as to whether the proposed term term of imprisonment is to be served concurrently or consecutively for each count. *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, too address appropriate tariffs for specified offences but are silent on matters to do with the choice between concurrent and consecutive sentences. Judges traditionally have a broad discretion in selecting whether the sentences they impose will run concurrently or consecutively where multiple terms

of imprisonment are imposed at the same time. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders that the terms are to run consecutively (see section 2 (2) of *The Trial on Indictments Act*). In determining whether the terms of imprisonment imposed are to be ordered to run concurrently or consecutively, I have considered as to each count for which a term of imprisonment is being imposed, the following factors; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the accused, and to provide the accused with adequate time for correctional treatment in the most effective manner. Although the accused is a first offender, and the offences underlying the convictions arise out of the same course of behavior, and are of the same or similar kind, the overall criminality of the accused will not sufficiently be reflected by concurrent sentences. I have decided to treat the offences as if they were not part of a single course of behavior for the additional reason that the ultimate sentence should reflect the outrageous and very personal manner in which each of the victims was violated. In the circumstances of this case, retribution for each of the victims will best be served by consecutive rather than concurrent sentences.

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 and one month on remand (having been charged on 2<sup>nd</sup> August 2013), 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 eight (8) years' imprisonment in respect of count 1, eight (8) years' imprisonment in respect of count 2, and eight (8) years' imprisonment in respect of count 3. All sentences are to be served consecutively starting from 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.

Dated at Arua this 6<sup>th</sup> day of October, 2016.

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Stephen Mubiru  
Judge.