

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
SITTING AT KAMPALA
CRIMINAL SESSIONS CASE NO. OF 2023

UGANDA.....PROSECUTOR

VERSUS

M.J (A JUVENILE).....JUVENILE OFFENDER

Before Hon. Lady Justice Rosette Comfort Kania

Disposition order

When this case came up this for plea, the juvenile offender was indicted with the offences of Aggravated Homosexuality c/s 3(1) & (2)(a) of the Anti- Homosexuality Act 2023 and Aggravated Defilement c/s 129(3) & 4(a) of the Penal Code Act. The record shows the juvenile offender to have been 15 years old at the time the offence was committed.

It was alleged that on the 1st and 2nd day of August 2023 at Kayunga Village in Wakiso District. MJ performed a sexual act with NJ a boy aged one year old. The juvenile offender pleaded guilty to the indictment.

The learned Senior State Attorney, Mr. Timothy Amerit then narrated the following facts; MJ had come to the home of the parents of the victim, NJ and was working therein as a houseboy and his purpose was to take care of the same NJ. Between the 1st and 2nd of August 2023 while the victim was in the care of the MJ, MJ made the victim to fondle and play with his erected penis and kept inserting it into the month of the victim. While doing this, MJ was recording the action using the phone of the victim's mother. Days thereafter, MJ went back to his home in Kasanda District. On the 19th August 2023 as the mother of the victim, was going through her phone, she found that there were some items deleted and that the deleted items were in the recycle bin. On retrieving the items from the recycle bin, discovered the matters that have been narrated.

The matter was reported to police and the juvenile offender was arrested. On medical examination it was observed that the juvenile offender was 15 years of age and the victim was



one year of age. Prosecution tendered PF3A in respect of the victim and PF24 in respect of the juvenile offender.

Upon ascertaining from the juvenile offender that the facts as stated were correct, he was on basis of his own plea of guilty found responsible for the offences of Aggravated Homosexuality c/s 3(1) & 2(a) of the Homosexuality Act 2023 and 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; prosecution has no previous record of the juvenile offender. He leaves it to court to determine the appropriate sentence in the circumstances.

In response, the learned defence counsel Ms. Winfred Adukule prayed for lenient disposition orders on grounds that; the juvenile offender who is only 15 years old has admitted responsibility and has not wasted court's time and resources. He is remorseful. He is a first time offender. In his *allocutus*, the juvenile offender prayed for forgiveness for the offence he committed. He promised never do this again.

Determination

According to sections 3(1) and 3 (2)(a) of the Anti-Homosexuality Act, 2023, the maximum penalty for the offence of aggravated homosexuality is death. Sections 129 (3) and (4) of the Penal Code Act provide that the, the maximum penalty for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) , is death. However, according to section 104 (A) (1) of *The Children Act*, a death sentence is not to be pronounced on or recorded against a person convicted of an offence punishable by death, if it appears to the court that at the time when the offence was committed the convicted person was below the age of eighteen years. The alternative is provided for by section 94 (1) (g) of *The Children Act*, which states that in such instances the maximum period of detention is to be three years.

The court is cognizant of the fact that children has diminished culpability and are more amenable to reform than adult offenders. The law therefore distinguishes between children and adults for sentencing purposes. The law provides that the maximum punishment for a juvenile offender found responsible for an offence punishable by death is three years' detention. However, section 94 (1) (g) of *The Children Act* provides that detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order. Accordingly, sentencing a juvenile

offender to three years in a juvenile detention facility is the most severe penalty available which is reserved for what is considered the "worst of the worst" crimes, the worst offenders and the worst cases. Such a sentence would be justified in cases where; the offence was committed with brutality, the offender is a habitual offender, conduct of the offender while on remand, the sophistication with which the offence was committed.

I have considered all the circumstances of this case. MJ pleaded guilty, he has not wasted court's time, he is remorseful he stated to court that he would plead for forgiveness from the mother of the child because now he regrets what he did. He added that he would not commit crimes again. MJ appeared genuinely remorseful. I also take into account the fact that a young boy of 15 years should be under the guidance of his parents and not taking responsibility for a home and of another child. MJ at 15 years of age, found himself many kilometers away from home shouldering responsibilities way above his age.

However, what MJ did to NJ was despicable, a horrific act. It is unfortunate that a young boy was charged with the responsibility of looking after a home and a baby, but it is even more unfortunate that, instead of taking care of the baby, looking upon him as his younger brother and protecting him, MJ took advantage of him in a manner most horrific. I note that acts of aggravated defilement are on the rise, the depravity with which the offence was committed is worrying. This is one of the cases where I am of the view that a custodial order would be most useful. A custodial order would not only give him access to professionals more regularly to assist him in his reformation journey, but he would also benefit from the skills that are taught in Kampiringisa and emerge from custody with a skill that would enable him to make a living otherwise than through offering his services as a house boy. The court has also considered the fact that as reported by the Probation Officer, no one has called or come to visit MJ since he was sent to Naguru Remand home. A strong support system is indispensable for the process of reforming a juvenile offender, it is indeed the most important factor. Had there been evidence of family support, that would have been a strong indication of the prognosis for reform of the juvenile offender in the family setting and a non custodial order would have been appropriate. Therefore, the indications are that the social support that is indispensable for his reform might not be available to him, I am compelled to issue a custodial order.

Section 94 (3) of the *Children Act* as amended provides that where a child has been remanded in custody prior to an order of detention being made, that period spent on remand shall be taken into account.

Consequently, having taken into account the above mitigating and aggravating factors, I pass a custodial sentence of two and a half years, less a third of that time because of the plea of guilty.



From the two years remaining, five months is subtracted for time spent on remand. The remaining one year and seven months he will spend in Kampiringisa where it is hoped that he will not only be counselled and receive professional help but that he will come out with skills that will better his future.

Having been found responsible and the disposition order made on basis of his own plea of guilty, the juvenile offender is advised that he has a right of appeal against the legality and severity of that order, within a period of fourteen days.



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Rosette Comfort Kania

Judge

21st December 2023