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**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA HOLDEN AT  
KAMPALA**

*(Coram; Cheborion Barishaki, Hellen Obura, Eva K. Luswata, JJA)*

**CRIMINAL APPEAL NO. 0097 OF 2020**

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**BETWEEN**

**OTHIENO MICHAEL..... APPELLANT**

**AND**

**UGANDA ..... RESPONDENT**

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*[Appeal from the Judgment of the High Court of Uganda sitting at  
Kampala in Criminal Session Case No.392 of 2018, by Hon. Justice  
Jane Frances Abodo, delivered on 21<sup>st</sup> day of October 2019]*

**JUDGMENT OF THE COURT**

**Introduction**

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1] The appellant was charged with the offence of aggravated defilement contrary to Section 129 (3) (4) (a) of the Penal Code Act. The particulars of the indictment were that on the 23<sup>rd</sup> day of April, 2017 at about 1700 hours in the Faith in Action International Ministries Church at Kalule Zone Kawempe Division in the Kampala District, the appellant performed a sexual intercourse with AT, a girl aged 9 years old. The appellant pleaded guilty to the offence on 21/01/2019 and entered into a plea bargaining

5 agreement, whereby he was convicted and sentenced to 20 years' imprisonment from which his remand period of 2 years, 5 months and 9 days was deducted. He was ordered to serve a sentence of 17 years, 6 months and 21 days' imprisonment.

### **Brief Facts**

10 2] The brief facts of the case were recorded in paragraph 3.0 of the plea bargaining agreement (hereinafter PBA). Those facts were at the trial read out and admitted by the appellant. It was specifically stated by the prosecutor that on the 23/4/2017, the victim Afeyorwoth Trinity who was aged 9 (nine) years was walking to the  
15 shop at Kalule zone Kawempe Division and the accused Othieno Michael intercepted her took her to a Church removed her knicker and had sexual intercourse with her. The mother to the victim, Claire Stella found the accused on top of the victim (in flagrante delicto). The accused ran away only to be arrested after one week.

20 3] The appellant being dissatisfied with the decision of the learned Trial Judge, lodged an appeal to this Honorable Court on the following grounds:

25 i. That the learned Judge erred in law when he failed to adequately evaluate and scrutinize the plea-bargaining agreement thereby wrongly convicted the appellant based on illegally obtained agreement.

- 5           ii. That the learned trial Judge erred in law when he conducted the appellant's criminal trial without sworn assessors.
- iii. That the learned trial Judge erred in law when he failed to consider the ingredients of the offence of aggravated  
10           defilement which are legal essential forming a basis upon which the plea of guilty should be entered before convicting the appellant occasioning miscarriage of justice.
- iv. The learned Judge erred in law when he failed to consider sentencing mitigation and without deducting a remand  
15           period imposed upon the appellant harsh and excessive custodial imprisonment of 17 years 6months and 21 days.
- v. That the learned trial Judge erred in law when he failed to consider that as at the time of the alleged offence, the appellant was a child and that the appellant's trial should  
20           have been at the time of the alleged offence thereby handled as a child.

### **Representation**

4] At the hearing of the appeal, the appellant was represented by Mr. Seth Rukundo on State brief. The respondent was represented by  
25           Ms. Immaculate Angutoko who held the brief of Ms. Ann Kabajungu, a Chief State Attorney. The appellant followed proceedings by video link from the Luzira Upper prison. During the proceedings, Mr. Rukundo sought leave of Court to adopt an amended memorandum of appeal filed on 16/8/2022. Ms. Angutoko