

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL CASE NO. 178 OF 2003**

UGANDA ..... PROSECUTOR

**VERSUS**

SEKABITO KASSIM ..... ACCUSED

**BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI**

**JUDGMENT:**

Accused, a neighbour was indicted with defilement of a girl in April 2002. It is alleged that on 1<sup>st</sup> April 2002 at Bubajwe Zone Kawempe Sekabito Kassim defiled Nasuna Nuriat. He denied committing the offence. During the trial Prosecution called 3 witnesses. The accused made a sworn testimony.

The ingredients of the offence of defilement are that (a) the girls must be below the age of 18(b) that there was carnal knowledge (c) that the accused committed the offence. In this case the girl herself told court that she was in primary 5 at Blessed Child Primary School. Other than this she did not say what her age was. However her mother Juliet Nabada, told court that the girl was 14 years old and also that she is in Primary 5. She stated in Cross Examination that Nasuna was born in 1990. This would make her 14 this year. From this evidence and looking at the girl as she testified I am able to say and find that she is 14 years old and in any case

she is quite below the age of 18. In any case the accused who testified on oath was aware that the child was below 18. He said:-

“I know her. She is a child of my Neighbour... Nassuna goes to school at Blessed Child”.

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In defilement cases it is always useful to prove the fact that the accused knew that the complainant was under [14] years of age. **Uganda Vs Joseph Mulindwa** 1975 HCB 206. evidence of any of the parents will be sufficient to prove age of the girl: **Uganda Vs Nicholas Okello** (1984)

10 HCB. 22.

On the second issue namely if there was carnal knowledge there is the evidence of the girl herself who narrated how the accused whom she knew and identified in broad daylight took sexual advantage of her. Her mother (PW3) then told this court of the way the girl reacted when asked to serve food to the accused.

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The child refused to serve Kassim with the food. She even entered the house and jammed.”

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From this reaction the mother smelt a rat. The girl then broke out the story and told the mother of her having been defiled by Kassim. She reported the matter to Mr Kinene who testified as PW3. Neither the girl nor her mother contradicted their testimony as to the defilement. Mr Kinene Addalla the Lc1 secretary for defence who intervened in the matter testified that PW2 approached him in tears and informed him of the defilement. He arrested the culprit and took him to police. In his defence the accused told court that he had been a husband to the child's mother PW2. he

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suggested a love anger that could have made the woman have him arrested for defilement.

From the evidence as a whole and even though there was no medical  
5 evidence, I have been able to conclude that the accused had carnal  
knowledge of the girl who was under age on the material time. The girls  
evidence and that of her mother as well as the LC defence secretary were  
pointing at the accused who was put at the scene of the crime. I find  
therefore that accused defiled Nuriat Nasuna who is a rather dull child. In  
10 law it is possible to convict on the un corroborated evidence of a single  
witness provided the trial court is satisfied that the possibility of mistaken  
identify is ruled out and tested the evidence of sole identifying witness:  
**Uganda Vs Musese & Anor** (1982) HCB 72. It is also trite law that  
medical evidence and opinion are of great help. Courts may act in absence  
15 of such opinion evidence when there is other available evidence to back a  
conclusion. **Ellis Vs R** 1965 EA.

As assessors are in agreement with me I do find that the accused  
committed the offence of defilement as charged and I convict him  
20 accordingly.

25 R.O. Okumu Wengi  
**JUDGE**  
9/3/2004.

**Odit:**

Convict is 30 years, a first offender, been on remand since 17/4/2002. Defilement is a very serious offence as it involved the child of school going age. Convict took advantage of the girl. Court to protect victims in case like this. This can be done by giving a deterrent sentence.

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**Twijukye:**

Convict is a first offender. He has children to look after though he does not live them. He has been on remand for 2 years. Lenient sentence would teach him a lesson. On other hand for purpose of time lag and resources we apply for leave to appeal this Judgment.

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**Court:**

Considering that the accused was a neighbour who was trusted by the child's mother as well as the child herself the accused's offence is not only deliberate but intended. He took advantage of a child who was not only rather dull but did so wantonly. He deserves a deterrent sentence. I take into account the fact that he has served a prison remand and I accordingly sentence him to 12 years in prison.

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20 **Sgd by:** R.O. Okumu Wengi

**JUDGE**

9/3/2004.

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**Court:**

Judgment and sentence read in open court in presence of accused and all the above other persons. Counsel may appeal.

**Sgd by:** R.O. Okumu Wengi

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**JUDGE**

9/3/2004.