

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT RUKUNGIRI**

**HCT-11- CR-CSC-134-2011**

**UGANDA :::::::::::::::::::::::::::::::::::::::PROSECUTOR**

**VERSUS**

**TWINOMASIKO OBED:::::::::::::::::::::::::::::::::::::ACCUSED**

**BEFORE HON. MR. JUSTICE J.W. KWESIGA**

**JUDGMENT**

The Accused person, is indicted for Aggravated defilement contrary to Section 129 (1) and 4 (a) of the Penal Code act. It is stated in the particulars of the offence that on 16<sup>th</sup> December, 2008 at Kameme Cell, Kanungu District, the Accused person unlawfully had sexual intercourse with Maniriho Sarah, a girl aged 6 years. The Accused person denied the allegations. At the time for his defence he sep up an alibi that he was not in the house where the offence was allegedly committed but he was in his garden between 300 and 500 metres from the scene.

By virtue of the provisions of Article 28 of The Constitution of The Republic of Uganda, the Accused person is presumed to be innocent until he pleads or he is proved to the contrary. The Accused person does not have any duty to prove his innocence and the moment he pleaded not guilty he put each and every allegation against him in issue. The state must adduce evidence to prove that:

- (a) The alleged victim was a girl aged below 14 years.
- (b) She had been involved in sexual intercourse.
- (c) That the Accused person did the sexual intercourse.

I will straight away resolve two of the issues jointly namely; whether the girl was below 14 years and whether she was a victim of sexual intercourse? I observed the victim testify in

court she clearly was a child of tender age. She was examined by Paul Nsiyaleta, a Senior Clinical Officer of Kihihi Health Centre on 24<sup>th</sup> December, 2008. He reported in Prosecution exhibit PE 1 that she was six years old. This was three days after the defilement. He observed that the girl's hymen had been ruptured 3 days before the examination. He observed bruises on the vaginal openings which indicated force having been used sexually. He found a mixture of sperms and puss cells in the girls private parts. The girl, PW 4 and her mother PW 1 gave evidence that she was born in 2002 and that she was 10 years at the time of her testimony. I have no doubt that she was aged below 14 years at the time she was defiled in 2008. I am satisfied that the victims age was proved to the required standards to have been below 14 years at the time at the offence.

PW 4, Imaniriho, the victim, despite her age, she gave clear and consistent evidence on oath. She knew the Accused by name. she said she used to hear people in the village calling him that name. she was living with her parents in a rented house belonging to the Accused person's mother, more or less in the same homestead, I have no doubt that she knew the Accused. Her version of the story is that she left her mother in the garden and was going home with two younger children when they met

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the Accused person. He held her arm and led her to his house she described what followed in the following words:-

***“He removed my pants, he made me sleep on a mat, I was facing upwards, he slept on me and I felt pain.... I told my mother that he raped me. I felt pain in the part which I use to urinate. ”***

I understood this victim's evidence to be a description of sexual intercourse. This was corroborated by PW 1 Irene Nyirabwoki. She said on 16<sup>th</sup> December, 2008 while she was in the garden, the three children strayed away and the younger two returned without the victim. They informed her that Sarah had remained with Obed. She became suspicious, she ran to Obed's house which was partly locked and closed from inside. She called and banged the door. The Accused person opened the door and the girl came out while crying. She examined

her private parts and found them bleeding. She told her Obed had sexual intercourse with her. The evidence of the victim was corroborated by the mother's evidence and that of medical examination prosecution exhibit P.E 1. PW 3 Turyahikayo Saidi told court that when he returned from the town that afternoon, he was informed by PW 1, he reported to LC 1 Chairperson who was not helpful and he reported the matter to the police at Kihihi. PW 1 and PW 3 explained that the LC 1 Chairperson and the village mates who responded were unwilling to support them to incriminate the Accused because he was one of their own while the victim's family were just strangers who had just rented in the village. In my view there is no legal requirement that there should be more witnesses than the family members of the victim. Even if the victim had no relatives and she gave cogent evidence as a single witness there would be nothing to render her testimony unreliable. I do not find any merit in the defence contention that someone other than the victim's parents should have been called. The medical evidence of Paul Nsiyoleta gave material corroboration to the age and sexual Act. Irene Nyirabwoki corroborated the victim on identification of the culprit. I have considered the Defence of ALIBI, that the Accused person was in the garden from 6:00 a.m to 6:00 p.m. I have also noted that the garden was about 300 metres from the scene of crime, his house. This garden was so close to the scene that renders this a very weak alibi. The detailed evidence of PW 1 Irene Nyirabwoki and PW 4 Sarah the victim puts the Accused person at the scene. Once the Accused person set up his defence of ALIBI he had no duty to prove it. For example he is not obliged to call witnesses to confirm that he was in the garden and never entered his house to commit the offence. The duty belongs to the state to disprove the alibi by placing the Accused person at the scene. This has been successfully done. Irene Nyirabwoki (PW 1) and Sarah Imaniriho (PW 4) gave watertight evidence of identification of the Accused person at the scene in broad day light. I agree with the opinion of the assessors that the prosecution proved the case against the Accused person beyond reasonable doubt. I find the Accused person guilty of **Aggravated Defilement contrary to Section 129 (1) and (4) (a) of The Penal Code** and he is **convicted** for it.

**SENTENCING**

STATE: Accused is first offender. The convict was 6 years, the Accused was 26 years old. He deserves a deterrent sentence. Consider the offences of this nature are on increase. I pray for a deterrent penalty.

Defence Advocate:

The convict is a first offender. Been on remand for 3 years and 11 months. He is still a young man. He can be a useful citizen. He is married with 1 child. State said he was not remorseful. I pray for a lenient sentence.

**SENTENCE**

**Court:** Defilement is alarmingly high in this region and the Country as a whole. I do not find it a mitigating fact that the Accused person was married and had a child, in my mind, I use this against him because as a parent he should have had respect of the girl child his victim. Children of this country are entitled to protect against all forms of violence and sexual exploitation is the worst violence against the children. This court has a duty to contribute to the effort of protection of children against Criminal perverts of this nature by keeping them away from the villages and streets to allow the children to grow without being traumatized. For the above reasons I do hereby sentence the Accused person to (17) Seventeen years imprisonment.

**J.W. KWESIGA JUDGE 19/11/2012**