



THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA  
CRIMINAL SESSION CASE NO 289 OF 2020

[DPP NO: MBR-CO-350/2020, POLICE NO: MBR CRB 25/ 2020]

UGANDA VS MUJUNI GERALD

BEFORE: Hon. Justice Nshimye Allan Paul. M.

JUDGEMENT

REPRESENTATION

Adv. Jacob Nahurira for the ODPP representing the state.

Adv. Suwaya Matovu on state brief.


INTRODUCTION.

The accused **Mujuni Gerald** was indicted on the charge of Agg Defilement Contrary to section 129 (3)(4)(a) of The Penal Code Act. The particulars of the offence are that; Mujuni Gerald between August 2017 and February 2020 at Bungyereza Cell in the Rwampara District unlawfully had sexual intercourse with AB (the initials of the child's name used) boy below the age of 14 years.

The Accused person took Plea on 2<sup>nd</sup> June 2023. He pleaded not guilty and the hearing of the trial started.

BURDEN AND STANDARD OF PROOF.

It is a principle of law that in criminal cases that the Prosecution has a burden of proving all the ingredients of the offence (**NANDUDU GRACE & ANOR VS UGANDA SUPREME COURT CRIMINAL APPEAL NO 4 OF 2009, SECTION 101 & 103 OF THE EVIDENCE ACT**). In Criminal cases the standard of proof that is required is to prove all the ingredients beyond reasonable doubt (See **MILLER VS MINSTER OF PENSIONS [1947] 1 ALLER 372, UGANDA VS MONDAY WILSON HIGH COURT CRIMINAL CASE 22 OF 2017**)

  
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## PRE-HEARING

The prosecution and defence during the pre-hearing agreed on some facts under section 66 of the Trial on Indictments Act. The documents that were agreed upon by both parties were exhibited and made part of the evidence; they are:

1. Police Form 24A, for medical examination of a person accused of sexual assault. The accused was found fit to stand trial, The form was exhibited as **PEX1**.
2. Police Form 3A, a form on which medical examination of a victim of sexual Assault is done was exhibited as PEX2 after being admitted as an agreed fact under section 66 of the Trial On Indictments Act. The medical personal noted that it was suggestive that the victim was sodomized and suffered anal ulcers probably caused by forceful anal sex.

## WITNESSES

The prosecution called three witness while the defence produced one witness.

## ASSESSORS' OPINION

The assessors gave a joint opinion, where in they recommended that the accused, be convicted.

## SUBMISSIONS

The court issued out a schedule on 03 August 2023 for the parties to file written submissions. The parties did not file any, so the court will consider the evidence on the court record.

## DETERMINATION

It is a principle of law that the prosecution has a duty to prove all the ingredients of the offences as is stipulated in the law in **SECTION 101 & 103 OF THE EVIDENCE ACT** and confirmed in case law in **NANDUDU GRACE & ANOR VS UGANDA SUPREME COURT CRIMINAL APPEAL NO 4 OF 2009**.

The question for determination is whether the prosecution has proved all the ingredients of the offence of aggravated defilement beyond reasonable doubt against the accused person.

The prosecution must prove all the ingredients of the offence of **Aggravated Defilement** beyond reasonable doubt. The ingredients in this case are;

1. That the victim was below 14 years of age.
2. That a sexual act was performed on the victim.
3. That it is the accused who performed the sexual act on the victim.

5

I will now consider the evidence in the court record in respect to each of the ingredients.

#### **Ingredient no 1**

10 **That the victim was below 14 years of age.**

The age of a child may be proved by the production of her birth certificate, or the testimony of the parents (**UGANDA V KIYINGO CRIMINAL SESSION 456 OF 2015**). It has however been held that other ways of proving the age of a child can be equally conclusive such as the court's own observation and common sense assessment of the  
15 age of the child (See **UGANDA V. KAGORO GODFREY H.C. CRIM. SESSION CASE NO. 141 OF 2002**).

The evidence on court record given PW1 testified that he is the father of the victim child, who he said is 13 years of age having been born in 2010. This evidence is also  
20 corroborated by PW2, the mother of the victim who also testified that the victim is 13 years old. I therefore find that the victim is below the age of 14 years, and as such ingredient number 1 is proved.

#### **Ingredient no 2**

25 **That a sexual act was performed on the victim.**

A sexual act is defined in section 129 (7) (a) & (b) of *the Penal Code Act* as amended, where the law states that "**sexual act**" means—

- (a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ.
- 30 (b) the unlawful use of any object or organ by a person on another person's sexual organ.

Proof of a sexual act is normally established by the victim's evidence, medical evidence, and any other cogent evidence, (See **REMIGIOUS KIWANUKA V. UGANDA; S. C. CRIM. APPEAL NO. 41 OF 1995 (UNREPORTED)**). The slightest penetration is enough to prove  
35 the ingredient.



PW1 and Pw2 testified that their son was sodomized by anal sex. This evidence is corroborated by the doctor's input in PEX2 which is PF 3A on which the victim was medically checked, and where the doctor states that he witnessed anal ulcers suggestive of forceful anal sex. The examining doctor then wrote that the matter be referred to police. this evidence is further corroborated by the DEX1 a medical report from Mbarara regional hospital dated 13 February 2020 based on examination of the victim that showed that;

1. The peri anal skin was normal.
2. Two old scars on the pari anal area at 7 o'clock and 1 o'clock, indicative of a previous history of anal trauma that had healed.
3. The sphincters were and anal tone was normal.

The victim's direct testimony is that he woke up to the accused sucking his penis.

In my opinion, the evidence on court record as detailed above shows that a sexual act was performed on the victim and as such ingredient no 2 is proved.

### **Ingredient 3**

**That it is the accused who performed the sexual act on the victim.**

The third essential ingredient required for proving this offence is that it is the accused that performed the sexual act on the victim. This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of crime performing the act. (*UGANDA V KIYINGO CRIMINAL SESSION 456 OF 2015*).

Pw3, AB the Victim (a minor) testified that he is 13 years, that he stayed with the accused for two weeks in January 2020. That the accused gave him medicine every night to treat flu, that he didn't have. Whenever he took the tabs, he would sleep but one day he didn't take the medicine he was given, he woke up and found the accused sucking his penis.

This evidence would if applied to the definition of a sexual act in section 129 (7)(b) of the Penal Code Act would show that the accused performed a sexual act, because his body organs that comprise of his tongue found in his mouth and his Skin were applied on the victim's penis, which is a sexual organ of the victim as is defined in section 129(7) of the Penal Code Act. I find that this evidence of oral sex on the victim amounts to a sexual act, that was performed on the victim by the accused.

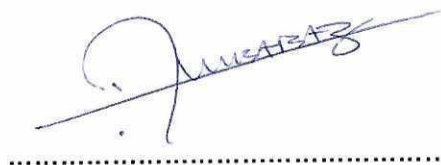
5 The victim also testified that in the morning when he went to ease himself, he felt pain and suspected that they had put salt in the toilet as his anus was hurting. When he went home his mother noticed he was not sitting well, he explained to her what had happened, and he was taken for medical checkup at the hospital.

10 The evidence of the victim as well as Pw2 confirm that the victim was staying with the accused, this evidence is confirmed by the accused himself who also confirmed that he was staying with the victim. The direct evidence of the victim is that he woke up after dodging the taking the drugs that the accused was giving him at night, only to find the accused performing sexual act on the victim.

15 In the same vein the circumstantial evidence shows that the victim was staying with the accused on the same bed and later the medical forms PEX2 and DEX1 all confirm that the victim suffered anal assault, this evidence builds to a conclusion that circumstantial evidence depicted by the forms in PEX2 and DEX1 as well as the direct evidence from the victim, leads to one conclusion that the accused performed a sexual Act on the victim by way of oral and anal sex.

20 I find that that the prosecution has ably proved beyond reasonable doubt that the accused committed the offence of aggravated defilement as stipulated in the indictment.

25 I therefore convict the accused, **Mujuni Gerald** on the charge of Agg Defilement of AB a minor aged below 14 years, contrary to section 129 (3), (4)(a) &(b) of The Penal Code Act.



30 .....  
**NSHIMYE ALLAN PAUL M.**

**JUDGE**

**12-10-2023**



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BEFORE: Hon. Justice Nshimye Allan Paul. M.

SENTENCING OF MUJUNI GERALD

**BACKGROUND**

Mujuni Gerald was on 12<sup>h</sup> September 2023 convicted of the offence of Agg Defilement by unlawful sexual intercourse with AB (the initials of the child's name used) boy below the age of 14 years contrary to section 129 (3)(4)(a) of The Penal Code Act.

I have considered the aggravating and mitigating factors before sentencing.

**SENTENCE**

In sentencing it is important to consider the following;

*Nature of the offence, whether the case went to a full trial or not, the aggravating factors put forward by the state, mitigating factors put forward in favor of the convict and The need for consistency in sentencing as can be inferred from appeal decisions of the higher hierarchal courts.*

the constitution (sentencing Guidelines for courts of Judicature (practice directions) of 2013 provide for a sentencing range for aggravated defilement from 30 years to death.

  
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I will now consider sentences as prescribed by the law or given by courts of law in similar matters. These include;

1. In Oumo Ben Alias Ofwono Vs Uganda Supreme Court criminal appeal 20 of 2016. The Supreme Court found a sentence of 26 years imprisonment neither illegal nor excessive on a conviction of aggravated defilement.
2. In Tusabe John Bosco Vs Uganda COA criminal appeal 425 of 2014. The Court of Appeal found a sentence of 22 years imprisonment appropriate on a conviction of aggravated defilement.

In this case the convict defiled a schoolboy under the age of 14 years that was under his care helping the convict in his work during the holidays. The convict regularly drugged the boy to sleep telling him that he was giving him medicine until one day when the boy did not take the sleeping pills he was given, as a result of the sexual assault the boy developed anal ulcers. I have considered the sentences given by the Court Of Appeal and the supreme court in the cases highlighted above in coming up with a sentence that considers the facts of this case and the need for uniformity in sentences irrespective of the gender defiled.

Counsel for the convict has suggested a sentence of 8 years, but I find that inadequate compared to the offence and given that the case went to full trial.

I sentence the convict to 22 years from the date of conviction, On the sentence, I deduct the period of 3 years, 6 months and 25 days spent on remand up to the date of conviction. The convict will therefore serve a sentence of 18 years, 5 months and 5 days Starting from the date of conviction.

The convict is informed of his right of appeal against the conviction and sentence within 14 days from today.



**Nshimye Allan Paul M.**

**JUDGE**

**12.10.2023**