

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL HIGH COURT
CIRCUIT SITTING AT KYENJOJO
HCT-01-CR-SC-0245-2023

5 **UGANDA**=====PROSECUTOR
VERSUS
BYAMUKAMA STEPHEN=====ACCUSED

BEFORE: HON. JUSTICE VINCENT WAGONA

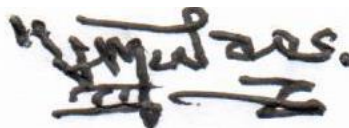
10 **JUDGMENT**

1.0. Introduction

The accused was indicted for Aggravated Defilement c/s 129 (3) and (4) (a) of the Penal Code Act. It was alleged that **Byamukama Stephen** on the 8th day of
15 December 2018 at Kirongo, Kyenjojo Town Council in Kyenjojo District, performed a sexual act on the victim who was aged 8 years.

2.0. The Brief Facts

On 8/12/2018, the victim did not go to school because it was a weekend. Her
20 mother left the victim with her grandmother and went to attend a burial. The accused found the victim at her grandmother's home and lured her to his house where he had sexual intercourse with her, causing her much pain. She later reported the incident to her mother, who examined her and got convinced that the victim had been defiled. The matter was reported to the LC1 Chairman and to the
25 police, which resulted in this case. The victim was medically examined and found



to have been sexually abused. The accused in his defence gave an unsworn statement and denied committing the offence and asserted that the case against him was a fabrication.

5 **3.0. Essential Elements Of The Offence**

For the accused to be convicted of Aggravated Defilement under the preferred indictment, the prosecution must prove each of the following essential ingredients beyond reasonable doubt:

- i. **That the victim was below 14 years of age.**
- 10 ii. **That a sexual act was performed on the victim.**
- iii. **That it is the accused who performed the sexual act on the victim.**

4.0. Burden of Proof And Standard Of Proof

It is trite law that in criminal cases the prosecution bears the burden of proving its
15 case beyond reasonable doubt and the burden does not shift upon the accused
 except in very few circumstances where statutory law specifically provides so.
 Proof beyond reasonable doubt does not mean proof beyond any shadow of doubt.
 It means that the prosecution case must be strong, reflecting a high degree of
 possibility that the accused committed the offence in question. Proof beyond
20 reasonable doubt is attained if having considered all the evidence, there is no
 probability that the accused is innocent. (*See: Woolmington Vs DPP (1935) AC
 462; Miller Vs Minister Of Pensions (1947) 2 All ER 372; Bigirwa Edward Vs
 Uganda Crim. App.27 of 1992*). In the event of any reasonable doubt, such doubt
 must be decided in favor of the accused resulting in an acquittal.

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The burden of proof never shifts to the accused person to prove his innocence and the accused can only be convicted on the strength of the prosecution case and not because of any weaknesses in his defence (See *Ssekitoleko v. Uganda [1967] EA 531*).

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5.0. Evaluation of Evidence

Evidence is evaluated as a whole. The Court considers evidence of both the Prosecution and the Defence relating to each of the ingredients before coming to a conclusion. The Court should not consider the Prosecution evidence in isolation of the evidence presented on behalf of the accused. In **Abdu Ngobi vs Uganda, S.C.Cr. Appeal No. 10 of 1991**, the Supreme Court expressed itself as follows, with regard to treatment of evidence: *“Evidence of the Prosecution should be examined and weighed against the evidence of the Defence so that a final decision is not taken until all the evidence has been considered. The proper approach is to consider the strength and weaknesses of each side, weigh the evidence as a whole, apply the burden of proof as always resting upon the Prosecution, and decide whether the Defence has raised a reasonable doubt. If the Defence has successfully done so, the accused must be acquitted; but if the Defence has not raised a doubt that the Prosecution case is true and accurate, then the witnesses can be found to have correctly identified the appellant as the person who was at the scene of the incidents as charged.”*

6.0. Representation

The Prosecution was represented by Mr. Joel Kakuru a Senior State Attorney in the Office of the Director of Public Prosecutions while the accused was represented by Counsel Robert Luleti on State Brief.

5 **7.0. The Evidence in This Case**

The prosecution called the following witnesses, namely: PW1 KAZIGATI MARY the mother of the victim; PW2 BYAMUGISHA GARACIANO a Medical Clinical Officer who examined the victim; PW3 AYETWA PATRICK the father of the victim; PW4 the victim. The accused gave an unsworn statement in his defence.

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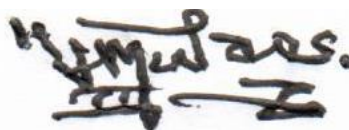
7.1. Evidence Adduced to Prove the Elements of the Offence

7.1.1. That the victim was below 14 years of age.

The most reliable way of proving the age of a child is by the production of her birth certificate, followed by the testimony of the parents. 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 age of the child. *(See Uganda v. Kagoro Godfrey, HC Criminal Session Case No 141 of 2002)*

20 PW1 KAZIGATI MARY the mother of the victim testified on 11/7/2023 and stated that the victim was born on 14/5/2010 and that she was now 13 years old. That she was a pupil in P5 at Buswiga Primary School.

PW2 BYAMUGISHA GARACIANO a Medical Clinical Officer examined the
25 victim on 11/12/2018 and tendered her medical examination report contained in



Police Form 3A (Prosecution Exhibit PE2). He stated that at that time the victim was in P1 and her estimated age was 8 years based on the observation of her having milky teeth and no puberty characteristics.

5 PW3 AYETWA PATRICK the father of the victim also testified on 11/7/2023 and stated that the victim was born on 14/5/2010 and that she was now 13 years old. That she was a pupil in P5 at Buswiga Primary School.

PW4 the victim testified on 11/7/2023 and told court that she was aged 13 years at
10 the time of giving her testimony.

I observed the victim as she testified in court and formed the opinion that she was below 14 years of age when the alleged offence occurred and was still below 14 years at the time of her testimony.


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I was therefore satisfied that the prosecution proved beyond reasonable doubt that the victim was below 14 years when the alleged offence occurred.

7.1.2. That a sexual act was performed on the victim.

20 Sexual act means (a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ; or (b) the unlawful use of any object or organ by a person on another person's sexual organ. Sexual organ means a vagina or a penis. To constitute a sexual act, it is not necessary to prove that there was deep penetration. The slightest penetration is sufficient.

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In the case of *No. 0875 Pte. Wepukhulu Nyguli v. Uganda, SCCA No. 21/2001*, it was held that: *“It is the law that however slight the penetration may be it will suffice to sustain a conviction for the offence of defilement. (See: Adamu Mubiru - V - Uganda (Cr.Appeal No. 47/97 Court of Appeal) (unreported).”*

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Proof of penetration is normally established by the victim’s evidence, medical evidence and any other cogent evidence. Whatever evidence the prosecution may wish to adduce to prove sexual intercourse, such evidence must be such that it is sufficient to prove the element beyond reasonable doubt.

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PW4 the victim testified that the accused defiled her on 8/12/2018. That the accused found her playing with her siblings at her grandmother’s place and offered to take her to his house to give her sugar cane, and made her enter his bedroom where he had sexual intercourse with her on a bed. That he inserted his *kasoro* (penis) into her *obusura* (vagina) and did it for some time. That she felt pain in her private parts and cried and after he had finished, she went home crying and reported the incident to her mother who examined her and saw blood on her dress. That she was later taken to hospital and also examined by a Doctor.

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PW1 KAZIGATI MARY the mother of the victim testified that on 8/12/2018 she went for burial and left the victim and her sibling Junior aged 10 years, with their grandmother. When she returned, Junior reported to her that the victim had returned when she was crying and entered the house and went to bed. PW1 stated that the victim reported to her that the accused had taken her to his bed and had sexual intercourse with her. She observed blood on her and her private parts were

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torn, widened and bleeding. She informed the victim's father and grandmother. The matter was reported to the LC Chairman who referred them to police from where the victim was taken for medical examination.

5 PW3 AYETWA PATRICK the father of the victim also testified that he also saw blood in the private parts of the victim.

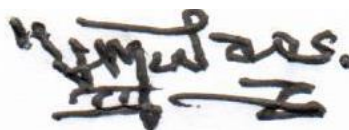
PW2 BYAMUGISHA GARACIANO a Medical Clinical Officer who examined the victim on 11/12/2018 and tendered her medical examination report contained in
10 Police Form 3A (Prosecution Exhibit PE2) testified that his findings were that the victim had serious hyperemia, bruises on both vulva (the lips of the vagina), and seminal fluids in the vagina. The possible cause of the injuries was forceful penetration by a stiff penis. PW2 also examined the accused on 13/12/2018 who was found to be of the apparent age of 23 years, HIV negative and mentally
15 normal. In cross examination the witness said that the victim had experienced penetrative sex but was not bleeding at the time; and that he recorded in the form, what the victim told him. He explained that she had bruises and described hyperemia as injuries caused by friction; that he found semen in her vagina but did not confirm if it belonged to the accused.

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I am satisfied based on the above evidence that the prosecution has proved beyond reasonable doubt that a sexual act was performed on the victim.

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

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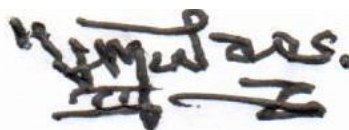


This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of crime as the perpetrator of the offence. To resolve this ingredient, the prosecution relied on the evidence of the victim and her mother.

5 PW1 KAZIGATI MARY the mother of the victim testified that she knew the accused because he was her neighbour in Kirongo village and that they had no grudges. In cross examination she said the home of the accused was 300 meters away from her home. PW1 testified that on 8/12/2018 when she returned from burial, the victim reported to her that it was the accused who had sexual intercourse
10 with her. In cross examination PW1 said that the victim had stayed home and had not gone to school on that day 8/12/2018 as it was a week end; PW1 stated that she had set off for burial at mid-day and returned at 4.00pm, but clarified that she actually got home at 7.00pm because she stopped by a Group Meeting.

15 PW2 BYAMUGISHA GARACIANO a Medical Clinical Officer who examined the victim on 11/12/2018 and tendered her medical examination report (Exhibit PE2) testified that the victim reported to him that she was forced into sexual intercourse by Byamukama on 8/12/2018. That Byamukama had taken her to his house and inserted his penis in her private parts. In cross examination the witness
20 said that he recorded in the form (Exhibit PE2), what the victim told him. PW2 recorded in Exhibit PE2 what the victim told him as follows: ***“She was forced into sexual intercourse with Byamukama of Kirongo on Saturday 8/12/2018. He found her in the garden to harvest sweet potatoes and lifted her up to his home and stripped off her clothes then sex”.***

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PW3 AYETWA PATRICK the father of the victim testified that he knew the accused because they were neighbours in Kirongo village and that he had no grudges with him. He got a report from his wife that the victim had reported to her that the accused defiled her.

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PW4 the victim testified that it was the accused who had sexual intercourse with her. She testified that she knew the accused because he was their neighbour and that she had no grudges with him. That he had sexual intercourse with her on the bed in the bedroom. PW4 told court that the bedroom had saucepans and jerricans and hat the house had 2 rooms. That the accused was wearing a trouser and a short sleeved shirt. PW4 testified that when the accused put her on his bed, he tore her dress before having sexual intercourse with her and that she was not wearing knickers and that when he finished, he threatened that he would cut her neck if she speaks anything about it. That she later reported to her mother that the accused had had sexual intercourse with her. In cross examination PW4 told court that she was alone in the room with the accused when he defiled her as the accused had sent away Nuwamanya Justus (a child younger than the victim) who was outside eating sweet potatoes when she was brought in the house.

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7.1.4. The defence evidence in this case.

The accused in his defence gave an unsworn statement and denied committing the offence. He asserted that he had visited his friend Mugisa whom he was helping with splitting firewood when he was arrested by the mother of the alleged victim and he was taken to Kyenjojo Police Station where he spent a night without being told the reason for his arrest. The accused alleged that the case against him was a

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fabrication based on a grudge that he had with the father of the accused arising from their rivalry over a woman. That arising from this, the father of the victim had vowed to do something to him and then leave that village and that indeed after the accused was jailed, the father of the victim sold his plot and left.

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7.1.5. Corroboration

In this case, corroboration of the evidence of the victim is required as a matter of law because she was a child of tender years who gave evidence not on oath.

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Section 10 of Oaths Act (Cap 19) states that: *“No person shall be convicted or judgment given upon the uncorroborated evidence of a person who shall have given his or her evidence without oath or affirmation.”*

Section 40(3) of the Trial on Indictment Act states:

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‘Where in any proceedings any child of tender years does not in the opinion of the court understand the nature of an oath his evidence may be received though not on oath, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of evidence, and understands the duty of speaking the truth.

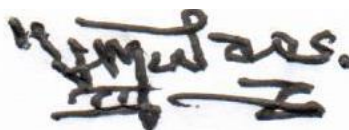
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Provided that where the evidence admitted by virtue of this subsection is given on behalf of the prosecution, the accused shall not be liable to be convicted unless such evidence is corroborated by some material evidence in support thereof implicating him’.

In the case of *Katende Mohammed v. Uganda SCCr.App. No. 32/2001*, the Supreme Court stated that: *Although by use of the expression “shall not be liable to conviction”, the legislature does not seem to completely forbid conviction, it is*
5 *clearly trite that no conviction of an accused can be based on the uncorroborated evidence of a child of tender years who testifies without swearing.*

The Court of Appeal of Uganda in the case of *Senyondo Umar versus Uganda, Criminal Appeal No. 267 of 2002*, relied on *R. VS Campbell (1956) 2 All E.R 272*
10 where Lord Goddard stated: *“To sum up, the un sworn evidence of a child must be corroborated by sworn evidence; if then the only evidence implicating the accused is that of un sworn children the judge must stop the case.*

An immediate report of the victim can amount to corroboration. Section 156
15 of the Evidence Act provides for the proof and admissibility of former statements of a witness to corroborate later testimony as to same fact and states as follows: *In order to corroborate the testimony of a witness, any former statement made by the witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.* In
20 this case PW4 the victim testified that after the incident, she reported to her mother that the accused had had sexual intercourse with her. PW2 BYAMUGISHA GARACIANO a Medical Clinical Officer who examined the victim on 11/12/2018 and tendered her medical examination report (Exhibit PE2) testified that the victim reported to him that she was forced into sexual intercourse by Byamukama on
25 8/12/2018. That Byamukama had taken her to his house and inserted his penis in



her private parts. In cross examination the witness said that he recorded in the form (Exhibit PE2), what the victim told him. PW2 recorded in Exhibit PE2 what the victim told him as follows: *“She was forced into sexual intercourse with Byamukama of Kirongo on Saturday 8/12/2018. He found her in the garden to harvest sweet potatoes and lifted her up to his home and stripped off her clothes then sex”*. I find that this evidence of immediate reports by the victim corroborates the testimony of the victim implicating the accused in the sexual act performed on the victim.

10 **The distressed condition of a victim can offer corroboration:** In **Kabazo v. Uganda (1965) EA 507** at P.510 it was held that in sexual offences the distressed condition of the complainant is capable of amounting to corroboration of the complainant’s evidence. The weight to be attached to such evidence as corroboration varies according to the circumstances of the case and the evidence.

15 The court must be satisfied that the distress was real and not simulated. In this case, the victim testified that after the act, she went home crying. Her mother received a report from victim’s brother that she had come home crying. In court when the witness commenced her testimony and got to the point where she was required to talk about the accused, she broke down and cried. It took some time

20 before she re-composed herself to be able to continue. At the end of her testimony, in answer to court, the witness explained that she cried in court because she remembered what the accused had made her go through. I consider this evidence relevant.

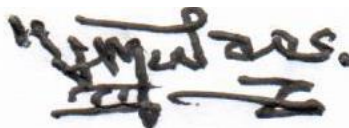
25 **7.1.6. Inconsistencies and contradictions**

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It is settled law that grave inconsistencies and contradictions unless satisfactorily explained, will usually but not necessarily result in the evidence of a witness being rejected. Minor ones unless they point to deliberate untruthfulness will be ignored. The law also allows the court to accept parts of the evidence of the witness considered truthful and reject those parts considered incredible. In **Nasolo v Uganda** [2003] 1 EA 181 (SCU), it was held that: *“The law governing inconsistencies in evidence was stated in **Tajar v Uganda** [1969] EACA 167 to be that minor inconsistency unless the trial Judge thinks it points to a deliberate untruthfulness does not result in evidence being rejected. The same case also laid the principle that it is open to the Judge to find that a witness has been substantially truthful even though he/she had lied in some particular respect”*.

In this case, I observed a number of inconsistencies:

- (i) The baptism card (Prosecution Exhibit PE1) that the mother of the victim sought to rely upon to prove the age of the victim had some erasures with white-wash that looked recent. In cross examination, the witness explained that the card had been issued to her by the church with the erasures and that she had kept it without tampering with it. The oral evidence of age was not contradicted and was consistent with what was contained in the baptism certificate that the victim was born on 14/5/2010. In her police statement (Defence Exhibit DE1), the mother of the victim stated that the victim was born on 14/5/2010.
- (ii) The victim testified that the accused had threatened to cut her neck if she spoke about the incident. The mother of the victim testified that the victim had reported to her that the accused had threatened her that if she spoke about the incident, he would cut her neck. The mother of the victim



however, accepted in cross examination that this was not contained in her statement that was brought to her attention in court in cross examination, but maintained that she did mention it to the police. The mother of the victim explained that the contents of her police statement were responses to questions put to her by the police and that her statement had not been read back to her.

(iii) The victim testified that her mother saw blood on her dress but the mother stated that the blood that she saw was on her body. It was the evidence of both the victim and her mother that the mother examined her private parts, and speaking for herself, the blood the mother saw was on the victim's body. There may have been blood on the victim's dress as well, but the victim may have been mistaken to believe that her mother saw the blood on her dress. The mother testified that she did not examine the clothes of the victim.

(iv) The mother of the victim at first stated that the incident was reported to the police on the same day 8/12/2018 but later clarified that the LC Chairman had advised them to report the case the next day as it was late. She stated that she believed the medical examination of the victim was done on 9/12/2018 but when shown the date on the report being 11/12/2018, she conceded that if that was contained in the report, then the examination was done on 11/12/2018. This is explainable by memory lapses as the witness was testifying in 2023 about events of 2018.

(v) The mother of the victim accepted the contents of her police statement (Defence Exhibit DE1) that she had not adduced in her testimony, that upon her return home on 8/12/2018, when she entered the house, she found the

victim viewing her private parts using a mirror that she had placed on the floor between her legs and as a parent, chastised her for what she was doing, and that was when she revealed the defilement incident committed against her by the accused. This could only be a contradiction if in court she had denied saying so in her police statement.

(vi) The victim testified that she found Namanya Justus present at the house of the accused but that he was sent away by the accused before he defiled her. In her police statement the mother stated that the victim had told her that she was defiled in the presence of Namanya Justus. I believe that the mother did not fully comprehend the report of the victim in this regard but was not being deliberately untruthful. I believe the evidence of the victim that she found Namanya Justus present at the house of the accused but he was sent away by the accused before he defiled her.

(vii) The victim testified that the accused found her playing with her siblings. The medical officer recorded that she told him that he found her in the garden harvesting sweet potatoes. In her police statement her mother stated that she reported that they were in the garden. I find this inconsistency minor as it was not ruled out that they were playing in the garden while harvesting potatoes.

I found the above inconsistencies minor and not going to the root of the case in terms of proving the elements of the offence.

7.1.7. Failure of the accused to put his case to the witnesses in cross examination



In the case of **Uganda Vs Jackline Uwera Nsenga (Kampala High Court Criminal Session Case No. 312 of 2013)**, the Hon. Justice Gaswaga held that:

Where evidence is not challenged in cross-examination, it must be admitted as true and this refers to cross-examination on evidence in chief. The purpose of cross examination is to test the veracity of the witness on his / her evidence in chief. Indeed I find cross-examination to be the most effective tool ever invented by man to establish the truth in court from the witness testimonies. It was held in Kabengevs Uganda UCA Cr App. No. 19 of 1977 (Unreported), and James Sowoabm&Anorvs Uganda (SC) Cr App No. 5 of 1990 (Unreported) by the then Uganda Court of Appeal and the Supreme Court respectively, that:

“Whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross – examination it must follow that he believed that the testimony given could not be disputed at all therefore, an omission or neglect to challenge the evidence-in-chief on a material or essential point by cross- examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently incredible.”

See also Eladam Enterprises Ltd vs. SGS (U) Ltd &Ors. Civil App. No. 05 of 205, reported in [2007] HCB Vol 1 and Sakaar on Evidence Vol. 2, 14t Edition, 1993 by Sudipto Sarkar & V.R Manohar Pg. 2006 -2007.

In this case the accused alleged that the case against him was a fabrication based on a grudge that he had with the father of the victim arising from their rivalry over a woman. That arising from this, the father of the victim had vowed to do something to him and then leave that village; that indeed after the accused was

jailed, the father of the victim sold his plot and left. These facts were never put to the father of the victim in cross examination. I consider it to have been an afterthought on the part of the accused that was only intended to cast doubt on the evidence of the prosecution witnesses. I reject this line of defence.

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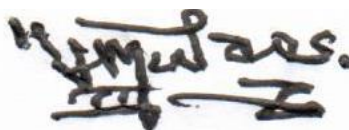
8.0. Conclusion

I have evaluated all the evidence in this case as a whole. I found the prosecution witnesses credible and believable. There was no grudge between the complainants and the accused. The victim knew the accused very well before the incident because they were neighbours. The offence took place during day. There was no possibility of a mistaken identification. The victim reported the incident to her mother at the earliest opportunity. She also reported to the medical officer who examined her. In both reports she implicated the accused in the commission of the offence. In court she broke down because she recalled what the accused had taken her through. I believed the victim that she did not implicate the accused because she was chastised by her mother for viewing her private parts through a mirror but because the accused defiled her. In the light of all of this evidence when taken in totality, I believe that the accused committed the offence and I reject his defence.

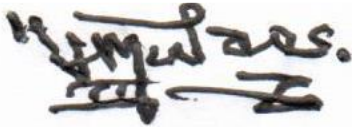
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20 As already stated, I found the prosecution witnesses consistent, credible and believable. They remained consistent in cross examination and their evidence was not discredited. I believed them. I thus reject the evidence of the accused.

In the end, I am satisfied that the prosecution has proved the case against the accused beyond reasonable doubt. In agreement with the joint opinion of the

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assessors, I find the accused guilty of the offence of Aggravated Defilement as indicted and I convict him accordingly.



Vincent Wagona

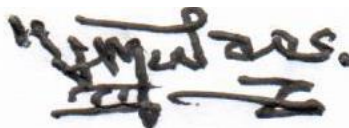
5 **High Court Judge**
FORT-PORTAL

DATE: 6/9/2023

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5 **UGANDA**=====PROSECUTOR
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SENTENCE AND REASONS FOR SENTENCE

Under Section 129 (3) and (4) (a) and (c) of the Penal Code Act, the maximum punishment for the offence of aggravated defilement is death. I am also guided by
15 the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

Under Guideline 35 of the Sentencing Guidelines the court shall be guided by the following aggravating factors— (a) the degree of injury or harm; (b) whether
20 there was repeated injury or harm to the victim; (c) whether there was a deliberate intent to infect the victim with HIV/AIDS; (d) whether the victim was of tender age; (e) the offender’s knowledge of his HIV/AIDS status; (f) knowledge whether the victim is mentally challenged; (g) the degree of pre-meditation; (h) threats or use of force or violence against the victim; (i) knowledge of the tender age of the
25 victim; (j) use or letting of premises for immoral or criminal activities; (k) whether

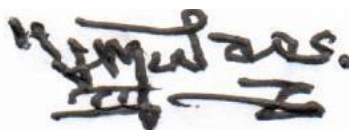
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the offence was motivated by, or demonstrating hostility based on the victim's status of being mentally challenged; or (l) any other factor as the court may consider relevant.

5 **Under Guideline 36 of the Sentencing Guidelines** the court shall take into account the following mitigating factors— (a) lack of pre-meditation; (b) whether the mental disorder or disability of the offender was linked to the commission of the offence; (c) remorsefulness of the offender; (d) whether the offender is a first
10 offender with no previous conviction or no relevant or recent conviction; (e) the offender's plea of guilty; (f) the difference in age of the victim and offender; or (g) any other factor as the court may consider relevant.

The sentencing guidelines have to be applied bearing in mind past precedents of courts in decisions where the facts have a resemblance to the case under trial
15 (see **Ninsiima v. Uganda Crim. C.A Criminal Appeal No. 180 of 2010**).

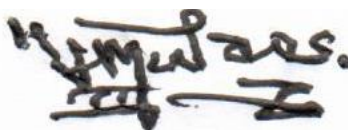
In **Abingoma Defonzi, Criminal Appeal No. 0284 of 2016**, the Court of Appeal upheld a sentence of 40 years's imprisonment for the appellant on a count of Aggravated Defilement of his stepdaughter who was 10 years old. In **Bacwa Benon
20 v Uganda; CACA No. 869 of 2014**, the Court of Appeal confirmed a sentence of life imprisonment upon the appellant who pleaded guilty to aggravated defilement of a 10 year-old girl while he was HIV positive. In **Bonyo Abdul v Uganda; SCCA No. 07 of 2011** the Supreme Court confirmed a sentence of life
25 imprisonment upon the appellant who was HIV positive and had defiled a 14-year-old girl. In **Anguyo Siliva v Uganda, CACA No. 38 of 2014** the appellant who



was HIV positive was convicted of Aggravated Defilement and sentenced to 27 years' imprisonment which was upheld by the Court of Appeal. In **Kaserabanyi James v Uganda SCCA No. 10 of 2014** the appellant was onvicted on his own plea of guilty to the offence of aggravated defilement and sentenced to Life
5 Imprisonment, which was confirmed by the Supreme Court.

Each case must be treated on its own merits. In this case I have considered the following factors that were pointed out by the prosecution. Aggravated defilement is a grave offence attracting a maximum sentence of death. The convict committed
10 the offence against a very young victim of 8 years when he was 23 years old; this was a very big age gap. The victim was traumatized and appeared to still be traumatized. There was evidence that after the incident, the victim returned home when she was crying and entered the house and went to bed. She cried in court when she recalled what the convict had taken her through. According to medical
15 evidence the young victim suffered serious hyperemia, bruises on both vulva (the lips of the vagina). The convict threatened to cut the neck of the victim if she reported. The convict had knowledge of the tender age of the victim. I have also considered the following mitigating factors. The convict is a first offender. He is youthful at his stated age of 29 years. He has a 6 year old son and an elderly
20 mother to care for. In allocutus the convict told court that his brother had died while he was in prison and that his mother is sickly. The aggravating factors by far outweigh the mitigating factors.

Under Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution*
25 (*Sentencing Guidelines for Courts of Judicature*) (*Practice*) *Directions, 2013*, the

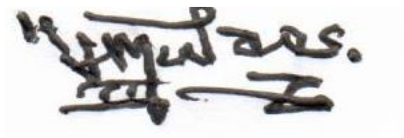


court should take into account the period spent on remand when sentencing the convict. The convict has been on remand for 4 years, 9 months and 15 days.

I consider a sentence of 40 years' imprisonment to be appropriate. After deducting
5 the period already spent on remand, the convict will serve a sentence of imprisonment of **35 years, 2 months and 15** days with effect from today.

The convict is advised that he has a right of appeal against both the conviction and sentence with 14 days from today.

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Vincent Wagona
High Court Judge
FORTPORTAL

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DATE: 6/9/2023.

