

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0065-2023

UGANDA=====PROSECUTOR

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VERSUS

MANIRIHO HABIMANA=====ACCUSED

BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGMENT

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1.0. Introduction

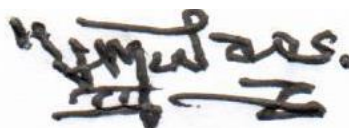
The accused was indicted for Aggravated Defilement c/s 129 (3) and (4) (a) of the Penal Code Act. It was alleged that **Maniriho Habimana** on the 15th day of August 2022 at Itambabiniga Cell, Kyaka II Refugee Settlement in Kyegegwa District performed a sexual act with the victim a girl aged 6 years.

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2.0. The Brief Facts

The complainant and the accused were neighbours in the Refugee Settlement Camp. On 15/8/2022 the complainant received information from Agatha a neighbour, that the accused had defiled the complainant's daughter. The offence is believed to have occurred on that same day. The victim then revealed that the accused had taken her to an abandoned house/shelter where he performed the sexual act on her. The victim took her mother and showed her where the incident had happened in an abandoned house. The complaint reported the case to the LCs and the police and the accused was subsequently arrested and charged with the

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5 offence. In his evidence given on oath, the accused denied the offence, in effect calling it a fabrication and attributing it to a grudge, saying that it was because he had left the church of the complainant where he had belonged for 2 months. He asserted that on the day in question, he was at work at the meat butchery where he was employed.

3.0. Essential Elements Of The Offence

10 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.
- ii. That a sexual act was performed on the victim.
- iii. That it is the accused who performed the sexual act on the victim.

15 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 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. 20 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 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.

5 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*).

5.0. Representation

10 The Prosecution was represented by Robert Arinaitwe a State Attorney from the Office of the Director of Public Prosecutions (Fort-portal Office) while the accused was represented by Counsel Samuel Muhumuza on State Brief.

6.0. The Evidence in This Case

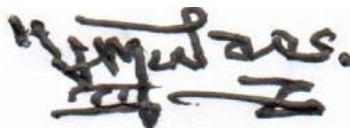
15 The prosecution called the following witnesses: PW1 VISA KAHINDO the mother of the victim; PW2 NO. 55453 D/C KABUGHO CHRISTINE the Investigating Officer; PW3 the victim; and the PW4 NABOTH NUWAMANYA the medical personnel who examined the victim. The accused gave evidence on oath and denied the offence.

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6.1. Evidence Adduced to Prove the Elements of the Offence

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

25 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.

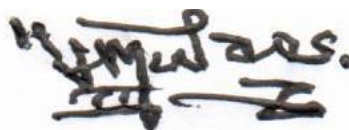
PW1 VISA KAHINDO testified that the victim was her biological daughter and that she was presently 6 years old. In answer to court the witness stated that her daughter was born on 27/2/2017. **PW2 NO 55453 D/C KABUGO CHRISTINE** who was the investigating officer testified that on 17/8/2022 she received a report from the mother of the victim who had come with the victim, reporting that her daughter had been defiled by accused. The witness stated that the child was about 6 years old. **PW3** the victim was found by the court to be a child of tender years who after a *voire-dire*, was found to be intelligent and to understand the nature of an oath and the duty to speak the truth and she gave her evidence on oath.

I observed the victim as she testified in court and formed the opinion that she was way below 14 years when the alleged offence occurred. I was therefore satisfied that the prosecution proved beyond reasonable doubt that the victim was below 14 years when the alleged offence occurred.

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

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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PW1 VISA KAHINDO the mother of the victim testified that she examined the victim and saw bruises in her vagina. That the victim was not in good condition and she started having night mares. In cross examination she said that when she examined her daughter, the bruises she saw in her vagina were fresh. In answer to the assessors, the witness stated that the bruises had blood stains and that the victim would cry when bathing and was walking with difficulty.

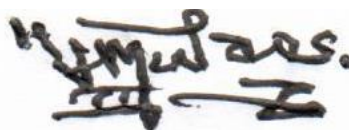
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PW2 NO 55453 D/C KABUGHO CHRISTINE the Investigating Officer testified that before taking the victim to the health centre, she examined the victim and saw bruises and wetness in her vagina. She issued PF3A and booked out to Bujubuli Health Centre III for medical examination of the victim.

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PW3 the victim testified that the accused placed his thing in her private parts. The witness demonstrated with the aid of a male and female anatomical doll that the accused placed his thing (penis) in her vagina. The witness testified that she was

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wearing a dress and knickers. That he removed her knickers and placed his penis in her vagina. That the accused sat on a built cooking stone then he placed her on his laps/thighs. That she felt bad when he pushed his thing into her and that she tried to make noise and when he released her, she ran and went home.

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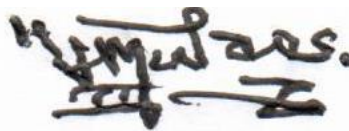
PW4 NABOTH MUWAMANYA a health care practitioner who examined the victim testified that in the genitals of the victim, he found a perforated hymen at the 12:00 O'clock position with bruises around the labias and the possible cause was a blunt object. He stated that lacerations were fresh; that they were 1-2 days
10 old.

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

15 **6.1.3. That it is the accused who 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 as the perpetrator of the offence. To resolve this ingredient, the prosecution relied on the evidence of the victim and her mother.

20 **PW1 VISA KAHINDO** testified that she knew the accused and that his home was about 50 meters from her home. In cross examination she stated that she knew him from 2018. **PW1** testified that she received information from Agatha a neighbour on 15/8/2022, that the accused had defiled her daughter. That the victim then reported to her that when she had sent her, the accused called her saying he would
25 give her sweets. He took her to an abandoned shelter, sat on a stone, removed her



knickers and put her on his laps, and inserted his penis in her vagina. She took her mother and showed her where the incident happened in an abandoned house.

PW2 NO 55453 D/C KABUGHO CHRISTINE the Investigating Officer testified that on 17/8/2022 she received a report from the mother of the victim who had come with the victim, reporting that her daughter had been defiled by the accused. **PW2** testified that the victim reported to her that she met the accused who deceived her that he would take her to her sister. Then took her to an abandoned house where he had sexual intercourse with her. That he sat on a stone and put her on his laps and had sexual intercourse with her. The child reported that the incident took place after lunch hours. The witness told court that at the scene she saw the abandoned house. That she entered the kitchen where the crime took place and the victim showed her *amahega* (Cooking stones/mounds) built with mud; that the victim told her that the accused sat on the *amahega* and placed the victim on his laps. **PW2** further testified that when she interrogated the accused, in his statement he denied the offence. He said he was at his place of work, a butcher. The witness stated that in efforts to verify the claims of the accused, she confirmed from the LC. I Chairman that the accused was not a Butcher and he failed to show her his alleged workplace the butcher. That the accused had said he was a Butcher, but on the village they said he rears goats.

PW3 the victim testified that she knew the accused because she used to see him at his home but that she did not know his names. The witness said that the home of the accused was next to their home. She said that the accused was rearing goats on the village. In cross examination, she said that even before that incident she knew

the accused. The witness said that she knew why the accused was in court. That it was because the accused had done something wrong on her. That he did it in the kitchen. That she did not know the owner of that kitchen. In cross examination she stated that the owner of the kitchen where the incident happened was no longer there. The witness testified that inside that kitchen, it was her and the accused that were there.

PW3 further testified that the accused placed his thing in her private parts. The witness demonstrated with the aid of a male and female anatomical doll that the accused placed his thing (penis) in her vagina. The witness testified that she was wearing a dress and knickers. That he removed her knickers. Then he placed his penis in her vagina. That he sat on a built cooking stone. That the accused sat then he placed her on his laps/thighs. That she felt bad when he pushed his thing into her. That she tried to make noise and when he released her, she ran and went home. The victim explained that the accused had found her on the way before he took her to the kitchen. That she had been sent to collect a key by *Mama Vicky*. That she was to pick the key from the husband of Mama Vicky and that she was alone and the time was morning hours.

PW3 in cross examination maintained that she had told the court the truth and that she was not lying. She said she feared God more than her mother. That what she had told court did happen to her and that no one told her what to say. She said she did not report to her mother immediately because the accused had warned her that he would beat her. In further cross examination, the witness clarified that after the incident she went back home. That she had already got the keys and was on her

way coming back when it happened. That she had already picked the keys and she was returning. That after the act, the accused gave her 500/= and said she should go and buy sweets, but that she gave it back to the accused. In answer to court, the witness said that she did not ask the accused for money and that she gave it back to him because she did not like the acts; that when she gave it back, he took the money.

6.1.4. The defence evidence in this case.

In his evidence given on oath, the accused denied the offence in effect calling it a fabrication and attributing it to a grudge because he had left the church of the complainant where he had belonged for 2 months. He asserted that on the day in question, he was at work at a meat butcher where he was employed. He stated that he was a Butcher man and that his butcher is in Itambabiniga. That 15/8/2022 was a Sunday and he spent his day at work at his Butcher from 6:00am to 6:00 pm. He stated that he was implicated because, 2 years ago, he had left the complainant's church where she was a pastor and joined another church. In cross-examination he stated that he had been a member of the church of the complainant for only 2 months. He testified that upon learning about the complaint against him, he willingly went to police. In cross examination the accused stated that he had been a neighbor of the complainant for 4 years and that the victim knew him very well as a neighbor.

6.1.5. Corroboration

I warned the assessors and I warn myself, that in this case, corroboration of the evidence of the victim is required as a matter of practice because this is a sexual

offence and also because it involved evidence of a child of tender years. Corroboration means additional independent evidence connecting the accused to the crime. There is need to find other independent evidence to prove not only that the sexual act occurred but also that it was committed by the accused. However, I
5 can rely on the evidence of the victim alone without corroboration and convict if I am satisfied that she was a truthful witness and that there was no possibility of a mistaken identification.

The rule of practice as laid down by the EACA with regard to all sexual cases has
10 been expressed thus: *“The judge should warn the assessors and himself of the danger of acting on the uncorroborated testimony of the complainant, but having done so, he may convict in the absence of corroboration if he is satisfied that her evidence is truthful.”* (Chila v. R (1967) EA 722. The Supreme Court of Uganda considered and settled this issue in *Remigious Kiwanuka Vs Uganda,*
15 *S.C.Criminal Appeal No. 41 of 1993.* It was held that it is settled law in sexual offences that though corroboration of the prosecution evidence is not essential in law, it is, in practice looked for, and it is the established practice to warn the Assessors against the danger of acting upon un-corroborated testimony.

Regarding the need for corroboration of the testimony of a child of tender years, in
20 **Patrick Akol vs. Uganda, Criminal Appeal No.123 of 1992,** the Supreme Court of Uganda cited with the approval the opinion of Lord Goddard in the case of **R vs. Campbell (1956) 2 All. E.R. 272** in which he summed up the law at page 276 as follows:-

25 **“To sum up, the unsworn evidence of a child must be corroborated by sworn evidence; if then the only evidence implicating the accused is that**

of unsworn children the judge must stop the case. It makes no difference whether the child's evidence relates to an assault on him or herself or to any other charge, for example, where an unsworn child says that he saw the accused person steal an article. The sworn evidence of a child need not as a matter of law be corroborated, but a jury should be warned not that they must find corroboration but that there is a risk in acting on the uncorroborated evidence of young boys or girls though they may do so if convinced the witness is telling the truth, and this warning should also be given where a young boy or girl is called to corroborate evidence either of another child, sworn or unsworn, or of an adult. The evidence of an unsworn child can amount to corroboration of sworn evidence though a particularly careful warning should in that case be given." [Emphasis added]

15 Corroboration means additional independent evidence connecting the accused to the crime. In *R. v. Baskerville* [1916] 2 K.B 658, it was held that: "*We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some*
20 *material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.*" [Added emphasis]. The EACA adopted the definition in the context of accomplice evidence in *R v. Manilal Ishwerlal Purohit* (1942) 9 EACA 58 (p.61) as follows: "*The corroboration which should be looked for is some additional evidence rendering it probable that the story of the*
25 *accomplice is true and that it is reasonably safe to act upon it. It must be*

independent evidence which affects the accused by connecting or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it. It is of course not necessary to have confirmation of all the circumstances of the crime. Corroboration of some material particular tending to implicate the accused is enough and whilst the nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged, it is sufficient if it is merely circumstantial evidence of his connection with the crime. Corroboration may be found in the conduct of the accused.”

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Section 155 of the Evidence Act provides for the admissibility of evidence that tends to corroborate evidence of relevant facts. The Section provides as follows:

“When a witness whom it is intended to corroborate gives evidence of any relevant fact, he or she may be questioned as to any other circumstances which he or she observed at or near to the time or place at which the relevant fact occurred, if the court is of opinion that the circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he or she testifies.” In this case, **PW1 VISA KAHINDO** testified that the accused

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took her to an abandoned shelter, sat on a stone, removed her knickers and put her on his laps, and inserted his penis in her vagina. She took her mother and showed her where the incident happened in an abandoned house. In the same effect, **PW2**

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NO 55453 D/C KABUGHO CHRISTINE the Investigating Officer testified that the accused took her to an abandoned house where he had sexual intercourse with her. That he sat on a stone and put her on his laps and had sexual intercourse with her. The witness told court that at the scene she saw the abandoned house. That she

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entered the kitchen where the crime took place and the victim showed her *amahega* (Cooking stones/mounds) built with mud; that the victim told her that the accused sat on the *amahega* and placed the victim on his laps. I find on the basis of Section 155 of the Evidence Act, that the evidence of the victim describing what she observed at the scene, as being an abandoned house with molded cooking stones where the accused sat and held her in order to commit the sexual act, is corroborated by **PW1 VISA KAHINDO** and **PW2 NO 55453 D/C KABUGHO CHRISTINE** who visited the scene and as such in this regard, the evidence of PW1 and PW2 provides corroboration to the evidence of the victim.

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Section 156 of the Evidence Act provides for the admissibility of a former statement of a witness to corroborate later testimony as to same fact. The Section provides 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 this case, **PW1 VISA KAHINDO** testified that the victim reported to her that when she had sent her, the accused called her saying he would give her sweets. He took her to an abandoned shelter, sat on a stone, removed her knickers and put her on his laps, and inserted his penis in her vagina. In the same effect, **PW2 NO 55453 D/C KABUGHO CHRISTINE** the Investigating Officer testified that the victim reported to her that she met the accused who deceived her that he would take her to her sister. Then took her to an abandoned house where he had sexual intercourse with her. That he sat on a stone and put her on his laps and had sexual intercourse with her. I find on the basis of

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Section 156 of the Evidence Act, that the reports of the victim to PW1 and PW2 as testified to by PW1 and PW2 corroborate the evidence of the victim.

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. The court must be satisfied that the distress was real and not simulated. In this case, **PW1 VISA KAHINDO** the mother of the victim testified that she examined the victim and saw bruises in her vagina. That the victim was not in good condition and she started having night mares. I find that the description of the victim as not being in good condition and the evidence of having nightmares following the incident, demonstrates that the victim was in a distressed condition and it amounts to corroboration of the evidence of the victim.

Failure to cross examine a prosecution witness about case of accused: 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, **MANIRIHO***

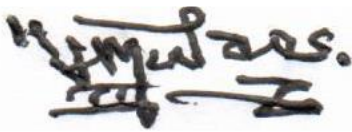
5 **HABIMANA** the accused stated that he was implicated because, 2 years ago, he had left the complainant’s church where she was a pastor and joined another church. In cross examination he stated that he had been a member of the church of the complainant for only 2 months. However, the complainant (mother of the victim) was not asked about this when she was being cross-examined.
10 Accordingly, I consider it an afterthought on the part of the accused brought only at the time of his defence. Therefore, I did not believe the evidence of the accused when he claimed that the complainant had a grudge with him because he had left her church.

15 **Evidence of accused regarding where he was on the 15th day of August 2022:**
MANIRIHO HABIMANA the accused denied the offence and stated that he was a Butcher man and that his butcher is in Itambabiniga. That 15/8/2022 was a Sunday and he spent his day at work at his Butcher from 6:00am to 6:00 pm. On the other hand **PW2 NO 55453 D/C KABUGHO CHRISTINE** the Investigating
20 Officer testified that in efforts to verify the claims of the accused, she confirmed from the LC. I Chairman that the accused was not a Butcher and he failed to show her his alleged workplace the butcher. That the accused had said he was a Butcher, but on the village they said he rears goats. In the circumstances, I did not believe the evidence of the accused when he claimed that he was working in a butcher on
25 15th day of August 2022.

7.0. Conclusion

After evaluating all the evidence as a whole, I find that the prosecution witnesses were truthful. They remained consistent in cross examination. The accused being a neighbour was well known to the victim. The offence was committed during broad
5 day light. The conditions were favorable for a correct identification and there was no possibility of a mistaken identification. In order to corroborate the testimony of the victim implicating the accused, I have relied on the reports she made to her mother PW1 and her statement to the police as testified by the Investigating Officer PW2, as well as the evidence of PW1 and PW2 regarding the victim's
10 observations at the scene, tallying with what PW1 and PW2 found at the scene. The distressed condition of the victim furthermore corroborates the evidence of the victim.

I am satisfied that the prosecution has proved the case against the accused beyond
15 reasonable doubt. In agreement with the joint opinion of the assessors, I find the accused guilty of the offence of Aggravated Defilement as indicted and I convict him accordingly.

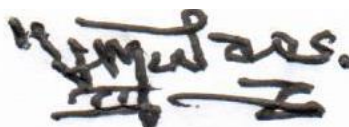


Vincent Wagana

20 **High Court Judge**

FORT-PORTAL

10.05.2023



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0065-2023

UGANDA=====PROSECUTOR

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VERSUS

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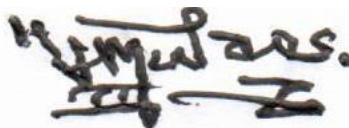
BEFORE: HON. JUSTICE VINCENT WAGONA
SENTENCE AND REASONS FOR SENTENCE

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Under Section 129 (3) and (4) (a) of the Penal Code Act, the maximum punishment for the offence of aggravated defilement is death. The Sentencing Guidelines set a sentencing starting point of 35 years.

15 **Under Guideline 33 of the Sentencing Guidelines:** (1) The court shall be guided by the sentencing range specified in Part IV of the Third Schedule in determining the appropriate sentence for defilement. The sentencing starting point for simple defilement is 15 years' imprisonment and the sentencing range is from 3 years' imprisonment to life imprisonment; (2) The court shall, using the factors in
20 paragraphs 34, 35 and 36, determine the sentence in accordance with the sentencing range.

Under Guideline 34 of the Sentencing Guidelines: The court shall take into account the following factors in considering a sentence for defilement— (a) the
25 age of the victim and the offender; (b) the nature of the relationship of the victim



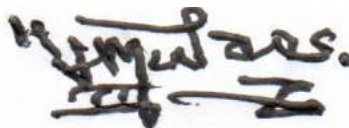
and the offender; (c) the violence, trauma, brutality and fear instilled upon the victim; (d) the remorsefulness of the offender; (e) operation of other restorative processes; or (f) the HIV/AIDS status of the offender.

Under Guideline 35 of the Sentencing Guidelines: In determining a sentence for defilement, the court shall be guided by the following aggravating factors— (a) the degree of injury or harm; (b) whether 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 victim; (j) use or letting of premises for immoral or criminal activities; (k) whether 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.

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Under Guideline 36 of the Sentencing Guidelines: In considering a sentence for defilement, 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 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.

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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 (see **Ninsiima v. Uganda Crim. C.A Criminal Appeal No. 180 of 2010**).

5 In Byera Denis vs. Uganda, Court of Appeal Criminal Appeal No. 99 of 2012, the Court of Appeal substituted a sentence of 30 years imprisonment with one of 20 years imprisonment it considered appropriate in a case of aggravated defilement. The victim in that case was aged 3 years. He had been on remand for 1 year and 8 months. **In Anguyo Siliva v. Uganda**, Criminal Appeal No. 0038 of 2014, the appellant was at the time of
10 the offence infected with HIV and the victim was aged 7 years. The Court of Appeal reduced a sentence of 27 years to 21 years and 28 days imprisonment. He had been on remand for 2 years, 11 months and 2 days. In Tiboruhanga Emmanuel vs. Uganda, Court of Appeal Criminal Appeal No. 0655 of 2014, the appellant had been sentenced to 40 years' imprisonment following his conviction on his own plea of Guilty. The Court of
15 Appeal considered the fact that the appellant was HIV positive as an additional aggravating factor in that he had, by committing a sexual act on the victim while HIV positive, exposed her to the risk of contracting HIV/AIDS. The Court imposed a sentence of 25 years imprisonment. Afterfter deducting 3 years spent on remand, the convict was to serve 22 years.

20 Each case must be treated on its own merits. In this case the prosecution cited the following aggravating factors: the accused has a previous record of conviction for aggravated defilement in Fort-portal HCT-01-CR-SC-0063-2023; offences of this nature are rampant; the case is of a capital nature that attracts a maximum sentence
25 of death; the sentencing starting point is 35 years; the victim was very young aged only 5 years and the age range was big as the convict was 24 yaesr old; he was a

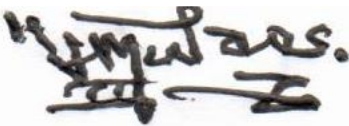
neighbour with a social responsibility to care for the victim, but instead committed an offence against her. It was reported that the convict had been on remand for 8 months and 4 days. The prosecution proposed 20 years imprisonment. The defence pointed out the following mitigating factors: the convict has learnt his lesson and is remorseful; he is still young at 25 years and can reform; he has a wife and 2 young children to care for; the defence proposed 10 years imprisonment. In allocutus, the convict had nothing to add. I have considered all these factors.

Under Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, the court should take into account the period spent on remand when sentencing the convict. I therefore sentence the convict as follows:

1. In the circumstances of this case, I consider a sentence of 20 years' imprisonment to be appropriate.
2. After taking into account the period of 8 months and 6 days already spent on remand as at the sentencing date, the convict will now serve a sentence of imprisonment of 19 years, 3 months and 24 days starting from today.

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

Dated at Fort-portal High Court Circuit this 12th day of May 2023.



Vincent Wagona
High Court Judge

