

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0253-2021

UGANDA=====PROSECUTOR

5

VERSUS

MWANGA IVAN =====ACCUSED

BEFORE: HON. JUSTICE VINCENT WAGONA

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JUDGMENT

Introduction

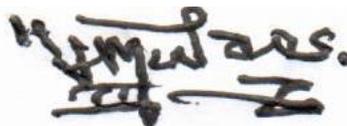
The accused was indicted for Aggravated Defilement c/s 129 (3) and (4) (a) of the Penal Code Act. It was alleged that **Mwanga Ivan** during the month of May 2020 at Mutiti Zone in Kabonero Parish in Kabonero Sub-county in Bunyangabo District performed an unlawful sexual act on the victim a girl aged 10 years.

The Brief Facts

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The accused was a tenant and neighbour of the complainants for about 1 year before this offence which took place around May 2020 during the COVID-19 lockdown. The children were home alone. The victim then aged 10 years was sweeping inside the house while her younger sister aged 5–6 years was outside. Their parents had gone to the garden. The accused found the victim in the house

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and pushed her down on the floor and had sexual intercourse with her for 5–10 minutes, causing her much pain. She attempted to resist but no one came to her rescue. She did not reveal it to her parents out of fear of punishment. During this period she went to live with her uncle from where the incident came to light arising from a vaginal discharge that the victim suffered and the victim revealed what the accused had done to her. The case was reported to the police and the accused arrested, resulting in this case. The accused gave sworn testimony and denied committing the offence and asserted that he suffered from erectile dysfunction that could not allow him to erect or successfully perform sexual intercourse. He brought his wife as his witness.

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:

- 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.**

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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.

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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 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.

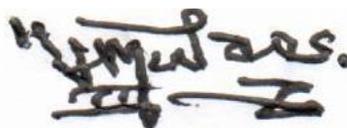
10 The burden of proof never shifts to the accused person to prove his innocence and the accused can only be convicted on the strength of the prosecution case and not because of any weaknesses in his defence (See **Ssekitoleko v. Uganda [1967] EA 531**).

15 **Representation**

The Prosecution was represented by Mr. James Khaukha a Senior State Attorney in the Office of the Director of Public Prosecutions while the accused was represented by Counsel Samuel Muhumuza on State Brief. Counsel made oral submissions which I have considered.

The Evidence in This Case

The prosecution called the following witnesses, namely: PW1 the victim; PW2 Ategeka Owen the Medical Clinical Officer who examined the victim; PW3



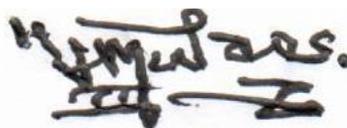
Mugisa Adam the maternal uncle of the victim; PW4 Monday Edson the father of the victim. The accused testified on oath as DW1 and his wife was DW2 Kembabazi Agnes.

5 Evidence Adduced to Prove the Elements of the Offence

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

10 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**)

15 **PW1 the victim** in the course of a voire-dire stated that she was aged 13 years at the time of giving her evidence on 6/12/2023. She had just finished P7. She was born on 6/3/2010. **PW2 Ategeka Owen** the Medical Clinical Officer who examined the victim and tendered her medical examination report contained in Police Form 3A (**Prosecution Exhibit PE1**) dated 12/6/2020 stated the apparent
20 age of the victim at that time as 11 years based on her physical appearance, school history, and the fact that she had one mandibular canine tooth and lacked all premolars. **PW4 Monday Edson** the father of the victim testified that the victim was born on 5/3/2010.



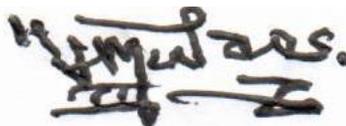
I observed the victim as she testified in court and formed the opinion that she was below 14 years of age when the alleged offence occurred and was still below 14 years at the time of her testimony. I was therefore satisfied that the prosecution proved beyond reasonable doubt that the victim was below 14 years when the
5 alleged offence occurred.

2. That a sexual act was performed on the victim

Sexual act means (a) penetration of the vagina, mouth or anus, however slight, of
10 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.

15 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).*

20 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.

A handwritten signature in black ink, appearing to be 'Wepukhulu Nyguli', written over a horizontal line.

PW1 the victim testified that the accused defiled her during COVID-19 time. He found her inside the house and held her by the hands and pushed her down on the floor. He removed her knickers and put his private part inside her private part. Then he did something bad. He had sexual intercourse with her. The accused took 5-10 minutes having sexual intercourse with her. She felt a lot of pain in her lower abdomen when the accused was having sexual intercourse with her. The pain continued and she developed a discharge in her private parts which worsened with time. She did not reveal it to her parents out of fear of punishment. She later revealed it to her uncle and his wife where she had gone for holidays.

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PW2 Ategeka Owen the Medical Clinical Officer who examined the victim and tendered her medical examination report contained in Police Form 3A (**Prosecution Exhibit PE1**) dated 12/6/2020 found that the hymen of the victim was not intact and she had vaginal discharge on the vulva area. The probable cause of the injuries was a blunt object. PW2 advised treatment for the discharge. In cross examination PW2 stated that at the time of examination of the victim he did not see bruises but there was presence of a bacterial vaginal discharge. He administered treatment and guided on further measures to manage the condition including hygiene. Regarding conditions known as vaginitis and cervicitis PW2 said he was knowledgeable about such and that he had ruled them out as the causes of the discharge he found in the victim, through ultrasound scan that he conducted; adding that these 2 conditions are not sexually transmitted. In re-examination PW2 said the discharge he found could be caused by sexual intercourse.

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PW3 Mugisa Adam the maternal uncle of the victim testified that one week after the victim had come to live with him, he and his wife observed puss and blood stains in her beddings and knickers. PW3 subsequently received a report from his wife that the victim had revealed to her that she had been defiled by the accused who was a neighbour and tenant back home.

PW4 Monday Edson the father of the victim testified that he learnt about the incident from PW3 and when he interacted with the victim, she revealed that the accused had caught her and defiled her from inside their house and she had feared to report the incident because the accused had threatened her that he would kill her if she reported.

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.

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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.

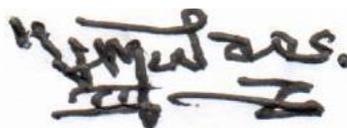
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PW1 the victim testified that she knew the accused as Mwanga Ivan. He was renting on their house. The house he rented belonged to the victim's father. The distance between the house of the complainants and the accused was only one and a half meters apart. He had lived there for about 1 year. The offence took place inside their house in the morning when her parents had gone to the garden. She

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was not at school because there was a COVID lockdown. The accused held her by the hands and pushed her on the floor and removed her knickers and proceeded to have sexual intercourse with her for 5-10 minutes. After the act, she did not report it to her parents for fear of punishment. She started having a discharge from her private parts. She went to the home of her uncle. While at her uncle's home a week later, she revealed it to her uncle's wife and disclosed that it was the accused that had defiled her. Her uncle talked to her and she revealed it to him as well. The discharge from her private parts had worsened. They gave her some medicine but the discharge did not stop. The case was taken up by her uncle. She was later taken to police and for medical examination and given medicine to stop the discharge. While at police she interacted with her parents and narrated what the accused had done to her when her parents had gone to the garden. PW1 told court that the accused had defiled her only once. In cross examination PW1 said that the accused used to come to their house and sit in the sitting room and talk to her father. On the day of the offence, her parents returned from the garden at 3.00pm. She felt unwell but concealed it from her parents and they did not notice it. She was feeling pain in her lower abdomen and the discharge had started but it was not much. She just kept quiet and did not know what to do.

PW2 Ategeka Owen the Medical Clinical Officer who examined the victim and tendered her medical examination report contained in Police Form 3A (**Prosecution Exhibit PE1**) dated 12/6/2020 recorded the history obtained from the victim. The victim told PW2 that on 15th May 2020 one Ivan came to their house when her parents were away and forcefully sexually assaulted her and promised to kill her if she reported him.

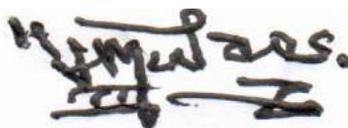


PW3 Mugisa Adam the maternal uncle of the victim testified that upon receiving the report from his wife that the victim had revealed that she had been defiled by the accused, he first shared it with his auntie who has since died then he reported the matter to the police and the LC1 Chairman of Butiti and in the night they went
5 to the home of the accused to arrest him but he refused to open. In clarification sought by court, PW3 said that the accused refused to open or to respond when the LC1 Chairman knocked and introduced himself. It was the wife of the accused who responded and said that the accused was not in the house. The accused eventually opened after about 1 hour when they threatened to break his door. That
10 is when the accused opened and police arrested him.

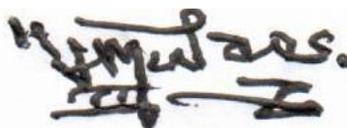
PW4 Monday Edson the father of the victim testified that the accused became his tenant in 2019 and left after his arrest in this case. He knew about this case through PW3 after the accused had been arrested and he went to the police station where he
15 met and interacted with the victim. The victim revealed that the accused had caught her and defiled her from inside their house and she had feared to report the incident because the accused had threatened her that he would kill her if she reported. In cross examination PW4 said that the victim told him that the accused defiled her from inside their house. In further cross examination PW4 stated that
20 the accused was his tenant and they had a good relationship. He used to come to the house of PW4 and they would talk and at times share a meal. He was not present when the accused was arrested.

Evidence of the Accused

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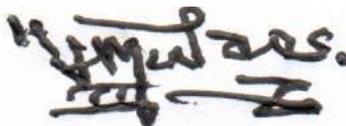
In his sworn testimony the accused who testified as DW1 stated that he knew both the alleged victim and her father when he was their tenant for under a year. He denied committing the offence. He testified that his manhood cannot erect and he cannot have feelings for a woman. The problem started in 2018 and increased in 5 2019. By the time of the alleged offence he could not function. He embarked on herbal treatment but things did not get better. He attributed this case to a fall out with PW4 the father of the victim because PW4 had borrowed 200,000/= from him and when the accused asked PW4 about the money, his attitude towards the accused changed and he started tossing the accused up and down. Whenever he left 10 his things outside, they would go missing or get damaged, and PW4 eventually asked the accused to leave, and before he could find another house, he was arrested for this case. While in prison and later while on bail, he continued on herbal medicine to treat his erectile dysfunction but the problem has never gone away. PW4 has never paid back his money. He refused to open for the police when they 15 came to arrest him because it was night and he did not know who they were. He opened when he got to know that the LC Chairman had come along. When he was taken for medical examination, his penis was examined for bruises and functionality and it was not responsive and was non functional. His wife knew about his erectile dysfunction. In cross examination the accused stated that when 20 he has sexual intercourse with his wife, he cannot ejaculate. In further cross examination the accused stated that after he obtained bail, his wife also started taking herbal medicine for conception. In clarification sought by court the accused said he is impotent and does not know if he can have children. He did not tell the police about his erectile dysfunction. He told the doctor who examined him about 25 it.



DW2 Kembabazi Agnes the wife of the accused testified that when the police came to arrest the accused she was with him in the house and when the LC Chairman called, they opened. The accused was handcuffed and taken to the police station. She went along. They said he had defiled the victim. She told the police that her husband could not erect and could not have defiled the victim. The police could not listen to her. The accused could not perform sexual intercourse but she persisted as a wife. The accused fell out with the landlord after he failed to pay the accused 200,000/= that he had borrowed from the accused. Before the fall out, the accused would visit the land lord at his home and they would share meals. When they have sexual intercourse, the accused does not ejaculate. In cross examination DW2 stated that one month after staying with the accused, she started taking herbs to conceive; that was one month after staying with the accused without conceiving. In further cross examination DW2 said that she has never had sexual intercourse with the accused because he does not function and he was not functioning when they met. The accused has used herbal medicine to cure his erectile dysfunction but it has not worked.

Contradictions and Inconsistencies:

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*

5 *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”.*

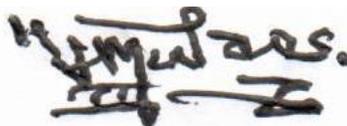
In *Uganda versus Kavuma Ismail High Court Kampala CSC No. 0819 of 2016*, the Hon Justice Stephen Mubiru stated as follows: *“It is settled law that grave inconsistencies and contradictions unless satisfactorily explained, will usually but*

10 *not necessarily result in the evidence of a witness being rejected. Minor ones unless they point to deliberate untruthfulness will be ignored (see Alfred Tajar v. Uganda, EACA Cr. Appeal No.167 of 1969, Uganda v. F. Ssembatya and another [1974] HCB 278, Sarapio Tinkamalirwe v. Uganda, S.C. Criminal Appeal No. 27 of 1989, Twinomugisha Alex and two others v. Uganda, S. C.*

15 *Criminal Appeal No. 35 of 2002 and Uganda v. Abdallah Nassur [1982] HCB). The gravity of the contradiction will depend on the centrality of the matter it relates to in the determination of the key issues in the case. What constitutes a major contradiction will vary from case to case. The question always is whether or*

20 *not the contradictory elements are material, i.e. “essential” to the determination of the case. Material aspects of evidence vary from crime to crime but, generally in a criminal trial, materiality is determined on basis of the relative importance between the point being offered by the contradictory evidence and its consequence to the determination of any of the elements necessary to be proved. It will be considered minor where it relates only on a factual issue that is not central, or that*

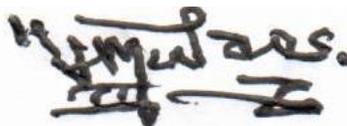
25 *is only collateral to the outcome of the case.”*



PW1 the victim testified that after the offence she asked her mother who allowed her to go to her uncle's place and she went alone by bus. Her uncle PW3 Mugisa Adam testified that he had asked the parents of the victim for the victim and she
5 was put on a bus and she found PW3 at his home. This contradiction is minor because it does not rule out the possibility that the victim without knowing that her uncle had already asked for her, had asked her mother to be allowed to go to her uncle.

10 PW1 the victim testified in cross examination that her uncle noticed that she was unwell when he saw puss in her knickers when she was washing her knickers inside the bathroom and her uncle had come to the bathroom for soap. On the other hand her uncle PW3 testified that he saw puss when the victim was doing the
15 washing on the veranda. This contradiction is minor because there is no evidence that the victim and PW3 interacted about what PW3 had just seen. It is not ruled out that the victim believed PW3 had made the observation on the occasion in the bathroom whereas PW3 had made the observation at the occasion on the veranda. The contradiction is also explainable by lapse of time and does not go to the root of the case.

20 There were inconsistencies in the evidence of the accused as to whether his manhood could erect or not. The accused claimed that he was not able to erect to perform a sexual act and that he had no feelings for a woman. In cross examination the accused stated that when he has sexual intercourse with his wife, he cannot
25 ejaculate. In further cross examination the accused stated that after he obtained



bail, his wife also started taking herbal medicine for conception. In clarification sought by court the accused said he is impotent and does not know if he can have children. In cross examination DW2 stated that one month after staying with the accused, she started taking herbs to conceive; that was one month after staying
5 with the accused without conceiving. In further cross examination DW2 said that she has never had sexual intercourse with the accused because he does not function and he was not functioning when they met. That the accused has used herbal medicine to cure his erectile dysfunction but it had not worked. The evidence of the accused was thus unclear as to whether he contended that he had an erectile
10 dysfunction that could not allow his manhood to erect and penetrate during sexual intercourse or whether he was saying he was only impotent.

Importance of Cross examination and failure to cross on material facts:

15 The accused claimed that he suffered from erectile dysfunction and was by reason thereof incapable of performing a sexual act and that the case against him was motivated by a fall out with the father of the victim who failed to repay 200,000/= borrowed from the accused. These claims however were not put to the father of the victim in cross examination. The claims of sexual dysfunction of the accused were
20 never explored with the victim, her father or her uncle during cross examination. Importantly, the claims of sexual dysfunction were not put to PW2 Ategeka Owen the medical officer who examined the accused and tendered his medical examination report contained in Police Form 24A (**Prosecution Exhibit PE2**). There is no way the medical officer would have neglected or omitted to report on

the alleged erectile dysfunction of the accused had he been notified or made any findings in that regard.

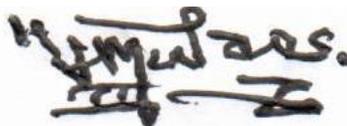
5 It was held in Kabengevs Uganda UCA Cr App. No. 19 of 1977 (Unreported),
and James Sowoabm&Anorvs Uganda (SC) Cr App No. 5 of 1990
(Unreported) by the then Uganda Court of Appeal and the Supreme Court
respectively, that: “Whenever the opponent has declined to avail himself of the
opportunity to put his essential and material case in cross – examination it
must follow that he believed that the testimony given could not be disputed at
10 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
15 Vol. 2, 14t Edition, 1993 by Sudipto Sarkar & V.R Manohar Pg. 2006 -2007.

The claims of sexual dysfunction of the accused having not been explored with the
victim, her father, her uncle and the medical officer during cross examination leads
me to the inference that their evidence was accepted. The evidence of fall out of
the accused with the father of the victim based on the alleged failure of the father
20 of the victim to pay a debt of 200,000/= he allegedly owed the accused, was also
not put to the father of the victim in cross examination.

Corroboration:

As I warned the assessors, I warn myself, that this being a sexual offence and an offence that involves the evidence of a child of tender years, it requires corroboration as a matter of practice, with regard to the act of sexual intercourse and with regard to the evidence implicating the accused. Further, the evidence of identification by the victim also requires corroboration as a matter of practice because it is evidence of a single identifying witness. If however, I am satisfied that the victim is truthful and free from the possibility of error in identification, I can rely on it to convict even in the absence of corroboration (see: *Chila v. R* (1967) EA 722; *Remigious Kiwanuka Vs Uganda, S.C.Criminal Appeal No. 41 of 1993*; *Jamada Nzabaikukize SCCA No, 01/2015*; *Abdullah Bin Wendo and another vs. R* (1953) 20 EACA 583; *Abdulla Nabulere vs. Uganda Criminal Appeal No.9 of 1978*; *Senvondo Umar Vs Uganda Cr. Appeal No. 267 of 2002*; *R v. Manilal Ishwerlal Purohit* (1942) 9 EACA 58 (p.61).

In this case the evidence of the sexual act and the evidence implicating the accused given by the victim is corroborated by the reports of the victim to the wife of her uncle, her father and the medical officer who examined her. **PW1** the victim testified that while at her uncle's home a week later, she revealed it to her uncle's wife and disclosed that it was the accused that had defiled her. Her uncle talked to her and she revealed it to him as well. **PW2 Ategeka Owen** the Medical Clinical Officer who examined the victim and tendered her medical examination report contained in Police Form 3A (Prosecution Exhibit PE1) dated 12/6/2020 recorded the history obtained from the victim. The victim told PW2 that on 15th May 2020 one Ivan came to their house when her parents were away and forcefully sexually assaulted her and promised to kill her if she reported him. **PW4 Monday Edson**



the father of the victim testified that the accused became his tenant in 2019 and left after his arrest in this case. He knew about this case through PW3 after the accused had been arrested and he went to the police station where he met and interacted with the victim. The victim revealed that the accused had caught her and defiled her from inside their house and she had feared to report the incident because the accused had threatened her that he would kill her if she reported. In cross examination PW4 said that the victim told him that the accused defiled her from inside their house. These reports made by the victim are relevant under Section 156 of the Evidence Act which provides that: *“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”*.

Conclusion:

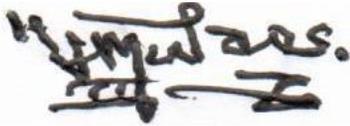
The evidence of the prosecution witnesses was truthful, consistent, reliable, and well corroborated implicating the accused. The offence was committed during day time and the victim knew the accused very well before because he was their tenant for about one year. The act lasted 5-10 minutes during which time the accused and the victim were close to each other. The evidence of identification placed the accused at the scene of the crime and was free from the possibility of error. I believed the victim was a truthful witness. The reports of the victim to her father and the medical officer who examined her, corroborated her court testimony that the accused defiled her. The evidence of the victim and the medical evidence proves that penetration was achieved during the sexual act and disproves the

accused's inconsistent claims of erectile dysfunction. The evidence of fall out of the accused with the father of the victim based on the alleged failure of the father of the victim to pay a debt of 200,000/= he allegedly owed the accused, is an afterthought which was not put to the father of the victim in cross examination.

5 The inconsistencies in the evidence of the prosecution were minor. Based on these considerations, I believe the prosecution evidence and reject the accused's defence.

I find that the prosecution has proved the case beyond reasonable doubt and in agreement with the joint opinion of the Assessors I convict the accused as indicted.

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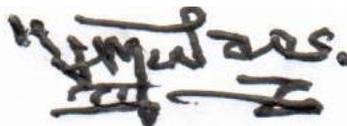


Vincent Wagona
High Court Judge
FORT-PORTAL

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DATE: 12/01/2024

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL HIGH COURT
CIRCUIT SITTING AT KYENJOJO
HCT-01-CR-SC-0253-2023

5 **UGANDA=====PROSECUTOR**
VERSUS
MWANGA IVAN=====ACCUSED

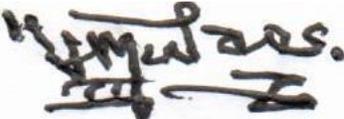
BEFORE: HON. JUSTICE VINCENT WAGONA

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SENTENCE AND REASONS FOR SENTENCE

15 The maximum punishment for the offence of aggravated defilement is death. I am also guided by the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

20 **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 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
25 the offence was motivated by, or demonstrating hostility based on the victim’s

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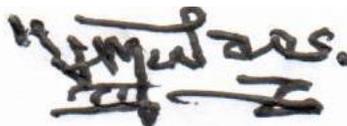
status of being mentally challenged; or (l) any other factor as the court may consider relevant.

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

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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 v Uganda; CACA No. 869 of 2014**, the Court of Appeal confirmed a sentence of
20 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 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
25 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 convicted on his own plea of guilty to the offence of aggravated defilement and sentenced to Life Imprisonment, which was confirmed by the Supreme Court.

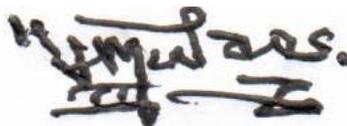
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In this case I have considered the following aggravating factors. Aggravated defilement is a grave offence that carries a maximum sentence of death. The victim was exposed to sexual intercourse at a very young age of about 11 years. There was a big age difference with the accused was about or above 25 years of age. The accused was aware of the tender age of the victim. The accused abused the trust of the complainants where he was a tenant of the victim's father and defiled her from the house of the parents of the victim in the sitting room where he would occasionally visit and be hosted at meals. He used the sitting room of the father of the victim for immoral purposes. He subjected the victim to much pain and she subsequently suffered from a vaginal discharge that took a while to treat. I have considered the following mitigating factors. The convict is a first offender age about 30 years. He can reform and be a good citizen. He has been on remand for 2 years, 10 months and 9 days. In allocutus he informed court that he has a family to care for. The aggravating factors far outweigh the mitigating factors.

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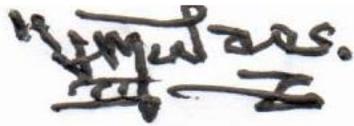
Under Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, the court should take into account the period spent on remand when sentencing the convict. The convict has been on remand for 2 years, 10 months and 9 days.

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I consider a sentence of 35 years' imprisonment to be appropriate. After deducting the period already spent on remand, the convict will serve a sentence of imprisonment of 31 years, 1 month and 29 days with effect from today.

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



Vincent Wagona

10 **High Court Judge**
FORTPORTAL

DATE: 12/1/2024.

