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THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-00- CR – SC- 0028 OF 2017

(ARISING FROM NABWERU COURT CRIMINAL CASE NO.AA- 0057 OF 2014)

UGANDA :::::::::::::: PROSECUTION

VERSUS

10 KIGERE EDWARD ::::::::::::::ACCUSED

BEFORE: THE HON. MR. JUSTICE OYUKO ANTHONY OJOK

JUDGMENT

15 The accused was indicted with the offence of Aggravated Defilement Contrary to  
Section 129 (3) and (4) (a) of the Penal Code Act, Cap. 120. It is alleged that on  
the 23<sup>rd</sup> day of September, 2014 at Jokolera village, Nangabo Sub County in  
Wakiso District the accused unlawfully performed a sexual act with Nansereko  
Laila a girl aged 4 years then. The accused denied the offence. The accused gave  
sworn evidence and didn't call any witness. Prosecution produced 4 witnesses.

20 Representation

William Byansi- Senior Principal State Attorney appeared for the State and  
Counsel Kumbuga Bak Richard represented the accused on State Brief. Both  
Counsel agreed on PE<sub>1</sub>, PE<sub>2</sub> and PE<sub>3</sub>.

### Burden of proof

It is a requirement by the law that prosecution must prove its case beyond reasonable doubt because the accused has no duty to prove his innocence (Article 28 of the Constitution). (See Woolmington-vs-DPP [1935] AC 462; Miller -vs- Minister of Pensions [1947] 2 ALLER 372; and in support of aforestated proposition on the burden of proof.

It is a settled cardinal principle in criminal law that in all criminal cases, except a few statutory offences the burden of proof is on the prosecution. The prosecution must prove all the ingredients of the charged offence beyond reasonable doubt against the accused person.

### The standard of proof

Prosecution must prove its case beyond reasonable doubt. Any doubt in the evidence shall be resolved in favour of the accused.

Prosecution must prove on all the ingredients of the offence of Aggravated Defilement in order to sustain a conviction thereof.

### Ingredients of the Aggravated Defilement

Prosecution must prove the following ingredients of Aggravated Defilement:-

1. The victim is aged below 14 years.
2. A sexual act was performed on the victim.
3. Participation of the accused person in the commission of the offence.

### **1) Age of the girl**

No doubt the offence was committed.

The victim was 4 years old at the time of the commission of the act. Her auntie testified and confirmed the age and even a medical report marked PEI was tendered in Court confirming the same. Even the victim stated her age by then of 4 years. I find that this ingredient was proved beyond reasonable doubt.

### **2) A sexual act was performed on the victim.**

The Clinical Officer on the 24<sup>th</sup> September, 2014 who examined the victim and tendered in PEI confirmed that there was abrasion in the private parts and the propable case of injuries being super facial penetration; the examination was done just after 1 day of the incident. PW3 the auntie who was staying with the victim also confirmed that she carried the initial examination of the girl and found out that there was injuries in the victim's private parts and even the victim testified to that effect although the victim wasn't able to describe the exact object used. This evidence was not contested by the accused person but admitted as agreed fact. I therefore find that this ingredient was proved beyond reasonable doubt.

### **Participation of the accused person**

In the instant case the victim is 9 years old now, Voir dire was conducted and the victim is found to possess sufficient knowledge and intelligence. Gave sworn



evidence, properly identified the accused person and pointed at him in Court identifying the accused as somebody who defiled her. She identified him by name as somebody who used to pass by at their home; this was confirmed by the accused person who knew the victim. I observed the demeanor of the witnesses and found the witnesses to be reliable, credible and trustful. Even the time the incident happened was before 7:00p.m. This leaves out no possibility of mistaken identity. (See **Moses Bogere Vs Uganda SCCA No 1 /1997**).

Secondly, the accused person admitted during his defence in examination in chief that he took the victim plus the 2 other children but failed to explain the whereabouts of the other children apart from the victim who he brought to the shop where he was arrested. Much as he said he took the victim from a crusade. Furthermore this evidence was corroborated by PW3 the auntie who had no grudge with the accused person, the accused person confirmed that he didn't know the auntie.

Much as the accused said that his conduct wasn't of a guilty person of bringing the victim to the shop, to me he didn't suspect that he would find people at the shop and his explanation of coming to get his balance was an afterthought. You can't just leave your balance of money to a stranger. Even if there were some contradiction regarding the object used, I find it minor and should be ignored.

The case of **Uganda V Ngirabakuuzi 188/199 HCB**, that only grave inconsistency should be taken into account but minor inconsistencies will have no effect at all. I therefore find that the accused participated in the commission of the offence and he is hereby guilty and convicted.

100 I agree with the assessors' opinion to convict the accused and he is hereby convicted of Aggravated Defilement Contrary to Section 129 (3) and (4) (a) of the Penal Code Act, Cap. 120.

**State:**

105 This is a very serious offence which carries a maximum sentence of death, the victim being only 4 years old by then the convict should be given a maximum sentence. The offence is rampant and need to be reduced; the victim might develop dislike of men, exposed to early sex, and inflicted pain I pray for 21 years. The mother prayed for death sentence.

110 **Defence:**

The convict is a first offender; he has been on remand for 3 years and 10 months, bread winner, youthful, a parent, and willing to reform, I pray for a lenient sentence of 12 years.

115 **Court:**

I agree the convict is a first offender; he has been on remand for 3 years and 3 months, bread winner, youthful, a parent and willing to reform. I take these facts into consideration while considering the sentence. However, the offence is rampant, which should be discouraged, the victim was only 4 years old capable of being the child of the convict, the permanent scar left on the victim which will never get cured and taking into consideration that this offence carries a maximum sentence of death. I therefore sentence the convict to 35 years to serve in prison,

125 considering period spent on remand of 3 years and 3 months leaving the convict  
with 31 years and 9 months to serve in prison.

Right of appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

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