

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
CRIMINAL SESSIONS CASE No. 0819 OF 2016

UGANDAPROSECUTOR

5 **VERSUS**

KAVUMA ISMAIL ACCUSED

Before Hon. Justice Stephen Mubiru

JUDGMENT

10 The accused in this case is indicted with one count of Aggravated Defilement c/s 129 (3), (4) (a) and (c) of the *Penal Code Act*. It is alleged that the accused on the 11th day of October, 2014 at Nabweru South in Wakiso District, being a person in authority over Nagasha Enid, performed an unlawful sexual act with the said Nagasha Enid, a girl under the age of fourteen years.

15 The prosecution case is that the accused a class teacher at Oxford Elementary Academy, a mixed day and boarding primary school located in Kazo Central, Wakiso District. The victim was a primary six pupil in that school where the accused was her English teacher. During the second term holiday of the year 2014, primary six and seven pupils were required to attend classes at the school. On Saturday, 11th October, 2014 during the afternoon hours after lunch,
20 pupils of the two classes were combined in one classroom where upon the accused summoned the victim from the class to meet him outside. In trepidation, the victim asked two of her friends to accompany her since she had previously been sexually molested by the accused, twice near her home and once at the school.

25 When they got to where the accused was, he sent the other two girls away and retained the victim. He took her into the primary six classroom and locked. He unzipped his trouser and she saw a condom on this private parts. He lifted the victim and placed her on the seat attached to the classroom desk. He placed his palm on her mouth and tore off her panty which got torn in the process. He inserted his private part into hers for about eight minutes. After the act, she was
30 shattered emotionally and felt pain in my private parts but did not sustain any wounds. The

accused went out with the zippers still open and the condom still on his private parts. The victim did not disclose her ordeal to anyone but unknown to her, her two friends had peeped into the room and had witnessed everything. The following Monday, one of her friends having seen her in s distressed condition, encouraged her to report but she was terrified to do so. Her friends
5 instead reported the occurrence to the Senior woman teacher who in turn reported to the head teacher. The head teacher conducted some preliminary inquiries, including taking the child for a medical examination, before reporting the case to the police. The accused was subsequently arrested on 18th October, 2014 and charged.

10 In his defence, the accused denied having committed the offence. Although he admitted having been a teacher at Oxford Elementary Academy at one time, he had left the school by 11th October, 2014 over non-payment of salary, to teach at another school nearby known as New Bubajjwe Primary School. He attributed the accusation in this case to a combined revengeful design by the head teacher of Oxford Elementary Academy, P.W.3 Nkoyooyo Joseph, in order to avoid paying
15 him his three months' salary arrears and by the father of the victim, P.W.2 Muhereza Golden, to extort money from him and his relatives.

The prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift and the accused can only be convicted on the strength of the
20 prosecution case and not because of any weaknesses in his defence, (See *Ssekitoleko v. Uganda* [1967] EA 531). Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see *Miller v Minister of Pensions* [1947] 2 ALL ER 372).

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For the accused to be convicted of Aggravated Defilement, 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.
- 30 3. The accused was a person in authority over the victim at the material time.
4. That it is the accused who performed the sexual act on the victim.

Firstly, the prosecution was required to prove beyond reasonable doubt 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 H.C. Crim. Session Case No. 141 of 2002*).

In the instant case, the victim Nagasha Enid Isidore testified as P.W.5 and stated that she was 17 years old. Her father, P.W.2 Muhereza Golden was more specific and stated that the victim was born on 3rd April, 2001 and hence she was thirteen years old and in primary six at the time of the incident. This is corroborated by P.W.6 Dr. Kalyemenya Martin, a Doctor by then at Mulago Hospital, who examined the victim on 18th October, 2014 (seven days after the day of the incident) and in his report, exhibit P. Ex.2 (P.F.3A) certified his findings that the victim was 13 years old at the date of examination, "by dentition (28) confession and physical appearance." The court too had the opportunity to see and observe the victim as she testified in court. She indeed looked the age she claimed. Counsel for the accused did not contest this ingredient during cross-examination of any of these witnesses and in her final submissions. I have considered this evidence and in agreement with the assessors find that it has been proved beyond reasonable doubt that by 11th October, 2014, Nagasha Enid, was a girl under the age of fourteen years.

The second ingredient required for establishing this offence is proof that the victim was subjected to a sexual act. One of the definitions of a sexual act under section 129 (7) of *the Penal Code Act* is **p**enetration of the vagina, however slight by the sexual organ of another or unlawful use of any object or organ on another person's sexual organ. Proof of penetration is normally established by the victim's evidence, medical evidence and any other cogent evidence, (See *Remigious Kiwanuka v. Uganda; S. C. Crim. Appeal No. 41 of 1995 (Unreported)*). The slightest penetration is enough to prove the ingredient.

In the instant case, the sexual act forming the basis of the indictment is alleged to have taken place on Saturday, 11th October, 2014. P.W.5 Nagasha Enid, the victim, testified that on that day after lunch, her teacher called her to the primary section. She asked her friends to escort her

because she was scared. When she arrived at the primary section the accused sent the rest away and retained her. He took her to the classroom which he locked. He unzipped his pair of trousers and she saw a condom on his private parts. He lifted her and placed her on the seat of the desk. He placed his palm on her mouth. He tore off her panty and inserted his private part into hers for about eight minutes. After the act, she was shattered emotionally. She felt pain in her private parts but had no wounds. He went out with the zippers still open and the condom still on. This narration fits the legal description of a sexual act.

Her evidence is corroborated by P.W.6 Dr. Kalyemenya Martin, who examined the victim seven days later on 18th October, 2014 and found that her hymen was ruptured most probably by penile penetration, although he could not ascertain when that could have happened. The nature of the source upon which such an opinion is based cannot have any effect on the admissibility of the opinion itself. Any frailties which may be alleged concerning the information upon which the opinion was founded are only relevant in assessing the weight to be attached to that opinion. This being opinion evidence, its strength founded on the premises upon which the expert's opinion is based. His opinion was based on what the victim told him when he was taking down the history, his own visual observation of remnants of the torn hymen and scars and on his previous experience involving cases of a similar nature. Although he did not undertake the desirable process, through interviewing the victim, of eliminating all other possible causes of loss of hymens in girls and women, such as tree climbing, bicycle riding and so on, each of the specific facts underlying an expert's opinion need not be proven in evidence before any weight could be given to it. As long as there is some admissible evidence to establish the foundation for the expert's opinion, the court ought to take it into consideration. The court should however be cautious in that the more the expert relies on facts not proved in evidence the less weight the court may attribute to the opinion.

An expert opinion relevant to a material issue in a trial but based entirely on unproven hearsay, is admissible but will carry no weight whereas an opinion based on matters within the scope of his or her expertise, as in personal observation, consultation with colleagues, and information that an expert obtains from a party to litigation touching a matter directly in issue. Where the information upon which an expert forms his or her opinion comes from a party to the litigation,

or from any other source that is inherently suspect, a court ought to require independent proof of that information. The lack of such proof will have a direct effect on the weight to be given to the opinion. However, where an expert's opinion is based in part upon suspect information and in part upon either admitted facts or facts sought to be proved, the matter is purely one of weight.

5 That was the situation here in that P.W.6 based his opinion partly on suspect information of his previous experience and the history given to him by the victim and in part upon observed facts of a torn hymen. I attach a lot of weight to the evidence only as corroboration of the fact that the victim had lost her virginity, most probably by penile penetration by the time of the examination, but not as corroboration of the fact that it had occurred on 11th October, 2014 at the hands of the
10 accused.

Corroboration of the latter aspect is by the testimony of the Senior Woman Teacher P.W.4 Nanteza Annet who testified that the victim looked scared as she confided in her the following Friday, 17th October, 2014 (P.W.3 says it was Monday 14th October, 2014). The distressed
15 condition of a victim of a sexual offence, soon after or within a reasonable time after the offence was allegedly committed, may corroborate her evidence. Moreover, she recounted the same experience to P.W.3 Nkoyooyo Joseph. The circumstances of the two reports provided a guarantee of reliability: the statements were made shortly after the alleged attack and to different persons on separate occasions. They were also consistent with one another and with the medical
20 evidence of P.W.6 Dr. Kalyemenya Martin.

It was argued by counsel for the accused that there were multiple contradictions and inconsistencies in the prosecution evidence by reason whereof it ought to be rejected. I find that the testimony of the victim's father P.W.2 Muhereza Golden alluded to by counsel related to two
25 previous incidents near the victim's home and is not central to the determination of this element. It may only be relevant for testing the credibility of the witnesses in light of details relating to the recovery of condoms and the sequence of events that occurred on those two occasions. The testimony of her head teacher P.W.3 Nkoyooyo Joseph in relation to this element is mostly corroborative in terms of section 156 of *The Evidence Act* which permits reliance on a former
30 statement made by a witness relating to the same fact, at or about the time when the fact took place.

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 (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. 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 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 is only collateral to the outcome of the case.

The more prominent contradictions and inconsistencies in the prosecution case include the following;- whereas P.W.4 Nanteza Annet testified that the victim confided in her the following Friday, 17th October, 2014, P.W.3 stated it was rather on Monday 14th October, 2014 and later she reported to him on Thursday 16th October, 2014; whereas the victim denied having led to the recovery of the used condoms at the incomplete house near her home, her father P.W.2 Muhereza Golden and her head teacher P.W.3. Nkoyooyo Joseph stated that it was she who led them to the scene and recovery of the two used condoms; it is only during cross-examination that the victim revealed that on the first evening when she was sexually molested at the incomplete building near her home, the accused not only inserted his finger in her private parts but also went ahead and had protected sexual intercourse with her; whereas the victim testified that only once was a condom used at that scene, the source of the second used condom allegedly recovered there is unexplained.

I have considered the range and character of the contradictions and inconsistencies so highlighted. I have not found them to be grave in so far as they relate to matters which are

peripheral to the central issues in the case. They do not relate to matters which are central to the decision but collateral ones only. I find the contradictions to be the inevitable result of the passage of time and fallibility of human memory. The retention span of details of events varies from one individual to another and the mere fact that two witnesses contradict one another when relating from their memory what they recall of an event does not necessarily imply that they are untruthful. I have not found any evidence to suggest that the contradictions were the result of deliberate untruthfulness on the part of any of the witnesses to whom they are attributed. Having considered this evidence and in agreement with the assessors, I find that it has been proved beyond reasonable doubt that Nagasha Enid, was the victim of a sexual act that occurred on 11th October, 2014 in the primary six classroom of Oxford Elementary Academy.

The prosecution is further required to prove that the accused was a person in authority over the victim. “A person in authority” is not defined by the *Penal Code Act*. Guided by the mischief rule of statutory interpretation, I construe it to mean any person acting in *loco parentis* (in place of parent or parents) to the victim, or any person responsible for the education, supervision or welfare of the child and persons in a fiduciary relationship, with the child i.e. relations characterized by a one-sided distribution of power inherent in the relationship, in which there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith with regard to the interests of the child reposing the confidence.

School teachers become temporary guardians or caretakers of a child. For the period pupils are entrusted to their care, they are responsible for their physical, moral welfare, and mental training. They regulate the pupils’ personal lives, including speech, association, and movement, and take disciplinary action against them. As a result, a fiduciary relationship is presumed in a teacher – pupil relationship. Some close personal and professional fiduciary relations continue long after termination of the official formal contexts in which they first arose. How long after they linger after the formal setting of the relationship is discontinued will depend on the duration of that period and intensity of the relationship. Since section 129 of *The penal Code Act* is intended to protect children from predatory tendencies of persons who may take advantage of their infancy to exploit them sexually; Parliament must have intended to protect pupils for the duration of their childhood. Therefore, once a teacher – pupil relationship arises, it will be deemed to continue

until the child attains the age of 18 years and will not be discontinued by termination of the official or formal context in which it may have first arisen. A teacher, who leaves the school or even the service, will for that reason remain “a person in authority” over his or her former pupils until they attain the age of 18 years. This is because the pupils will be deemed to maintain a special confidence reposed in their teachers and perceive them as such, for an indeterminate period after the formal setting has come to an end, but which for the purposes of certainty of the law, should be curtailed upon their attaining the age of adulthood.

In this regard, there is oral testimony of the victim P.W.5 Nagasha Enid Isidore who said the accused was her Primary Six teacher at the time. Her head teacher P.W.3 Nkoyooyo Joseph confirmed too that the accused was one of the teachers in the school at the time. P.W.2 Muhereza Golden identified the accused as the former teacher of his daughter, P.W.5. In his defence, the accused stated that he left the school at the end of August, 2014. The contention by implication is that since he had left the school by October, 2014 not only was he no longer in position to commit the crime in the manner alleged, but also the victim no longer had special confidence reposed in him since the teacher - pupil relationship had been severed. Having argued earlier that once a teacher – pupil relationship arises, it will be deemed to continue until the child attains the age of 18 years and will not be discontinued by termination of the official or formal context in which it may have first arisen, in agreement with the assessors I find that this ingredient too has been proved beyond reasonable doubt.

Lastly, the prosecution is required to prove that it is the accused that performed the sexual act on the victim. There should be credible direct or circumstantial evidence placing the accused at the scene of crime as the perpetrator of the offence. The accused denied any participation. He attributed the case to a revengeful design by the head teacher P.W.3 Nkoyooyo Joseph to avoid paying him his three months' salary arrears and by P.W.2 Muhereza Golden to extort money from him and his relatives.

To refute that defence, the prosecution relies on the oral testimony of the victim P.W.5 Nagasha Enid Isidore. She testified that the accused had sexually molested her twice before the incident of 11th October, 2014. The evidence of P.W.5 being in the nature of visual identification by a single

identifying witness, the question to be determined is whether as a single identifying witnesses she was able to recognise the accused. In circumstances of this nature, the court is required to first warn itself of the likely dangers of acting on such evidence and only do so after being satisfied that correct identification was made which is free of error or mistake (see *Abdalla Bin Wendo v. R* (1953) 20 EACA 106; *Roria v. R* [1967] EA 583 and *Abdalla Nabulere and two others v. Uganda* [1975] HCB 77). In doing so, the court considers; whether the witness was familiar with the accused, whether there was light to aid visual identification, the length of time taken by the witness to observe and identify the accused and the proximity of the witness to the accused at the time of observing the accused.

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As regards familiarity, P.W.5 knew the accused prior to the incident. She was her class teacher. In terms of proximity, the accused was very close. As regards duration, the act took some time since it began by the accused calling her to himself and separating her from the rest of the class. It was not a sudden attack. That was long enough a period to aid correct identification. It occurred during day time, in the afternoon after lunch. Although it was inside a classroom and behind closed doors, light that was sufficient to enable her to see that he had a condom on his genitals must have been sufficient to aid her correct identification of the accused.

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Under section 133 of *The Evidence Act*, subject to the provisions of any other law in force, no particular number of witnesses in any case is required for the proof of any fact. Evidence is not to be counted but only weighed and it is not the quantity of evidence, but the quality that matters. Consequently, even in a case like this one which is more or less of "she said, he said" character, the testimony of a single witness, if believed, is sufficient to establish any fact that requires proof. It is only if some aspect of that testimony is found unreliable or lacking that the court will look for corroboration.

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I observed the victim as she was being examined in chief as well as under cross-examination. I undertook a credibility, common sense and ordinary experience evaluation of her testimony to determine its accuracy and truthfulness. I undertook an evaluation of her narration by considering her demeanour, perception, memory, sincerity and veracity, testing it against other independent pieces of evidence that implicitly corroborated or undermined its accuracy or

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veracity. Despite some lapses and what may be described as bordering on exaggerations of some aspects, she appeared to me to be making a good faith effort to fully and accurately give her recollection of the facts. I did not detect any deliberate attempt to tell lies or concealment of information. She gave her narration in a matter of fact manner, without any apparent emotion.

5 She answered questions without hesitation. Her recollection of the facts appeared accurate and complete, without distortion or influence from conversations or questions she any have had with others. I found no evidence that might have cast doubt on her credibility, or that might show that she was coached or manipulated. She understood all the questions put to her quite well and gave well articulated answers. Her demeanour, from the perspective of her manner of speech, pauses,
10 physical appearance and apparent confidence, was not wanting in any significant way. She stated the facts consistently without self-contradiction and the manner in which she handled the cross-examination showed her to be honest and dependable.

In any event, her evidence is corroborated by circumstantial evidence of P.W.3 Nkoyooyo
15 Joseph that the accused did not report to school from 11th October, 2014 until his arrest on 18th October, 2014. Such conduct is inconsistent with his innocence. I have further considered the defence of fabrication imputed on P.W.3 as a strategy for avoidance of payment of salary arrears to the accused. It was argued by counsel for the accused that this is manifested by his initial concealment of the report from the parents of the victim, and conducting his own investigation
20 including taking the victim for medical examination in absence of any female teacher or parent. I find this claim to be implausible in that it depends on too many coincidences whose probability of all falling in place at the same time is zero, i.e. he had to identify a girl who should have lost virginity by the age of thirteen without first examining her, coach that girl to incriminate the accused, instigate the girl's friends to report the fictitious occurrence to the Senior Woman
25 Teacher, compromise the integrity of a 57 year old pathologist to examine and find non-existent evidence of lost virginity, and ensure that the parents of the child join the conspiracy. That P.W.3 chose to make a preliminary investigation before involving the parents and the police to me is understandable from the perspective that he took precautions not to rush into implicating his teacher without some tangible evidence to support such a grave accusation. It is not conduct of a
30 vengeful and crafty person. I therefore reject this part of the defence raised by the accused as a sham.

As regards the claim that the father of the victim was after extorting money from the accused, I find this incredible as well. In his defence, the accused claimed that he was approached by the victim's father P.W.2 Muhereza Golden while the accused was in the police cells and that he demanded for shs. 9,500,000/= from him for the time his child had spent in school, lest he would face the law, which demand the accused turned down. The accused was impecunious at the time, earning only salary of shs. 200,000/= which in his own defence he claimed to have gone without for the previous three months. There is no evidence to show that P.W.2 knew the accused to be a man who could raise that sum of money from his own means or with the help of his relatives. He could not reasonably be the target of an extortionist. In any event, this was never put to this witness during his cross-examination, and it seems to me to be a clear afterthought.

On the other hand, such a design would require P.W.2 to be so depraved as to involve his own daughter in creating a graphic story of sexual intercourse with her teacher. The accused did not offer any explanation as to why the victim would so readily participate in such a design. The only plausible reason I can think of is that possibility of having been was coached or manipulated by an overbearing parent. I observed P.W.2 as he testified and he seemed to me to be neither depraved nor overbearing. Him and P.W.3 were not in position to influence the victim, now in Senior three, to make up such a sordid tale of sexually explicit content of the goings on between her and the accused. I do not see how she stood to benefit from that intricate design nor was it alleged that she had an axe of her own to grind against the accused. I therefore reject this part of the defence raised by the accused too as a sham.

In conclusion, having considered and dismissed the defence raised by the accused, I find that the prosecution has proved all ingredients of the offence beyond reasonable doubt and accordingly the accused is found guilty and is hereby convicted of the offence of Aggravated Defilement c/s 129 (3) and (4) (a) and (c) of the *Penal Code Act*.

Dated at Kampala this 4th day of July, 2018.

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Stephen Mubiru
Judge.
4th July, 2018.

4th July, 2018.

2.50 pm

Attendance

Court is assembled as it was before.

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SENTENCE AND REASONS FOR SENTENCE

Upon the accused being convicted for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) and (c) of the *Penal Code Act*, the learned State Attorney prosecuting the case, Ms. Florence Kataike, prayed for a deterrent custodial sentence, on grounds that; the convict was ten years older than the victim, he was class teacher of the victim who would have taken care of her. He ruined her life as she is no longer a virgin. There is no evidence however that he is a serial offender. He can be taken as a first offender. He was charged on 31st October, 2014, was remanded and he was subsequently committed for trial on 20th November, 2015. He has never been granted bail. It is three years and nine months now. The offender was a teacher and he should have cared about his actions. He should not have had sex with the victim. She did not suggest the death penalty but proposed imprisonment of ten years and above. The convict should not be returning to teach by the time he serves his sentence.

In his *allocutus*, the convict prayed for lenience on grounds that; the court having found him guilty, he prayed that since he had completed senior six, he is given a chance to serve sentence and continue with his studies. His mother died of stroke two months after his arrest. His father is about 80 years old. He suffered an accident and broke his leg. His sister was in court and he told him his father had been in court the previous day and suffered a stroke on learning that judgment was to be delivered today. He has been teaching at Murchison Bay Prison and he participates in making crafts. He has never said that he is untouchable. Before his arrest, he was looking after the child of his sister who is now 8 years old and was taken to the village. The father of the victim forgave him and advised him to find a way of saving himself. He will become 29 years old on 20th October, 2018. He has been obedient while in prison and prayed to be forgiven.

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According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, is death. However, this punishment is by sentencing convention reserved for the most egregious forms of perpetration of the offence such as where it

has lethal or other extremely grave consequences. Examples of such consequences are provided by Regulation 22 of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* to include; where the victim was defiled repeatedly by the offender or by an offender knowing or having reasonable cause to believe that he or she has acquired
5 HIV/AIDS, or resulting in serious injury, or by an offender previously convicted of the same crime, and so on. Since in this case death was not a very likely or probable consequence of the act, I have discounted the death sentence.

When imposing a custodial sentence on a person convicted of the offence of Aggravated
10 Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 3 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors or reduced on account of the relevant mitigating factors. Although the
15 manner in which this offence was committed did not create a life threatening situation, they are sufficiently grave to warrant a deterrent custodial sentence. At the time of the offence, the convict was a class teacher of the victim, thirteen years older. He abused a fiduciary relationship and took advantage of the girl, turning her into a sex object, moreover in a classroom within sight of her peers who will carry this embarrassing memory for a long time to come. He exposed
20 an innocent child to ridicule, odium of her peers and loss of self esteem.

I have considered the decision in *Kato Sula v. Uganda, C.A. Crim. Appeal No 30 of 1999*, where the Court of Appeal upheld a sentence of 8 years' imprisonment for a teacher who defiled a primary two school girl. In *Bashir Ssali v. Uganda, S.C. Crim. Appeal No 40 of 2003*, the
25 Supreme Court, on account of the trial Court not having taken into account the time the convict had spent on remand, reduced a sentence of 16 years' imprisonment to 14 years' imprisonment for a teacher who defiled an 8 year old primary three school girl. The girl had sustained quite a big tear between the vagina and the anus. In *Tujunirwe v. Uganda, C.A. Crim. Appeal No 26 of 2006*, where the Court of Appeal in its decision of 30th April 2014, upheld a sentence of 16 years'
30 imprisonment for a teacher who defiled a primary three school girl. In light of the sentencing

range apparent in those decisions and the aggravating factors mentioned before, I have considered a starting point of twenty three years' imprisonment.

The seriousness of this offence is mitigated by the factors stated in mitigation in his *allocutus*, which have been reproduced above. The severity of the sentence he deserves has been tempered by those mitigating factors and is reduced from the period of twenty three years, proposed after taking into account the aggravating factors, now to a term of imprisonment of nineteen years.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a convict. Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, requires the court to “deduct” the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This requires a mathematical deduction by way of set-off. From the earlier proposed term of twenty four years' imprisonment, arrived at after consideration of the mitigating factors in favour of the convict, the convict having been charged on 31st October, 2014 and has been in custody since then, I hereby take into account and set off three years and eight months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of fifteen (15) years and four (4) months, to be served starting today.

The convict is advised that he has a right of appeal against both conviction and sentence, within a period of fourteen days.

Dated at Kampala this 4th day of July, 2018.

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Stephen Mubiru
Judge.
4th July, 2018.