

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT IGANGA  
(SITTING AT JINJA HIGH COURT)**

**CRIMINAL SESSION CASE NO. 0139 OF 2013**

**UGANDA..... PROSECUTOR**

**VERSUS**

**BUYINZA EMMANUEL Alias GAYULA..... ACCUSED**

**RULING**

**BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

**Background and brief facts**

The accused **BUYINZA EMMANUEL Alias GAYULA** was on an unspecified date indicted with the offence of aggravated defilement contrary to sections 129 (3) and (4) (a) of the Penal Code Act. Cap. 120 LOU.

It was stated in the indictment that on 5/04/2013, at Sinda Village, Buhemba Sub County in Namayingo District, he performed a sexual act with AJAMBO MERYVINE, a girl aged three and a half years.

The accused denied the offence and a plea of not guilty was entered on 9/1/19. He was represented by Asiimwe Anthony while Wasajja Robert represented the State.

The facts born of the prosecution case are that Melvin Buheri Ajambo, the victim, was aged three and a half years and resident with her mother, Bagume Eunice. On an unspecified date during 2013 at around 2 pm, Bagume left the victim and her brother Mukisa Jonathan at the home of the accused in charge of Namusoga, the accused's wife. Both Namusoga and the accused were at home when the children were dropped off. Bagume returned to collect them at 5pm and found that both children were sleeping inside the accused's house with the accused. She retrieved and carried away both children to her home.

Later the same evening as Bagume was bathing the victim, the child begun crying and when questioned stated that Gayula (the accused) had put something in her “googo” (meaning her private parts). Bagume checked and noticed injuries and a white substance on the victim’s vagina and thighs. The victim was subjected to medical examination and the matter was reported to Namayingo Police Station which resulted into the accused’s arrest.

### **The law**

It is now a well-established law that on a charge of aggravated defilement, at whatever point the prosecution choose to close their case, the burden lays upon them to adduce evidence to prove the following elements beyond reasonable doubt:-

- i. The victim is below 14 years.
- ii. That the victim experienced unlawful carnal knowledge (sexual intercourse).
- iii. It is the accused person who had sexual intercourse with the victim or that the accused person participated in the commission of the offence.

By law it is expected of the prosecution that, at the close of their case, they have made out a *prima facie* case, one on the face of it, is convincing enough to require that the accused person be put on his defence. See for example **Rananlal T. Bhati Vrs R (1957) EA** followed in **Uganda Vrs Kivumbi & Ors Crim. Case No. 20/2011**.

Therefore in order for the court to dismiss the charge at the close of the prosecution case, I must be satisfied that: -

- a) There has been no evidence to prove an essential element of the alleged offence, or
- b) The evidence adduced by the prosecution has been so discredited as a result of cross examination or, is so manifestly unreliable, that no reasonable tribunal could safely convict on it.

See **“A Guide to Criminal Procedure in Uganda” (supra) at page 120**.

### **The evidence**

The fact that Ajambo was aged three and a half years at the time of the alleged offence was not contested. She was unable to give any coherent evidence at the trial and the prosecution

case thus relied on the evidence of Bagume her mother and the medical officer. Bagume claimed that she left Ajambo at the accused's household in the care of the accused's wife for about three hours. She returned to find Ajambo inside the house with the accused behind a locked door. She carried Ajambo home and a few hours later as she tried to bath her, Ajambo cried out in pain stating that "*Gayula has put something in my googo*" meaning her private parts. Bagume then examined Ajambo and noticed that her vagina was reddish, with bruises and blood.

The child was subjected to medical examination which returned (in Form 3A) that Ajambo's genitals were swollen and tender with bruises around the vulva. Her hymen was ruptured or torn. The probable cause of the injuries was recorded as "defilement".

The available evidence is that the accused was present in his home when Ajambo was left with his wife. It was the same accused who was found with Ajambo behind a locked door three hours later. The child indicated to her mother that she had pain in her vagina and that the accused had inserted his "googo" into her vagina. The medical result was Ajambo was the victim of a defilement.

In conclusion, the three ingredients of the offence of defilement have been proved to the level expected to maintain a prima facie case against the accused. It is still not evidence beyond reasonable doubt and the accused as of right, can rebut it by presenting his defence.

I would conclude therefore that the accused has a case to answer to the charge of aggravated defilement. I do order that he presents his defence using any one of the three options open to him at law.

I so order.

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**EVA K. LUSWATA**

**JUDGE**

**26/03/2019**

