

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)**

**HIGH COURT CRIMINAL SESSION CASE NO 396 OF 2020
(ARISING FROM MAKINDYE CRIMINAL CASE NO. AA- 023/2020)**

UGANDA-----PROSECUTOR

VERSUS

MUWONGE ALEX -----ACCUSED

BEFORE HON: JUSTICE ISAAC MUWATA

JUDGEMENT

The accused, Muwonge Alex was charged with aggravated defilement contrary to section 129 (3), (4), (a) of the Penal Code Act. It is alleged that Muwonge Alex in the month of October 2019 at Kevina Zone, Makindye Division in Kampala District, performed a sexual act with Muzaki Rahma a girl aged 9 years old.

He pleaded not guilty to the charge.

For the accused to be convicted of Aggravated Defilement, the prosecution must prove each of the following essential ingredients beyond reasonable doubt; The victim was below 14 years of age. A sexual act was performed on the victim. It is the accused who performed the sexual act on the victim

In criminal law the prosecution bears the burden to prove the offence against the accused. This burden of proof does not shift to the accused to prove himself innocent. The burden of proof always rests on the prosecution. The prosecution must adduce evidence to discharge its burden of proof. **See: Ssekitoleko v. Uganda [1967] EA 531).**

30 The prosecution has to prove the offence against the accused beyond reasonable doubt. If there is any doubt in the prosecution case, then the accused is entitled to an acquittal.

The prosecution called four witnesses while the defense called three witnesses

Consideration

35 **That the victim was at the time aged below 14 years.**

The age of a child may be proved by the production of her birth certificate, or 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**

40 **Godfrey H.C. Crim. Session Case No. 141 of 2002)**

PW1, the clinical officer indicated on the PEX.1 that the apparent age of the victim based on his medical examination was 9 years. The age of the victim is not in contention. The court also had the opportunity to see her when she testified. It was evident that she was still below the age of fourteen years. On basis of all that
45 evidence, I am satisfied that the prosecution has proved beyond reasonable doubt that Muzaki Rahma was a girl under the age of 14 years

That a sexual act was performed on the victim.

The next ingredient to be proved is the fact that the victim was subjected to a sexual act. Section 129 (7) of the Penal Code Act defines sexual act to mean (a)
50 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

The act of sexual intercourse or penetration may be proved by direct or circumstantial evidence. Usually the sexual intercourse is proved by the victims
55 own evidence and corroborated by the medical evidence or other evidence. Though desirable it is not a hard and fast rule that the victims evidence and medical evidence must always be adduced in every case of defilement to prove

sexual intercourse or penetration. **See: Bassita v Uganda S. C. Criminal Appeal No. 35 of 1995**

60 In this case, PW3, the victim in her testimony told court that the accused took her to his bed and slept on her, that he put his thing(*penis*) on her and it produced a whitish substance. The act of sexual intercourse is also corroborated by the medical evidence of PW1 that the victim's hymen had fresh wounds around it but was not broken. His report indicated that the probable cause of this
65 was a sexual act. I am satisfied that the prosecution has proved beyond reasonable doubt that Muzaki Rahma was subjected to an act of sexual intercourse while still under the age of fourteen years.

That it is the accused who performed the sexual act on the victim.

Lastly, the prosecution is required to prove beyond reasonable doubt that it is
70 the accused that performed the sexual act on the victim. This ingredient is satisfied by adducing evidence, direct or circumstantial, showing that the accused as the perpetrator or a participant in the perpetration of the offence. In his defense, the accused denied having committed the offence and stated that he was being falsely accused.

75 He relied on the testimony of DW3 Nambasa Shakira to advance the argument that he could not have defiled the girl since she was in company of D.W.3 at all material times. He also relied on the testimony of DW2 Namuddu Sumaya who told court that she was not aware of any defilement of the victim at her premises. He also told court that the victim falsely accused him because her sister's
80 husband had wanted money from him and he did not give it to him

The prosecution adduced the testimony of PW3 Muzaki Rahma the victim who stated that she had known the accused before. She told court that the accused had on two occasions taken her to his bedroom. She narrated that on the first occasion the accused tried to force her into sex but she refused.

85 But on the second occasion when the other children had gone to school, the
accused took her to his bedroom and slept on her, that he put his thing on her
and it produced a whitish substance.

With respect to the evidence on identification of the perpetrator, the general rule
is that even without considering the presence or otherwise of medical evidence,
90 an offence of this nature can be proved by oral evidence of the victim or
circumstantial evidence.

Section 133 of the Evidence Act is also clear that subject to the provisions of any
other law in force, no particular number of witnesses shall in any case be required
for the proof of any fact.

95 It has also been held that the evidence of a single witness can be used to secure
a conviction in sexual offences. There is no legal requirement for corroboration,
the evidence of a victim in a sexual offence must be treated and evaluated in the
same manner as the evidence of a victim of any other offence. **See Ntambala Fred
Vs Uganda Supreme Court Criminal Appeal No.34 of 2015**

100 In the instant case, the victim's evidence of identification of the accused stands
unchallenged, and therefore in the circumstances the accused was not only
positively identified but also placed at the scene of crime by the victim. Her story
was consistent with what transpired moreover her evidence was corroborated by
the medical evidence of PW1.

105 Consequently, I find that the prosecution has proved the case against the accused
beyond reasonable doubt and therefore find the accused guilty. I hereby convict
him as charged.

I so order

110 **JUDGE**

22/06/2022