

Nankunda Crispus (A14), Ninyesiga Onesmus (A15), Niwahereza Kada Edwin (A16), Ssali Abdul (A17), Niwahereza Joseph (A18), Wafula Cyrus (A19) and Nankwasa Oscar (A20) with different counts of Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the Prevention of Trafficking in Persons Act 2009 (PTIP Act)**, Trafficking in Persons contrary to **Section 3(1) (a) of the PTIP Act**, Operating a Brothel contrary to **Section 137 of the Penal Code Act, Cap 120 (PCA Act)** as well as Prostitution contrary to **Sections 138 & 139 of the PCA Act**.

[2] It is important to mention here that the names of the victims in this have been redacted on the court's own motion under **Rule 22 (3) (c) of the Judicature (High Court International Crimes Division) Rules of 2016** (herein after referred to as the **ICD Rules**), in order to protect the privacy of the said victims.

[3] In Count 1 of the Indictment, A1 is charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that between the month of December 2019 and October 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District, A1 and others still at large, received and harboured "NR" a 17-year-old girl by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[4] In Count 2 of the indictment, A1 and A15 are charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that in the month of October 2020 at Katwe Kinyoro Base, Makindye Division in

Kampala District, A1, A15 and others still at large, received, recruited and harboured NM a 15-year-old girl by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[5] In Count 3 of the indictment, A1, A2, A7 and A20 are charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that in the month of October 2020 at Katwe, Kinyoro Base Zone, Makindye Division in Kampala District, A1, A2, A7 and A20 and others still at large received, recruited and harboured NF, a 16-year-old girl by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[6] In Count 4 of the indictment, A1, A2 and A19 are charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that in the month of May 2020 at Katwe, Kinyonro Base Zone, Makindye Division in Kampala District, A1, A2, A19 and others still at large received, recruited and harboured BS, a 16-year-old girl by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[7] In Count 5 of the indictment, A1 and A4 are charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that in the month of September 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District, A1, A4 and others still at large received, recruited and harboured NE a 17-year-old girl by means of deception or abuse of power or of position of

vulnerability, for the purpose of exploitation to wit; sexual exploitation.

[8] In Count 6 of the indictment, A1, and A17 are charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that in the month of October 2020 at Katwe, Kinyoro Base Zone, Makindye Division in Kampala District, A1, A17 and others still at large received, recruited and harboured NA, a 17-year-old girl by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[9] In Count 7 of the indictment, A1 is charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that in the year 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District A1 and others still at large received and harboured AW, a 16-year-old child by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[10] In Count 8 of the indictment, A1 is charged with Aggravated Trafficking in Children contrary to **Sections 3(1) (a) and 5(a) of the PTIP Act**. It is alleged that in the year 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District, A1 and others still at large received and harboured MA a 17-year-old child by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[11] In Count 9 of the indictment, A1 is charged with Aggravated Trafficking in Children contrary to **Sections 3(1)**

(a) and 5(a) of the PTIP Act. It is alleged that in the month of October 2020 between Kamwenge District and Katwe Kinyoro Base Zone, Makindye Division in Kampala District, A1 and others still at large transported, recruited and harboured NG by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[12] In Count 10 of the indictment, A1 is charged with Trafficking in Persons contrary to **Section 3(1) (a) of the PTIP Act.** It is alleged that in the year 2020 in Katwe Kinyoro Base Zone, Makindye Division, Kampala District, A1 and others still at large received, recruited and harboured BR by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[13] In Count 11 of the indictment, A1 is charged with Trafficking in Persons contrary to **Section 3(1) (a) of the PTIP Act.** It is alleged that in the year 2020, at Katwe Kinyoro Base Zone, Makindye Division in Kampala District A1 and others still at large, received, recruited and harboured LS by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[14] In Count 12 of the indictment, A1 is charged with Trafficking in Persons contrary to **Section 3(1) (a) of the PTIP Act.** It is alleged that in February 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District, A1 and others still at large received and harboured KR by means of deception or abuse of power or of position of vulnerability, for the purpose of sexual exploitation.

[15] In Count 13 of the indictment, A1 is charged with Trafficking in Persons contrary to **Section 3(1) (a) of the PTIP Act**. It is alleged that in February 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District, A1 and others still at large received and harboured LE by means of deception or abuse of power or position of vulnerability, for the purpose of sexual exploitation.

[16] In Count 14 of the indictment, A1 is charged with Operating a Brothel contrary to **Section 137 of the PCA Act**. It is alleged that between 2018 and 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District, A1 and others still at large, kept a set of rooms for the purposes of prostitution.

[17] In Count 15 of the indictment, all accused persons are charged with **Prostitution contrary to Sections 138 and 139 of the PCA**. It is alleged that between 2018 and 2020 at Katwe Kinyoro Base Zone, Makindye Division in Kampala District, the accused persons habitually held themselves out in public regularly, as available for sexual intercourse or other sexual gratification for monetary or other material gain.

THE EVIDENCE

[18] It is the prosecution's case that A1 is a businessman and resident of base zone Katwe II Makindye Division in Kampala District and owns a small bar and lodge in the said zone. On 24th October 2020, Assistant Superintendent (ASP) Anthony Opuna received information that A1 was involved in trafficking mostly girls, from upcountry to his lodges through deceitful

means and then recruiting them into the practice of prostitution.

[19] Later that day, ASP Opuna together with other police officers and Local Defence Unit personnel raided A1's premises at around 9:00 pm and found approximately 40 people, mainly young girls and men drinking in A1's bar and arrested them. ASP Opuna also stormed A1's lodges, where he found A4 having sexual intercourse with a one NE. He also found A2 in the same act with a one BS in another room. He arrested them. The said officer subsequently found a one NM sleeping in one of the rooms and also arrested her.

[20] As the said arrests were being carried out, other girls and men occupying the rest of the rooms in the lodges upon hearing the commotion around them, ran out of the said rooms. Unknown to them, the police had surrounded the said premises. They were all arrested. After the arrests, ASP Opuna realised that NM, BS, NE, NF, NG, BR, LS, NA, NR, KR and others were juveniles.

[21] The men who had been arrested were A1, A2, A5, A7, A9, A10, A13 and A17 among others. The arrested persons were taken to the police station at the clock tower and charged.

[22] NR who is one of the victims is a 17-year-old girl who states in her police statement that she left her village in Bugiri District in December 2019, got employed as a house maid in Kampala District where she earned monthly income of eighty thousand shillings (80,000/=). When she worked for a period of three (3) months and was not paid, she left her place of work and went to the old taxi park. While there, she met a woman

who convinced her to reside in A1's premises where she was introduced to the practice of prostitution. She had sexual intercourse with Kasita and A1 among other men, whom she charged between four thousand shillings (4,000/=) and 5,000/= in exchange for sex for short periods of time and between ten thousand shillings (10,000/=) and fifteen thousand shillings (15,000/=) for a night. Out of the said earnings, five thousand shillings (5,000/=) was remitted to A1 every day. She was prostituted alongside other girls. On 24th October 2020, she was asleep when the police raided A1's lodge. All persons who occupied rooms in the said lodge at the time, were arrested.

[23] The prosecution's evidence is also that A1 recruited two females, NM and NG aged 16 and 20 years respectively from a bar named Tuuse, located in Nyabugando village at Kamwenge district. A1 lied to them that he owned a hotel in Katwe and promised to pay them a monthly wage of fifty thousand shillings (50,000/=). Since they were earning just thirty thousand shillings (30,000/=) at Tuuse, the two accepted A1's offer and travelled to Katwe with him. Upon their arrival, A1 informed them instead that they would engage in prostitution for a daily wage of 5,000/=. He refused to give them transport fare to return to their village. According to NM, before her arrest, one of her clients had promised to marry her. The said man gave her 5,000/= and paid A1 three thousand shillings (3,000/=).

[24] Another victim, NF who was aged 17 years states that on 28th January 2018, while she was at the old taxi park where she used to sleep, A1 approached her and offered her a job at his

hotel. She took the offer but when she reached the said hotel, A1 informed her that she would have to engage in prostitution to earn money to for survival. She eventually had sexual intercourse with A1, A2, A7 and A20 among other men.

[25] BS aged 16 years, stated in her police statement that she was engaged in prostitution at A1's premises during the night. When the police surrounded the premises, she was in one of the rooms with her boyfriend called Mohammed Crispus.

[26] NE, also aged 16 years, states in her police statement that when she left her job at Nakasero market, she did not have anywhere to sleep. She was introduced to A1 by a friend of hers. While at A1's lodge, she worked as a sexual worker. Her clients would pay for a room at the said lodge, which money was handed to A1. When the police raided the premises, she was found with A4 in room 18, having sexual intercourse. A4 had paid her and A1 eight thousand shillings (8,000/=) and 5,000/= respectively.

[27] NA is a 17-year-old girl who states that her friend Florence informed her that she had found a place for her to sell vegetables in Kampala. Florence subsequently took her to A1's lodge where the two of them were supposed to pay 5,000/= per night for accommodation. Florence however developed misunderstandings with some people where she was working and was fired from her job. She returned to her village. When A1 returned from his village where he had gone when NA and Florence arrived at his lodge, he was informed that NA had not paid for her accommodation for a while. He informed her that she would have to wash used bedsheets in the lodge, engage in

prostitution and look for clients if she is not approached, if she was to stay there. She agreed to his conditions as she had no anywhere to go. She found out that many other girls were working as sex workers at A1's premises. She had sexual intercourse with A17 among other men.

[28] The above mentioned victims were subjected to medical examination on Police Form 3A and most of them were found to be children at the time of their medical examinations. They were all found to be sexually active.

[29] In his defence, A1 states in his police statement that he was arrested while at his bar. He admits the fact that he owns the said bar and lodge, which he was renting out at a fee of 5,000/= daily. He denies knowledge that his premises were being used by his tenants for prostitution. He admits transporting NM and NG to Kampala, but says he only did so at their request, since they were going there to look for employment. He states that they were only staying in his lodge because he was still looking for jobs for them. He further states that most of the people arrested at his lodge did not live there.

[30] A2, A3, A6, A7, A8, A9, A12, A16 and A17 state in their police statements that they were arrested by police officers at about 8.00 pm when they were heading home.

[31] A4 states that he was arrested while buying food around A1's premises.

[32] According to A5, he was arrested in A1's premises where he had gone to pick batteries.

[33] A10 the bar attendant at A1's bar states that he was arrested by the police while at the bar. He suspects that he was

arrested because he had disobeyed the directive of the President of Uganda on closing bars during the Covid19 period.

[34] A11 states that he was arrested by the police at A1's bar, where he had gone to meet up with his brother A10.

[35] A13 states that he was visiting his uncle A1 when the police arrested him.

[36] A14 states that he was arrested for disobeying the President of Uganda's Covid19 curfew directives when he went to a shop to buy water and food.

[37] A18 states that he was arrested at A1's premises where he had gone to buy food.

[38] A19 states that he was arrested when he was returning from a shop around A1's premises.

[39] A20 states that he was arrested while roasting meat around the clock tower.

LIST OF EXHIBITS

[40] The following documents were identified as documents that the prosecution intends to adduce in evidence:

- 1) PTPE1 (Police Form 3A) is a medical examination report of NM, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 15 years old and was a sexually active girl, who had recently had vaginal penetration;
- 2) PTPE2 (Police Form 3A) is a medical examination report of NR, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic,

- which confirms that the victim was 17 years old girl who was sexually active;
- 3) PTPE3 (Police Form 3A) is a medical examination report of NF, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 16 years old girl who was sexually active;
 - 4) PTPE4 (Police Form 3A) is a medical examination report of BS, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 16 years old girl who was sexually active;
 - 5) PTPE5 (Police Form 3A) is a medical examination report of NG, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 20 years old and was sexually active;
 - 6) PTPE6 is a sketch plan drawn by D/IP Nabutono Eseeza on 26th October 2020, showing a crime scene at A1's lodge where the accused persons are alleged to have committed the crimes charged;
 - 7) PTPE7 (Police Form 3A) is a medical examination report of NE, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 17 years old and was sexually active;
 - 8) PTPE8 (Police Form 3A) is a medical examination report of NA, dated 26th October 2020, made by Bwire Faizo, a

medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 17 years old and was sexually active;

- 9) PTPE9 (Police Form 3A) is a medical examination report of BR, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 19 years old, was sexually active and had recently had vaginal penetration;
- 10) PTPE10 (Police Form 3A) is a medical examination report of LE, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the victim was 18 years old and was sexually active;
- 11) PTPE11 (Police Form 24A) is a medical examination report of A17, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 20 years old and was of sound mind;
- 12) PTPE12 (Police Form 24A) is a medical examination report of A14, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 23 years old and was of sound mind;
- 13) PTPE13 (Police Form 24A) is a medical examination report of A16, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 19 years old and was of sound mind;

- 14) PTPE14 (Police Form 24A) is a medical examination report of A18, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 20 years old and was of sound mind;
- 15) PTPE15 (Police Form 24A) is a medical examination report of A11, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 19 years old and was of sound mind;
- 16) PTPE16 (Police Form 24A) is a medical examination report of A15, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 27 years old and was of sound mind;
- 17) PTPE17 (Police Form 24A) is a medical examination report of LS, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said victim was 19 years old;
- 18) PTPE18 (Police Form 24A) is a medical examination report of KR, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said victim was 19 years old;
- 19) PTPE19 (Police Form 24A) is a medical examination report of A19, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care

- Clinic, which confirms that the said accused was 18 years old and was of sound mind;
- 20) PTPE20 (Police Form 24A) is a medical examination report of Tumusiime Lauben, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said person was 23 years old and was of sound mind;
- 21) PTPE21 (Police Form 24A) is a medical examination report of A4, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 20 years old and was of sound mind;
- 22) PTPE22 (Police Form 24A) is a medical examination report of AW, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that he said victim was 16 years old and was of sound mind;
- 23) PTPE23 (Police Form 24A) is a medical examination report of a one Chiper Olympia, dated 26th October 2020, made by Bwire Faizo a medical clinical officer of Integrated Health Care Clinic, which confirms that the said person was 28 years old and was of sound mind;
- 24) PTPE24 (Police Form 24A) is a medical examination report of A20, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 21 years old and was of sound mind;

- 25) PTPE25 (Police Form 24A) is a medical examination report of A8, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 24 years old and was of sound mind;
- 26) PTPE26 (Police Form 24A) is a medical examination report of A5, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 32 years old and was of sound mind;
- 27) PTPE27 (Police Form 24A) is a medical examination report of A12, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 23 years old and was of sound mind;
- 28) PTPE28 (Police Form 24A) is a medical examination report of A1, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that A1 was 55 years old and is of sound mind;
- 29) PTPE29 (Police Form 24A) is a medical examination report of A6, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 27 years old and was of sound mind;
- 30) PTPE30 are the 38 copies of photographs of the crime scene;

- 31) PTPE31 (Police Form 24A) is a medical examination report of A2, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 20 years old and was of sound mind;
- 32) PTPE32 (Police Form 24A) is a medical examination report of A3, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 18 years old and was of sound mind;
- 33) PTPE33 (Police Form 24A) is a medical examination report of A10, dated 26th October 2020, made by Bwire Faizo a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 20 years old and was of sound mind;
- 34) PTPE34 (Police Form 24A) is a medical examination report of A7, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care Clinic, which confirms that the said accused was 27 years old and was of sound mind;
- 35) PTPE35 (Police Form 24A) is a medical examination report of MA, dated 26th October 2020, made by Bwire Faizo a medical clinical officer of Integrated Health Care Clinic, which confirms that the said victim was 17 years old;
- 36) PTPE36 (Police Form 24A) is a medical examination report of A13, dated 26th October 2020, made by Bwire Faizo, a medical clinical officer of Integrated Health Care

Clinic, which confirms that the said accused was 24 years old and was of sound mind; and

37) PTPE37 is a letter dated 28th October 2020, addressed to the Divisional OC CID Katwe Police Station from the Directorate of Forensic services, forwarding the crime scene report on Katwe CRB 1677/2020.

REPRESENTATION

[41] At the pre-trial hearing, Mr. Joseph Kyomuhendo represented the State, while Mr. Nicholas Senkumi represented A13 and A15 on private brief. The rest of the accused persons were represented by Mr. Senkezi Stephen on state brief.

[42] On 18th May 2022, counsel for the state was given until 17th June 2022 to file his written submissions in support of the indictment, while both defence counsel were given up to 1st July 2022 to reply. It was only State counsel and Counsel Senkumi who complied with the directives of the court.

BURDEN AND STANDARD OF PROOF

[43] It is trite law that the prosecution bears the burden to prove all the elements of the offence charged, except in specific offences, which are not charged in this case. As I have already opined in my previous decisions, particularly in ***Uganda Vs Miria Rwigambwa HCT-00-ICD-SC-0006-2021***, and ***Uganda Vs Nsungwa Rose Karamagi HCT-00-ICD-SC-0007-2021***, the standard of proof in a pre-trial hearing is not stipulated by the *ICD Rules* or in the *High Court (International Crimes Division) Practice Directions, 2011*, which provide for trial procedure in the ICD. They do not stipulate any standard

that the prosecution must meet in its evidence at the Pretrial hearing, to make the case ready for confirmation of charges.

[44] I have decided in those cases that the court would in such circumstances apply the ICC standard, which is the standard of substantial grounds to believe that the accused committed the crimes charged as provided for by the *Rome Statute in Article 61(7)* given that Uganda is a party to the Rome Statute, which has undertaken considerable steps to fulfil its obligations therein, including by domesticating the Rome Statute and establishing this court to try international and other serious crimes of a national and transnational nature. The application of relevant provisions of the Rome Statute and of the ICC Rules of Procedure and Evidence *mutatis mutandis*, by this honourable court, in order to fill procedural gaps in the laws establishing this court, is within the powers of this court, since Uganda is bound by all its obligations under the Rome Statute.

[45] The standard of substantial grounds to believe is lower than the PRIMA FACIE CASE standard used by our courts to determine whether an accused person should offer a defence to an indictment, after the prosecution has closed its case. Applying the Rome Statute standard to this pre-trial will not thus prejudice the rights of the accused or even of the prosecution as both parties will still have the chance to present their respective cases at the trial of the accused. This court determines that the evidence of the prosecution is sufficient to take the case to the trial court. If this court finds otherwise, the prosecution still has the opportunity to find better evidence and return the case to this court for pretrial hearing.

[46] The concept of “substantial grounds to believe”, was defined in the judgement of the European Court of Human Rights (ECHR) of 7th July 1987 in ***Soering v. United Kingdom, Application No. 14038/88*** (cited in the case of ***The Prosecutor Vs Thomas Lubanga Dyilo, ICC-01/04-01/06-803-tEN 14-05-2007 1/157 SL PT***) as meaning that “**substantial grounds have been shown for believing**”. It cited with approval, the joint dissenting opinion appended to the judgement in ***Mamatkulov and Askarov v. Turkey***, of 4th February 2005, (***Applications Nos. 46827/99 and 46951/99***) by Judges Bratza, Bonello and Hedigan in which “**substantial grounds to believe**” were defined as “**strong grounds for believing**”.

DETERMINATION

COUNT 1: *Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act.*

[47] The offence of Trafficking in Persons is defined in ***Section 2(r) of the PTIP Act*** as follows:

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

[48] A1 is charged under **Section 3 (1) (a) and 5(a) of the PTIP Act. Section 3(1)(a)** provides as follows:

A person who recruits, transports, transfers, harbours or receives a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation commits an offence and is liable to imprisonment for fifteen years.

[49] **Section 5 (a) of the PTIP Act** provides:

A person who does any act referred to under Section 3 in relation to a child commits an offence of aggravated trafficking in children and may be liable to suffer death.

[50] In light of the aforementioned provisions, the offence of Aggravated Trafficking in persons has five elements that the prosecution must prove. They are: The ACT, the MEANS, and the PURPOSE set out in Section 3; Participation of the accused; and the relevant AGGRAVATING FACTOR from either Section 4 or 5 (See **Umutoni v Uganda [2019] UGCA 147**).

[51] In this case before me, the following elements need to be established by the prosecution to prove the offence of aggravated trafficking in children:

1. The act of recruiting, or transporting, or transferring, or harboring or receiving of the victim of trafficking in persons;

2. The aggravating factor of the victim being a child;
3. The means of deception or abuse of power or position of vulnerability of the victim;
4. The purpose of exploitation of the victim and;
5. Participation of the accused in the commission of any of the acts, or means or purpose of trafficking complained of.

THE ACT OF RECEIVING AND HARBOURING OF NR BY THE ACCUSED

[52] From the indictment, the acts of trafficking complained of are that the A1 received and harboured the victim at Katwe Kinyoro Base Zone, Makindye Division in Kampala District NR who is a 17-year-old girl. Mr. Kyomuhendo submitted that the police statements of the victim as well as the evidence of D/C Kato and D/AIP Kayondo, the police officers who visited the crime scene show that A1 received the victim and harboured her in one of his rooms. He additionally submitted that the victim's statement is supported by the exhibits PTPE6, PTPE30 and PTPE37, which are the sketch plan, photographs and the Scene of Crimes Officer's report respectively.

[53] In her said statements, the victim states that she was convinced by a one Nakato to stay at A1's premises and practice prostitution. She accepted and subsequently paid A1 5,000/= per day. When the police went to the premises, she was found sleeping in one of the rooms from where she was arrested. In ***Uganda versus Mpagi Didas HCT-00-ICD-004-2020*** Wangutusi J, citing the decision in the case of ***The State versus Koch (CC20/2017) (2018) NAHCMD290***, observed as follows:

“In my view, an act of receiving and harbouring a child would be complete if there was evidence to show that the accused allowed or tolerated the presence in his dwelling of the minors to facilitate the pursuit of his unlawful intention with them, or in the circumstances where had their presence there been known by their parents, the parents would have objected thereto fully aware of the risks.”

[54] In the current case before me, the victim states that she actively practised prostitution at A1’s premises, an act which is criminalised under **Section 139 of the PCA** and under **Section 129** of the **PCA**. A1 knew or ought to have known that retaining NR in his lodge for the purpose of prostitution was unlawful. Thus, in my view, the evidence that the prosecution intends to rely on sufficiently establishes the first element in count 1 of the indictment to the required standard.

THE AGGRAVATING FACTOR OF THE VICTIM BEING A CHILD

[55] **Section 2 (a)** of the **PTIP** defines a child as a person below the age of 18 years. It is trite that 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. Other ways of proving the age of the child include conducting a medical examination, obtaining school records and the court’s own observation and common sense assessment of the age of the child.

[56] The victim states that she was 17 years old. Her statement is corroborated by PTPE2, in which the medical

clinical officer opines that NR was 17 years of age. This fact is also established to the required standard.

THE PERFORMANCE OF THE ABOVE ACT BY MEANS OF DECEPTION OR ABUSE OF POWER OF THE ACCUSED OR OF POSITION OF VULNERABILITY OF THE VICTIM

[57] Concerning the third element, **Section 3(3) of the PTIP Act** provides:

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall constitute “trafficking in persons” even if this does not involve any of the means set forth in subsection (1) of this Section

[58] From her police statement, the victim practised prostitution at A1’s premises. Her evidence is further corroborated by the statement of NG who confirms that the victim was a prostitute at A1’s lodge. Their evidence is further supported by PTPE2, which confirms that the victim was a sexually active person. Under **Section 2(d)** of the **PTIP Act**, exploitation includes sexual exploitation. Sexual exploitation under **Section 2(j)** of the **PTIP Act** is defined to include the use of a person in prostitution.

[59] **Section 2(i)** of the **PTIP Act** states: “prostitution” means the activities of a “prostitute” as defined in the Penal Code Act - “a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain”

[60] Since I have already found that the victim was a child, there is thus no need to establish the means element of the offence of trafficking in persons in count 1.

THE PURPOSE EXPLOITATION OF THE VICTIM BY THE ACCUSED

[61] Concerning the purpose for which NR was trafficked, as discoursed above, the prosecution has proved that the victim was sexually exploited. This element is well established.

PARTICIPATION OF THE ACCUSED IN THE COMMISSION OF ANY OF THE ABOVE ELEMENTS OF THE OFFENCE CHARGED

[62] The fact of the accused's participation in trafficking the victim is well established by the evidence of the victim (NG) and the complainant. I therefore find that there is sufficient evidence disclosed by the prosecution to establish substantial grounds to believe that A1 committed the preferred charge of aggravated trafficking of persons.

COUNT 2: *Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act.*

[63] Mr. Kyomuhendo submitted that the prosecution has through the police statement of NM established that A1 and A15 recruited and harboured the victim by means of deception, with the purpose of engaging her in prostitution. In his reply, Mr. Senkumi submitted that the prosecution has not adduced evidence of a birth certificate or any documentary proof that the victim was 16 years old at the time the alleged offence. He further submitted that the prosecution had produced evidence

that showed that the premises were owned by A1 and not A15. He stated that the victim pointed out that it was A1 who recruited her from Nyabugando village and not A15.

THE ACT OF RECRUITMENT, TRANSPORTING AND HARBOURING OF NM BY THE ACCUSED

[64] NM states that while she and her cousin NG were working in a bar called Tuuse at Nyabugando village, A1 approached them and inquired from them what they were earning at the said place. They informed him that they earned a monthly income of 30,000/=. He subsequently offered them a job at his hotel in Katwe Kinyoro where he undertook to pay each of them a monthly income of 50,000/=. The victim and her cousin accepted his offer and travelled back to Kinyoro Katwe with A1. To their surprise, when they arrived Katwe Kinyoro, there was no hotel. A1 instead informed them that they were to engage in prostitution and pay him 5,000/= per day. She rejected the offer but continued staying with A1 to find transport money to return to her village. She had sexual intercourse with a man who paid her and A1 money. Her statement is corroborated by NG.

[65] A1 denied those allegations, saying that when he went to Nyabugando village, the victim and her cousin were chased away by their boss in his presence. He subsequently offered them employment in his bar at Nyabugando. At the request of the victim and her cousin, he decided to travel with them to Kampala so that he could get them jobs. A one Cathy Nayebare, who had promised to employ them did not like their demeanours when they visited her and so he decided to let

them stay at his premises while he continued to seek for job opportunities for them.

[66] It is evident from the victim and A1's accounts of what transpired that the victim's only intention of travelling to Katwe Kinyoro was to find employment. By offering the victim and her cousin NG jobs and subsequently transporting them, A1 recruited and transported them. Furthermore, he harboured the victim when he let her stay at his premises as a prostitute. This element has been proved against A1 to the required standard.

[67] As for A15, I agree entirely with Mr. Senkumi that the prosecution has not produced any bit of evidence of his participation in the recruitment, transporting, receipt or harbouring of the victim.

THE AGGRAVATING FACTOR OF THE VICTIM BEING A CHILD

[68] The victim's statement is that she was 16 years old at the time she made that statement. The fact that the victim is a child was corroborated by the medical clinical officer Mr. Bwire Faizo, who estimates the victim's age at 15 years at the time he examined her on 26th October 2020, as per his report (PTPE1). The prosecution has in my view established the fact that the victim is a child.

THE MEANS OF DECEPTION OR ABUSE OF POWER OVER OR POSITION OF VULNERABILITY OF THE VICTIM BY THE ACCUSED

[69] As already stated earlier, under **Section 3(3)** of the **PTIP Act** the means element of the offence need not be proved if the act of recruitment, transporting, receiving or harbouring of

the child was for the purpose of exploitation. There is no need to establish the means element of the crime in this case, although I think that the fact of deception and abuse of position of vulnerability of the victim by A1 is well established by the prosecution in the statement of NG.

THE PURPOSE OF EXPLOITATION OF THE VICTIM BY THE ACCUSED

[70] **Section 2(j) of the PTIP Act** defines sexual exploitation to include the use of a person in prostitution or the use of a person for sexual intercourse. The victim states that while she was at A1's lodge, a man approached her and promised to marry her. She accepted to have sexual intercourse with him and he paid her and A1 5,000/= and 3,000/= respectively.

[71] **Section 2(i) of the PTIP Act** defines prostitution to mean the activities of a prostitute as defined in **the PCA**. The said Act defines prostitute as: *a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain.*

[72] Also, it is the victim's evidence that while she rejected A1's proposal to engage in prostitution, she accepted 5,000/= from a man at A1's lodge in exchange for sex and A1 benefitted from her sexual activity when he was paid 3,000/= by the said man. Basically, A1 succeeded in engaging NM in prostitution, which is sexual exploitation in the circumstances of this case. The victim is a child and any sexual act with her is unlawful and is termed defilement under **Section 129 of the PCA**. This

element has also been established by the prosecution against A1 to the required standard.

PARTICIPATION OF THE ACCUSED IN THE COMMISSION OF ANY OF THE ABOVE ELEMENTS OF THE OFFENCE CHARGED

[73] The evidence of the victim, NG and of the complainant incriminates A1 in the participation of the offence.

[74] Concerning A15, I do agree entirely with Mr. Senkumi's submissions that the victim in her statement does not incriminate A15 in the said offence. Since the prosecution has failed to adduce any evidence against A15. This count against him is dismissed therefore.

COUNT 3: *Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act.*

[75] It is alleged in this count that A1, A2, A7 and A20 recruited, received and harboured NF, a 16-year-old girl, by means of deception or abuse of power or of position of vulnerability for the purpose of sexual exploitation.

[76] Mr. Kyomuhendo submitted that the statement of NF shows that A1 harboured and received her when she was 16 years old. In reply, Mr. Senkumi submitted that the prosecution did not provide documentary proof of the victim's age but only relied on her statement and additional statement. That the statements of the victim that the prosecution relies on to establish her age are contradictory, that is to say that her statement dated 25th October 2020, shows that she was 19 years old then, while her statement dated 26th October 2020 shows that she was 17 years of age at the time in question.

According to him, it can only mean that she was an adult at that time. He further submitted that the prosecution's evidence points to A1 recruiting and harbouring the victim but not A15.

THE ACT OF RECRUITING, OR HARBOURING, OR TRANSPORTING NF BY THE ACCUSED

[77] The victim in her additional statement states that she was at the old taxi park when she was approached by A1, who informed her that he had a hotel and was looking for staff to work there. When she went to the said hotel, A1 told her that she had to engage in prostitution for her own survival or return to the streets. She accepted to work as a prostitute and subsequently had sex with A1 in room 13 of A1's lodge. She subsequently had sexual intercourse with A2, A7, Akram and A20 among others. Her evidence of residing at A1's premises is corroborated by the statement of ASP Opuna Anthony and SGT Ochamuna Fredrick who arrested her at the said premises on 24th October 2020.

[78] I do find that the proposed evidence of the prosecution sufficiently establishes the first element of the offence charged against A1 to the required standard.

[79] In regard to A2, A7 and A20, NF clearly states that she had sexual intercourse with them at A1's premises. Her statement was not refuted by either one of the said accused. It is clear to me that they received the victim for the purpose of having sexual intercourse with her. The prosecution has in my considered opinion also established this element against A2, A7 and A20 to the required standard.

[80] Once again, I have no option but to agree entirely with Mr. Senkumi, that there is no evidence produced against A15 implicating him in this count.

THE AGGRAVATING FACTOR OF NF BEING A CHILD

[81] NF in her police statement recorded on 25th October 2020 states that she was 19 years old. However, the numeral 7 appears superimposed on last digit 9 of the number 19. The victim in her second statement made on 26th October 2020 states that she was 17 years old at time of her statement. While the said statements of the victim appear contradictory on the fact of age, they have not yet been challenged in cross-examination. It is not possible for this pretrial court which does not any hear witnesses, to determine whether the victim or the police officer who recorded her statement may have any explanations for that apparent contradiction in the victim's police statements regarding her age. The procedure for challenging conflicts in police statements is well established by the highest courts of this land, which challenge can only be done within the hearing of a case. At this point, I cannot make a determination on the veracity of both or any of those statements as far as the fact of age is concerned.

[82] That fact notwithstanding, PTPE3, which is the medical report of the victim establishes that she was 16 years old at the time of the medical examination. For that reason, it is my view, that the prosecution has established substantial grounds for this court to believe that NF is a child.

THE PERFORMANCE OF THE ABOVE ACTS BY MEANS OF DECEPTION OR ABUSE OF THE POSITION OF POWER BY THE ACCUSED OR OF THE VULNERABILITY OF NF

[83] From the victim's statement, A1 lied to her that he had a hotel and would employ her in it. He later turned around when she reached his lodge to introduce her to prostitution. From this statement and the police evidence of the circumstances in which the victims were found at the scene of the alleged crimes, it is my considered opinion that the means of deception is established to the required standard.

[84] In any case, as per **Section 3(3)** of the **PTIP Act** the means element need not be proved, although as I have already observed above, means of deception has been proved to the required standard for confirmation of this charge.

THE PURPOSE BEING EXPLOITATION OF NF, BY THE ACCUSED

[85] As already stated above exploitation is defined in the **PTIP Act** to include sexual exploitation. According to the victim, since she was recruited and started staying in A1's lodge, engaging in prostitution. She had sexual intercourse with A1, A2, A7 and A20 among other men. Her statement is corroborated by PTPE3, which establishes that she was sexually active at the time.

[86] I thus make a finding that the victim was exploited by A1, A2, A7 and A20. The prosecution has proved this element against A1, A2, A7 and A20 to the required standard.

PARTICIPATION OF THE ACCUSED IN THE COMMISSION OF ANY OF THE ABOVE ELEMENTS OF THE OFFENCE CHARGED

[87] It is important to note at this point that an accused need not participate in all stages of trafficking in persons to be found to have participated in the commission of the offence charged. In the Kenyan case of ***Bernard Onyandi versus Republic [2018] eKLR***, the court held: *The offence of trafficking consists of a process with the ultimate purpose of exploitation of the person trafficked. Every participant in every stage of the process is guilty of the offence, and an accused need not participate in all stages to be guilty. If the prosecution established to the satisfaction of the court that the accused was part of the chain and committed only one act in the chain which was aimed at facilitating the commission of the offence, he would be guilty of the offence of trafficking in persons.*

[88] NF clearly implicates A1, whose lodge she resided in after he had convinced her to work for him. She was subsequently engaged in prostitution with A2, A7, A20 among other men, after A1 directed her to so. She would hand him 5,000/= daily from her earnings in prostitution. Her evidence sufficiently implicates the said accused persons in committing the offence of trafficking to her prejudice. Consequently, I find that the prosecution has proved this offence against A1, A2, A7 and A20 to the required standard. I wonder why the prosecution did not also charge A1, A2, A7 and A20 with the offence of defilement contrary to **Section 129 of the PCA**, considering that the evidence adduced establishes it as well.

[89] However, because the prosecution has failed to adduce any evidence against A15. The case against A15 in this count is hereby dismissed.

COUNT 4: *Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a)* of the *PTIP Act*.

[90] It is the prosecution's case that A1, A2 and A19 recruited, received and harboured BS, a 16-year-old girl by means of deception or abuse of power or of position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING, RECEIVING OR HARBOURING OF BS, BY THE ACCUSED

[91] As regards the act of recruiting, or receiving harbouring the victim by A1, A2 and A19, the victim in her police statement avers that she worked at Nakasero market during day time, selling eggplants, while residing in A1's premises were she would engage in prostitution at night. She later met Mohammad Crispus her lover, who rented a house and they both moved in and lived there. She got pregnant but lost the pregnancy. Subsequently, her lover Mohammad run out of money. She was forced to leave the rented house and move in with her friend BR. On 24th October 2020, she and BR went to A1's premises where she wanted to meet with Mohammed. Police stormed the place and arrested all present. Her evidence regarding the circumstances of her arrest contradicts the evidence of ASP Opuna Anthony, who states that he found BS having sexual intercourse with A2 and subsequently arrested them. That contradiction will in my view, be interrogated at the full hearing of the case, since the said victim admits the fact that she was a prostitute at A1's lodge before she met

Mohammed. She does not however state exactly how she was recruited to engage in prostitution in A1's lodge.

[92] In light of the victim's confession and of ASP Opuna Anthony's evidence of arrest, as well as the evidence of other witnesses, the prosecution has established to the required standard that A1 owns the lodge in issue where BS was working as a prostitute. If A1 did not recruit the victim, by the fact of his ownership of the lodge and of his allowing the victim to engage in prostitution in his premises, he had received and harboured her. As for A2, the evidence of his having been found having sexual intercourse with the victim in the said lodge albeit disputed by the victim shows that he had received the victim, subject of course to challenge by the defence of the said evidence at the trial.

[93] As to whether A19 is implicated by the evidence on record, I answer in the negative. The prosecution has not at all implicated him.

THE AGGRAVATING FACTOR OF BS BEING A CHILD

[94] BS in her first police statement, avers that she was 19 years old when she made her statement. In her additional statement, she states however that she was 16 years old. As I have already said above, the discrepancies in those police statements concerning the victim's age will be interrogated at the hearing of the evidence of witnesses in a trial, which this pre-trial court does not have the power to do. Nonetheless, on the independent medical opinion in PTPE4, the victim's age is estimated at 16 years at the time of the offence alleged. On that ground alone, the prosecution has given substantial

grounds for this court to find as a fact that BS was a child at the time of the offence.

THE PERFORMANCE OF THE ABOVE ACTS BY MEANS OF DECEPTION AND ABUSE OF POSITION OF POWER BY THE ACCUSED OR OF THE VULNERABILITY OF BS

[95] Since the victim was a child, who was sexually exploited by engaging her in prostitution at A1's premises, it is not mandatory for the prosecution to prove the means element of the alleged offence.

THE PURPOSE BEING SEXUAL EXPLOITATION OF BS

[96] The victim states that she lived in A1's premises where she engaged in prostitution at night. Her evidence is corroborated by ASP Opuna Anthony's statement that he found her at the scene having sexual intercourse with A2. PTPE4, which is the medical examination report of the victim, confirms that she is sexually active. It is my view that the victim, a child below 18 years of age was sexually exploited by A1 and A2.

PARTICIPATION OF A1, A2 AND A19 IN THE COMMISSION OF ANY OF THE ELEMENTS OF THE OFFENCE AGAINST BS

[97] As stated above, BS's evidence shows that A1 harboured her while she was engaged in prostitution. Her evidence is also corroborated by ASP Opuna Anthony.

[98] In regard to A2, the statement of ASP Opuna Anthony incriminates him for having sexual intercourse with the victim,

whom this court has found to be a child. **Section 2 (j) of the PTIP Act** defines exploitation to include the use of a person for sexual intercourse. Because the victim is a child, A1 had no business receiving and keeping her in his lodge for prostitution purposes and also, A2 had no business having sexual intercourse with a child. In the result, the prosecution evidence implicates A1 and A2 in the commission of the offence charged against BS to the required standard. In any case, the offence of defilement of a child below the age of 18 years has been established. The prosecution ought to have charged A1 and A2 with the said offence as well.

[99] Concerning A19, the prosecution has failed to adduce evidence that shows that he committed the offence charged. He is discharged of responsibility for the offence in respect of BS.

COUNT 5: Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act.

[100] The prosecution alleges that A1 and A4 recruited and harboured NE, a 17-year-old girl by means of deception or abuse of power or of position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING, RECEIVING OR HARBOURING NE, BY THE ACCUSED

[101] The prosecution alleges that the victim who was a child was received and harboured by A1. The victim in her police statement avers that she was introduced to A1 by a friend of hers called Mugwere. She then begun to trade in prostitution.

She would negotiate with her customers who would pay between 10,000/= to 80,000/= and also pay A1 for the room at his lodge. She would have sexual intercourse with at least two men daily. Her statement is corroborated by ASP Opuna Anthony who states that when the police carried out their raid on A1's premises, he found the victim having sexual intercourse with A4. On his part, A1 denied recruiting any people for the purpose of prostitution and claimed that he only rented out his rooms to the tenants.

[102] Since A1 agreed that the premises were his, and the police found all victims in it, some of them got redhandedly engaged in sexual acts, I have no doubt, as I have already said above, that I believe the statements of NR and NM, that A1 was responsible for collecting and bringing together the victims of trafficking and the persons implicated by the evidence of trafficking in this case.

[103] As for A4, he knew that the victim was a prostitute and went to A1's lodge to have sexual intercourse with a prostitute, an act which is not just penalized by our laws, but which also amounts to the offence of defilement of a child under **Section 129 of the Penal Code Act**. He cannot be heard to say that he had no knowledge that the victim had been recruited and harboured for prostitution or sexual exploitation in those circumstances. In the circumstances, the prosecution has proved this element against A1 and A4 to the required standard.

THE AGGRAVATING FACTOR OF NE BEING A CHILD

[104] In her additional statement, NE states that she is sixteen years old, which fact is supported by PTPE7 the medical opinion of Mr. Bwire Faizo who states that the victim was 17 years old. This element is well established by the evidence proposed to be adduced by the prosecution.

THE PERFORMANCE OF THE ABOVE ACTS BY MEANS OF DECEPTION AND ABUSE OF POSITION OF POWER BY THE ACCUSED OR OF THE VULNERABILITY OF THE VICTIM

[105] Since the victim is a child, who engaged in prostitution when she was introduced to it by A1 and used to earn between 10,000/= to 80,000, it is not necessary for the state to prove the means element of the offence as stipulated in ***Section 3(3) of the Trafficking in Persons Act, 2009.***

THE PURPOSE BEING SEXUAL EXPLOITATION OF NE

[106] The victim's statement is that she was engaged in prostitution at A1's premises. In fact, on 24th October 2020 when the police arrested the victim, she was found having sex with A4 whom she claims is her boyfriend and not her client. The said boyfriend had from her statement already paid her 8,000/= and had also paid A1 for renting the room in the lodge. This evidence is largely corroborated by ASP Opuna Anthony. It is my view that the victim's statement incriminates A1 and A4 for sexually exploiting her. Also, by having sexual intercourse with a child, both accused should have also been charged for committing defilement.

PARTICIPATION OF THE ACCUSED IN THE COMMISSION OF ANY OF THE ABOVE ELEMENTS OF THE OFFENCE CHARGED

[107] The evidence of the victim and of the complainant establishes A1's and A4's participation in the commission of the offence. This offence has thus been adequately established against A1 and A4.

COUNT 6: *Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act*

[108] A1 and A17 are accused for receiving, recruiting and harbouring NA a 17-year-old girl by means of deception or abuse of power or of position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING, RECEIVING OR HARBOURING OF NA BY THE ACCUSED

[109] NA states that a woman named Florence caused her to stay at A1's premises where they were paying 5,000/= per day. Florence later returned to the village, leaving NA at A1's premises. As a result, NA failed to meet the rental requirements. A1 told her that he would only allow her to continue staying in his lodge if she agreed to become a prostitute and instructed her to remit to him the money she would earn from trading in prostitution. She hesitated at first but eventually accepted his offer upon realising that she did not have anywhere to go.

[110] A1 denied the allegations and maintained that he only rented out the rooms to tenants who have various occupations including those that practiced prostitution.

[111] I find the victim's evidence more believable considering that her statement was corroborated by other victims namely:

NF and NR among others who stated that they engaged in prostitution at A1's premises. Also, A1 did not provide documentary evidence that showed that the people who occupied the rooms in his lodge had a tenant-landlord relationship with him. I find that A1 received the victim, recruited her to engage in prostitution and harboured her in one of the rooms in his lodge. The prosecution has established this element against A1 to the required standard.

[112] As for A17, the victim states that he was her boyfriend, whom she loved and that they regularly had sexual intercourse. She avers that A17 decided that they reside at A1's premises and pay him 5,000/= every day. A1 however did not name A17 as his tenant. Strangely A17 in his defence, states that he was arrested on his way back from work. However, the complainant and Sgt Ochamuna state that all the persons arrested by the police on 24th October 2020 were found inside A1's premises. It is my view therefore that NA's evidence is corroborated by the complainant and Sgt Ochamuna and implicates A17 as a participant in the sexual exploitation of the victim as someone who paid money to have sexual intercourse with the victim of trafficking by A1. The prosecution has thus established this element against A17 to the required standard.

THE AGGRAVATING FACTOR OF NA BEING A CHILD

[113] According to the victim's statements, she stated that she was 17 years old. Her evidence is supported by PTPE8, her

medical examination report made by Bwire Faizo a medical clinical officer. She is a child in my view.

THE PERFORMANCE OF THE ABOVE ACTS BY MEANS OF DECEPTION AND ABUSE OF POSITION OF POWER BY THE ACCUSED OR OF VULNERABILITY OF NA

[114] Since the victim is a child who was sexually exploited by engaging in prostitution on A1's premises, the means which were used to recruit, receive and harbour her for the purpose of sexual exploitation do not need to be proved. **(See Section 3(3) of the PTIP Act).**

THE PURPOSE BEING SEXUAL EXPLOITATION OF NA

[115] I have already stated that by engaging NA in prostitution, the victim was sexually exploited, the same way that engaging her in sexual intercourse as a child amounts to sexual exploitation. This evidence is corroborated by PTPE8, where in the Medical Clinical Officer who examined her, she is sexually active.

PARTICIPATION OF THE ACCUSED IN THE COMMISSION OF ANY OF THE ABOVE ELEMENTS OF THE OFFENCE CHARGED

[116] As shown from my discussion of above four elements of count 6, the prosecution has proved that A1 committed this offence by the required standard.

[117] Since it is the law that a court can find an accused guilty of the offence of trafficking in persons if the prosecution proves that the accused committed one act in a chain that facilitated the commission of the offence, (See **Bernard Onyandi versus**

Rebulic (supra), the evidence of NA, the complainant and Sgt. Ochamuna sufficiently shows that by receiving the victim and having sexual intercourse with her, A17 participated in the commission of the offence charged. In any case, A17 could also be charged with defilement contrary to **Section 129(1)** of the **PCA** since the evidence established that he had sexual intercourse with a child.

COUNT 7: Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act.

[118] A1 and others still at large are accused of receiving and harbouring AW, a 16-year-old child by means of deception or abuse of power.

THE ACT OF RECRUITING, RECEIVING OR HARBOURING AW BY A1

[119] A1 states that one of the rooms in his premises was being rented out to the victim. In his statement, the victim states that he had gone to A1's premises on 24th October 2020 to look for a one Roger. His intention was to fetch water with Roger so that he could wash cars at the parking lot. He was arrested by the police who did not tell him what he had done.

[120] There is nothing in his statement that shows that he was recruited and harboured by A1. The victim in his statement says that he is 19 years old. Surprisingly, he was initially examined by a medical clinical officer as shown in his Police Form 24A, as an accused person accused in a charge of sexual assault. However, he was later examined as a victim of sexual assault. PTPE22, shows that he is a 16-year-old boy.

Nevertheless, the victim's statement does not implicate anyone in recruiting him for purposes of exploitation. This element has not been proved at all by the prosecution, neither have other elements of trafficking been proved. In the circumstances, this charge against A1 is dismissed.

COUNT 8: Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act.

[121] It is alleged that A1 received and harboured MA a 17-year-old child by means of deception or abuse of power or of the position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING, RECEIVING OR HARBOURING OF MA BY THE ACCUSED

[122] About the victim being recruited and harboured by the accused, the victim in his statement avers that he was arrested in A1's bar when he went to pick the keys of his house from a one Twinamasiko who was a bar attendant there. There is nothing in his statement that incriminates A1 or anyone else for recruiting or harbouring the victim at A1's lodge. Also, the victim asserts that he is 21 years old. This contradicts PTPE35 which estimates his age at 17 years. MA, was also examined on Police Form 24A, as an accused person, showing that he was initially treated as a suspect before he was considered a victim of trafficking and examined on Police Form 3A for sexual assault.

[123] All in all, the ACT element of the offence of trafficking in respect of MA remains unproved in this case. Since this ingredient has not been proved, I shall not proceed to discuss

the MEANS and PURPOSE elements of the offence as doing so would be time wasting. This charge is also dismissed against A1.

COUNT 9: *Aggravated Trafficking in Children contrary to Sections 3(1) (a) and 5(a) of the PTIP Act*

[124] It is alleged that A1 recruited, transported and harboured NG by means of deception or abuse of power or position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING, RECEIVING OR HARBOURING OF NG BY THE ACCUSED

[125] I will not restate the prosecution evidence concerning this count, which is already discussed under Count 2 in respect of NM. NG and NM were together and were recruited, transported and harboured together by A1. Hence, I find, as I did in Count 2 that this element is established to the required standard by the prosecution.

THE PERFORMANCE OF THE ABOVE ACTS BY MEANS OF DECEPTION AND ABUSE OF POSITION OF POWER BY THE ACCUSED OR OF VULNERABILITY OF THE VICTIM

[126] As is already mentioned above, A1 recruited the victim and her cousin from their village in Nyabugando under the pretext that they were going to work in his hotel in Kampala. When they reached Kampala there was no hotel for them to work in save him engaging them in prostitution. A1 denied the said allegations and stated that he recruited them at their own request. I find his defence unbelievable in the circumstances of

this whole case and given my findings above that the evidence of the prosecution establishes his participation in recruiting and harbouring most of the victims in the indictment. The victim in her additional statement asserts that A1 gave her and her cousin NM directions regarding how they would charge their clients in his lodge. They were directed to charge 8,000/= and 15,000/= for short sexual encounters and long ones respectively and to also pay A1 5,000/=. Her statement is corroborated by the statements of NM and NA among others.

[127] I do not thus accept A1's evidence that he was only staying with the victim NG and NM as he continued to search for jobs for them. This element has been proved to the required standard.

THE PURPOSE OF SEXUAL EXPLOITATION OF NG

[128] The victim states that A1 recruited her into prostitution. It is the law as stated above that prostitution amounts to sexual exploitation under the **PTIP Act**, where the means element of the offence is proved or in case of a child, where the fact of the victim being a child is proved. The fact that the victim was still at A1's premises on 24th October 2020 when she was arrested, after she had asking him to let her go, shows that he still intended to sexually exploit her.

[129] Also, in his own police statement A1 refers to the monies that he had spent on transporting the victim and NM. This means that the NM and NG were under a debt bondage to A1. It is clear to me thus that the purpose of recruiting, transporting and harbouring of victim was sexual exploitation. I therefore

find that the prosecution has proved this element to the required standard.

PARTICIPATION OF THE ACCUSED IN THE COMMISSION OF ANY OF THE ABOVE ELEMENTS OF THE OFFENCE CHARGED

[130] As I have already discoursed in the first three elements of the offence charged in count 9, the evidence satisfactorily places the A1 at the scene of the alleged crime.

COUNT 10: *Trafficking in Persons contrary to Section 3(1) (a) of the PTIP Act*

[131] The prosecution alleges that A1 received, recruited and harboured BR by means of deception or abuse of power or of position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING AND HARBORING BR BY THE ACCUSED

[132] In her statement, the victim states that she came to know of A1's premises through her friend BS, who told her that staying in A1's lodge would cost 5,000/= per day. She used to reside in BS' room at the said lodge because of curfew. From her evidence, A1 did not recruit or transport her. She accompanied BS to A1's premises on 24th October 2020 to see her boyfriend and ended up being arrested. The victim does not implicate A1 or anyone. This element has not been proved to the required standard. It is not therefore necessary to delve into the determination of the other elements of the offence charged. This charge against A1 is dismissed.

COUNT 11: *Trafficking in Persons contrary to Section 3(1) (a) of the PTIP Act*

[133] It is alleged that A1 received, recruited and harboured LS by means of deception or abuse of power or of position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING, HARBORING AND TRANSPORTING LS BY THE ACCUSED

[134] The victim, in her police statement, avers that she was arrested at A1's premises where she had gone to look for her husband Ali to inform him that their child was ill. There is nothing in her statement that indicates that she was recruited by anyone or that she was in the said premises against her will or to do perform any criminal act. There is no evidence that supports this charge against A1. It therefore stands dismissed too.

COUNT 12: *Trafficking in Persons contrary to Section 3(1) (a) of the PTIP Act*

[135] The prosecution claims that A1 received and harboured KR by means of deception or abuse of power or of position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING AND HARBOURING OF THE VICTIM BY THE ACCUSED

[136] According to the victim, she rented one of A1's rooms at a cost of 5,000/= per night. This was not rebutted by A1. The victim states that when she got employed, she looked for a place to stay and ended up in A1's premises on her own volition. It is clear from her statement that she is not complaining against A1 or anyone for any offence, let alone trafficking in persons. This element has not been proved at all. Since I have found so, it would be otiose to discuss the other elements of trafficking in persons. As a result, this charge against A1 is dismissed.

COUNT 13: *Trafficking in Persons contrary to Section 3(1) (a) of the PTIP Act.*

[137] It is alleged that A1 received and harboured LE by means of deception or abuse of power or position of vulnerability for the purpose of sexual exploitation.

THE ACT OF RECRUITING, HARBORING OR TRANSPORTING LE BY THE ACCUSED

[138] Regarding this element, the victim states in her police statement that on 24th October 2020, she was arrested at A1's premises where she had gone to look for her sister Jokia, who had left her phone at home. From the prosecution's proposed evidence, A1 did not recruit or harbour the victim. Furthermore, the victim did not provide any evidence that proves the other ingredients that constitute the offence. In the result, this charge against A1 is dismissed.

COUNT 14: *Operating a brothel contrary to Section 137 of the PCA*

[139] It is alleged that A1 kept a set of rooms for the purposes of prostitution. **Section 137 of the Penal Code Act, Cap 120** provides:

Any person who keeps a house, room, set of rooms or place of any kind for purposes of prostitution commits an offence and is liable to imprisonment for seven years.

[140] The ingredients of the offence are:

- a) The fact of keeping a house, room, set of rooms or place of any kind;
- b) The purpose of keeping the said house, room, set of rooms or place of any kind for prostitution; and
- c) The fact of participation of A1.

THE FACT OF KEEPING A HOUSE, ROOM, SET OF ROOMS OR PLACE OF ANY KIND

[141] In his statement, A1 admits that he had owned the bar and lodge for a period of four years. He rented eight (8) of the rooms from a one Edisa Komuhangi whom he paid four hundred thousand shillings (400,000/=) a month. In order to earn some income from the premises, he partitioned the rooms therein into smaller rooms and sublet them rooms to tenants at a cost of 5,000/= per day. He further constructed other rooms in the compound of the premises, which he had also rented out. His evidence supports the statements of ASP Opuna Anthony, NR, NM, NF, BS, NE, NA, NA, BF, AW, MA, Sgt Ochamuna Fredrick and D/P Nabutono Eseza that he owned the lodge in which the accused persons and the victims were found and arrested. PTPE6, PTPE30 and PTPE37, are the sketch plan of the crime scene, 38 copies of photographs of the crime scene and a letter

addressed to the Divisional OC CID Katwe Police Station forwarding the crime scene report respectively. They support the statements of the witnesses and the accused I his plain statement. It is therefore my esteemed view that this element has been proved by the proposed evidence of the prosecution.

THE PURPOSE OF KEEPING THE SAID HOUSE, ROOM, SET OF ROOMS OR PLACE OF ANY KIND BEING FOR PROSTITUTION

[142] NR, NM, NF, BS, NE, NA in their statements assert that they practiced prostitution on a daily basis at A1's premises where they would negotiate and charge client's fees in exchange for sex. The various amounts they charged are mentioned by those witnesses. They were expected to give 5,000/= to A1 every day, for the rooms they used in prostitution, which they did. Their evidence is corroborated by NG, who stated that she knew girls who practised prostitution at A1's premises and NR was one of them. BR also corroborated that evidence.

[143] The mere fact that several persons were arrested there: boys and girls, men and women; some who were redhandedly found in acts of sexual intercourse during the police swoop of A1's place is evidence that the said lodges were well known by the users of prostitution services as the place to find prostitutes.

[144] The victims' respective medical examination forms show that they are sexually active thus supporting their statements about what they were engaged to do in A1's lodge. In the result, I find that the prosecution has produced adequate evidence to support this element.

THE PARTICIPATION OF A1 IN THE COMMISSION OF THE OFFENCE

[145] The victims state that whenever they practiced prostitution, they paid A1 5,000/=. In fact, they assert that A1 himself engaged NF and NR among others as providers of sexual services to him. In his additional statement, he denied any knowledge of people who were practicing prostitution at his premises. That statement contradicts his prior statement that he rented out his lodges to many people who engaged in different trades, which included casual labour and prostitution. I find the proposed evidence of the prosecution as a whole more believable since the victims' statements are corroborated by police evidence in material particulars which shows that prostitution was practiced at A1's lodge. As a result, I find that the prosecution has established this element to the required standard for confirmation of this charge.

COUNT 15: *Prostitution contrary to Sections 138 and 139 of the PCA.*

[146] From the indictment, it is alleged that A1 A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15, A16, A17, A18, A19 and A20, habitually held themselves out in public regularly as available for sexual intercourse or other sexual gratification for monetary or other material gain.

[147] **Section 138 of the PCA** defines a prostitute to mean:
A person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification

for monetary or other material gain and “prostitution” shall be construed accordingly.

[148] The elements of prostitution are:

1. The act of regularly or habitually holding out as being available for sexual intercourse or other sexual gratification;
2. The fact that the accused commits these acts for monetary or other material gain; and
3. The participation of the accused in these acts.

[149] It has been established that the victims practiced prostitution at A1’s premises. No evidence has been brought by the prosecution to show that the accused persons habitually held themselves out in public regularly, as available for sexual intercourse or other sexual gratification for monetary or other material gain. The prosecution evidence instead implicates the victims themselves of the crime of prostitution and not the beneficiaries of their exploitation who are the accused person who paid money to have sexual gratification from the victims. The Penal Code Act should have made liable both the provider (mostly women) and the beneficiaries of paid sexual service (usually men) if true justice was to be achieved.

[150] In this case, the offence charged against the accused in this count is not established and is dismissed. I wonder why A1 was not charged with procuration contrary to **Sections 131(b) and (c) of the PCA** and living on the earnings of prostitution contrary to **Section 136 of the PCA**, as the evidence adduced implicates him.

[151] Consequently, this court finds that the prosecution has provided sufficient evidence to this court that establishes substantial grounds to believe that A1 is responsible, for the crimes charged in counts 1, 2, 3, 4, 5, 6, 9 and 14. The said charges are confirmed.

[152] The crimes charged against A2 in counts 3 and 4 are also confirmed.

[153] The crimes charged against A7 and A20 in count 3 are also confirmed.

[154] The crime charged against A4 in count 5 is confirmed.

[155] The crime charged against A17 in count 6 is confirmed.

[156] The crimes charged in counts 7, 8, 10,11,12,13 and 15 against A1 are dismissed for lack of sufficient evidence.

[157] The crime charged against A15 in count 2 is dismissed for lack of evidence. He is discharged forthwith.

[158] Also, the crime charged against A19 in count 4 is dismissed for lack of evidence. He is also discharged forthwith.

[159] Regarding A3, A5, A6, A8, A9, A10, A11, A12, A13, A14, A16 and A18, the prosecution has failed to adduce any evidence at all against them for the crimes charged. As a result, I dismiss the charges brought against them and discharge them forthwith.

[160] This discharges herein are not a bar to the prosecution bringing the same charges against the respective accused persons upon obtaining additional cogent evidence against them.

[161] Consequently, A1, A2, A4, A7, A17 and A20 are committed to the trial court on the charges as confirmed.

I so order.

Susan Okalany

JUDGE

15/11/2022