THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL SESSION CASE NO. 259/94

UGANDA……..……..……PROSECUTION

VERSUS

KULABA BADIRU ……..……ACCUSED

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

RULING

This ruling is in respect of a submission of no case to answer made by the learned counsel for defence Mr. Wangoola. The accused person Kulaba Badiru is indicted for defilement c/s 123(1) of PCA. He pleaded not guilty to the indictment. At the close of the case for prosecution Mr. Wangoola submitted that no prima facie case had been made out for the accused person to answer because the ingredients of the offence of defilement had not been established, he pointed out that the age of the girl had not been proved to be below 18 years and that no evidence had been adduced to connect the accused with the alleged defilement. On his part Mr. Okwanga who appeared for the prosecution was of the view that the prosecution had made out a prima facie case for the accused to answer.

The principles upon which this court proceeds to reject or to uphold a submission of no case to answer were laid down in the case of: R.T. Bhatt v R (1957) EA 332. A case to answer means that if the accused decided to keep quiet after the close of the prosecution case the court would proceed to convict him, but where no case is made out it means the evidence available is not enough to have the accused convicted by a reasonable tribunal properly directing its mind to such evidence and law. In the present case I do not agree with the learned counsel for accused when he says that there was no evidence to prove defilement. The evidence available does show that defilement was actually committed upon the victim. I however agree with the learned defence counsel when he says that no evidence was adduced

to connect the accused with the commission of the offence, this is because the complainant who would have testified as to what happened on that day did not appear in court. The case for the prosecution on the question of the accused being involved in this crime is nothing but suspicion and it is the law that suspicion alone is not enough: Israil Epuka s/o Achietu v R (1934) 1 EACA 166 in particular at page 168. Since no sufficient evidence has been adduced to connect the accused with the commission of the offence I would uphold the submission of no case to answer and accordingly find the accused not guilty and I do acquit him under section 71(1) of TID.

C.M. KATO

JUDGE

1-9-1995