

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**INTERNATIONAL CRIMES DIVISION**  
**HCT-00-ICD-SC-0011-2022**

**UGANDA ::P**  
**ROSECUTOR**  
**VERSUS**

**KATO INNOCENT ALIAS**  
**MULONDO ::ACCUSED**

**BEFORE: HON JUSTICE SUSAN OKALANY**  
**CONFIRMATION OF CHARGES RULING**

**BACKGROUND**

[1]Kato Innocent alias Mulondo is the accused indicted by the Director of Public Prosecutions with the charges of ***Aggravated Trafficking in children contrary to Sections 3(1) (a) and 5(a) of Prevention of Trafficking in Persons Act, 2009*** and ***Aggravated Defilement contrary to Section 129(3) and 4(a) of the Penal Code Act Cap. 120 as amended.***

[2]It is alleged that the accused between October and November 2021 at Kanaaba - Ndejje village, Makindye Division in Kampala District, recruited or transferred or harboured or received Namutebi Natasha (herein after referred to as the victim), a girl aged 12 years, by means of deception or abuse of power or position of vulnerability, for the purpose of sexual exploitation. It is also alleged that the accused between the months of October and November 2021, at the same place as aforementioned, performed a sexual act with the victim.

[3]The prosecution in its summary of the case on record as well as the evidence disclosed to the accused and to this court is that the accused was a resident of Kanaaba village in Makindye Division where he was a neighbour of the victim’s grandmother. He was also friend of the victim’s grandmother.

[4]In June 2021, the accused requested the victim's parents through her grandmother to permit him enrol the victim for scholarship offered by an unknown NGO managed by white people. The victim's parents agreed and the victim together with her twin brother and sister were handed over to the accused. The twin siblings used to commute from the accused's home to go school while the victim would stay at the accused's home for some days and stay with her parents for other days. This was so because the accused had specifically requested the parents to allow him stay with the victim at his home for some days in a week. The accused had rented a single room which he used to share with the victim and three of his children. The accused had no wife and lived alone with his children.

[5]According to the victim, the accused often sneaked to her bed and had sexual intercourse with her. She alleges that the accused warned her against telling anyone about the sexual relationship they had and threatened to beat her if she disobeyed him. The victim also alleges that the last act of sexual intercourse committed against her by the accused was on 13<sup>th</sup> November 2021. After which, she confided in a one Joshua Muganga Imuran and eventually to her mother. The victim's mother informed her husband who went to Kibiri Police Post and made a report of the incident.

[6]The accused was arrested and informed of the allegations brought against him, which he denied. He was subjected to a medical examination which placed him at an apparent age of 32 years, his HIV status was negative. He had a normal mental status and had no physical injuries at the time of his examination.

[7]The victim was also medically examined and found to be of apparent age of 12 years. She had an old raptured hymen and was mentally normal. She was HIV negative and was not pregnant.

## **LIST OF EXHIBITS**

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

- 1) PID1 which is a police statement dated 17<sup>th</sup> November 2021, made by the father of the victim, recounting what happened on the day he was informed that the victim had been defiled;
- 2) PID2, which is a police statement dated 19<sup>th</sup> November 2021, made by the victim's mother, recounting how she came to know the accused, entrusted him with the victim and later learnt that the victim had been defiled;
- 3) PID3(a) and PID3, which are police statements made on 17<sup>th</sup> November 2021 by the victim, recounting how she came to know the accused and her ordeal while she was staying with him;
- 4) PID4(a) and PID4(b) which are police statements dated 17<sup>th</sup> November 2021, made by the victim's uncle, who was the first person that the victim confided in about the alleged defilement. The statement is an account of how the witness got to know the accused and how he learnt of the victim's alleged defilement;
- 5) PID5, which is a police statement dated 18<sup>th</sup> November 2021, made by the victim's grandmother, recounting how she knew the accused and the events that happened leading to the accused's arrest;
- 6) PID6, which is a police statement made in November 2021, made by No. 33491 Deputy Sergeant Mwirolu Annet the investigating officer of the case;
- 7) PID7, which is a sketch plan of the crime scene drawn on 23<sup>rd</sup> November 2021 by No. 33491 Deputy Sergeant Mwirolu Annet;
- 8) PID8(a) and P1D8(b), which are the plain police statement and the charge and caution statement made by the accused, recounting his version about the allegations brought against him;

- 9) PID9, which is Police Form 3A dated 18<sup>th</sup> November 2021 prepared by Bwire Faizo, the medical practitioner who examined the victim; and
- 10) PID10, which is Police Form 24A dated 18<sup>th</sup> November 2021 prepared by Bwire Faizo, the medical practitioner who examined the accused.

## **REPRESENTATION**

[9] Mr. Richard Birivumbuka Chief State Attorney was prosecution counsel, while the accused was represented by Mr. Geoffrey Turyamusiima on State Brief.

## **BURDEN AND STANDARD OF PROOF**

[10] 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.

[11] 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)***. Uganda is a party to the ***Rome Statute*** and 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.

[12] The standard of substantial grounds to believe is lower than the standard of a *prima facie case*, used by our courts to determine whether an accused person should offer a defence to an indictment or not, when the prosecution closes its case. I think that applying the **Rome Statute** standard to this pre-trial will not thus prejudice the rights of the accused or the prosecution, if the charges are confirmed, as both parties will still have the chance to present their respective cases at the trial of the accused. As for the prosecution, if the charges are dismissed for failing to meet the pre-trial standard of proof, the DPP has the chance, considering that a dismissal at this stage is not an acquittal, of directing the police to conduct further investigations and may present the case again to this court for pre-trial on newly obtained evidence.

[13] The concept of “substantial grounds to believe”, was defined in the judgement of the European Court of Human Rights (ECHR) of 7<sup>th</sup> 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”. The joint dissenting opinion appended to the judgement in **Mamatkulov and Askarov v. Turkey, of 4<sup>th</sup> February 2005, (Applications Nos. 46827/99 and 46951/99)** by Judges Bratza, Bonello and Hedigan was quoted, in which “substantial grounds to believe” were defined as “strong grounds for believing”.

[14] The ICC Pre-trial Chamber II in its decision of 9<sup>th</sup> December 2021 on the confirmation of charges against **Mahamat Said Abdel Kani, ICC-01/14-01/21**, under **paragraph 38** held that the evidentiary standard applicable at this stage of the proceedings requires the existence of substantial grounds to believe that the

person committed the crimes charged. This is a lower standard than that required at trial, **and is met as soon as the prosecution offers concrete and tangible proof demonstrating a clear line of reasoning underpinning the specific allegations.** [*Emphasis mine*]

[15] Furthermore, while evaluating evidence presented before it, the role of the court was stated in the case of **Mahamat Said Abdel Kani**, *supra*, under **paragraph 40**, as follows: “to avoid any pre-determination of issues or pre-adjudication regarding the probative value of evidence, **the decision must only address what the Chamber considers necessary and sufficient for its determination on the charges** – namely, whether there is sufficient evidence to establish substantial grounds to believe that the accused committed the crimes charged and therefore that the case brought by the Prosecution warrants a trial.”

[16] The Pre-trial chamber II further stated that the specific and limited function of the confirmation proceedings also calls for a style and structure of the decision under **Article 61(7)** of the Statute which is as simple and straightforward as possible; this also with a view to meaningfully implement the principle that the confirmation hearing is not, nor should be seen or become, a ‘mini-trial’ or ‘a trial before the trial.’ (*See paragraph 42*)

[17] Consequently, I must determine whether the evidence disclosed by the prosecution in this case is sufficiently strong to move me to confirm the charges and present the accused to the Trial Court for the hearing of the said evidence. Clearly, the standard of **substantial grounds to believe** is a lesser one than the standard of **prima facie case** that is required by courts to put an accused person to his/her defence.

## **FINAL SUBMISSIONS ON CONFIRMATION OF CHARGES**

[18] State counsel filed his submissions in support of confirmation of the charges on 19<sup>th</sup> October 2023, while the defence counsel filed

the accused's submission on 20<sup>th</sup> October 2023. On 20<sup>th</sup> October 2023, state counsel prayed for amendment of the indictment to indicate proper citation of the law and change in particulars of the offence. The defence did not object to the amendment but abandoned the part on legality in its written submissions. The court granted the parties' prayers and the indictment was amended in the terms proposed by state counsel and agreed to by the defence counsel.

## **ARGUMENTS FOR THE STATE**

[19] Regarding the first charge, Mr. Richard Birivumbuka submitted that the elements of the offence of aggravated trafficking in persons are:

1. Transportation or transfer or harbouring, confinement or receipt of a victim
2. By means of deception or forceful means;
3. For purposes of sexual exploitation;
4. The fact that victim is a child; and
5. The accused's participation.

[20] Concerning the first element of transportation or transfer or harbouring or confinement or receipt of the victim, counsel submitted that the disclosed evidence in PID2, PID3 (a) and (b), PID4 (a) and (b), PID5 and PID8 (a) and (b) show the elements of harbouring, receipt and confinement.

[21] On the elements of deception or use of force for purposes of sexual exploitation, counsel submitted that the disclosed evidence in PID 2, PID 3(a) and (b), PID 4(a) and (b) and PID5 establishes the same.

[22] Regarding the age of the victim, Mr. Richard Birivumbuka submitted that the prosecution witness statements PID1, PID2, PID3 (a) and (b), PID5 and PID9 show that the victim was a child aged 12 years.

[23] On the element of participation of the accused, counsel submitted that witness statements PID1, PID2, PID3 (a) and (b), PID5 show that the accused participated in the commission of the alleged acts.

[24] Mr. Richard Birivumbuka concluded that from the evidence disclosed by the prosecution, there are substantial grounds to believe that the offence was committed by the accused. He prayed that the charge in the first count is confirmed.

[25] Regarding the 2<sup>nd</sup> charge of Aggravated Defilement contrary to **Section 129(3) and 4(a) of the Penal Code Act**, Mr. Richard Birivumbuka submitted that the following are the elements of the said offence

1. The victim is a child below the age of 14 years
2. A sexual act was performed on the victim
3. The accused participated

[26] On the element of age, Mr. Birivumbuka submitted that the disclosed evidence in PID1, PID2, PID3(a) and (b), PID4(a) and (b), PID5 and PID9 show that the victim was 12 years old.

[27] On the element of performance of a sexual act performed with the victim, Mr Birivumbuka submitted that prosecution evidence disclosed in PID1, PID2, PID3 (a) and (b), PID4(a) and (b), PID5 and PID9 prove that a sexual act was performed on the victim.

[28] Regarding participation of the accused, state counsel submitted that disclosed evidence in PID1, PID2, PID3 (a) and (b), PID 4(a) and (b), PID 5 shows that the accused participated in the alleged performance of a sexual act with the victim.

## **ARGUMENTS FOR THE DEFENCE**

[29] Mr. Godfrey Turyamusiima submitted that while the prosecution has the legal burden of proving the allegations brought against the accused person, in this instant case, it did not tender sufficient evidence to support the charges to warrant confirmation of charges against the accused persons.



[30] On the first charge, Mr. Turyamusiima also reiterated the statement of the law on the elements of the offence on aggravated trafficking in children. On the element of recruiting or harbouring or receiving, the victim defence counsel submitted that the victim in her statement acknowledges that it is her parents who consented to her being taken by the accused; that it was the victim's parents and grandmother who asked the accused to allow the victim to stay with him in his home; and that PID2 (the mother of the victim's statement) clearly states that the victim was taken to the accused's home. In conclusion, the defence submitted that the accused did not recruit the victim, since her parents voluntarily gave her to the accused.

[31] On the element of use of force as a means of recruiting the victim, the defence counsel submitted that it was the parents of the victim who willingly surrendered her to the accused. That the victim's statements and the rest of the statements sought to be relied upon by the prosecution do not state or show how the accused by force took the victim, but rather show that she went there voluntarily with the support of her parents. Counsel asserted that the taking the victim to the accused's home was done in good faith because the accused was a family friend of the victim's family and was only helping the victim secure a good education.

[32] On the element of abuse of power or position of vulnerability for the purpose of sexual exploitation, the defence submitted that it is manifestly unreliable for prosecution to rely on PID9 and Police Form 24A (PID10) to prove that the accused allegedly had sex with the victim. He stated that the said exhibits did not make any mention of any injury on the lower and upper limbs of the victim which might have been caused as a result of the use of force and forcefully having sex with her. According to counsel, whereas the medical report showed that the victim's hymen had been ruptured, it was not a recent rapture and there were no bruises, on the external genitalia of the victim which was normal.

[33] The defence cited the case of ***Uganda v. Kagando Samson [2009] UGHCCRD 9***, where it was held that to prove the occurrence of sexual intercourse, all that the prosecution needed to do was establish that there was penetration of the girl's vagina and in this matter, the medical report disclosed by the prosecution (PID9) shows no evidence of recent penetration of the victim's vagina by a penis. Mr Turyamusiima submitted that in ***Kagando Samson's*** case supra, the court noted that it was always safer for court to look out for corroboration. He stated that in this case, there is no corroborative evidence to support the victim's allegation. The defence further submitted that PID9 and PID10 do not link the sexual acts alleged by the victim to the accused and also, no injuries were established as a result of the alleged sexual intercourse.

[34] Still on the element of abuse of power or position of vulnerability for the purpose of sexual exploitation, the defence submitted that the witness statements sought to be relied upon by the prosecution to prove this element are merely hearsay as none of the witnesses saw the accused sexually assaulting the victim. The defence maintained that since the victim was residing in the same house with other children, she could not have been sexually assaulted without the notice of other children and yet no statements were taken from the other children who lived with the accused. In conclusion, the defence argued that the accused had no authority express or implied over the victim and the same is not in any way explained by the prosecution evidence tendered. Furthermore, it was contended for the accused that the victim was not in a position of vulnerability for the purpose of sexual exploitation as the accused was offering assistance to secure her education.

[35] On the second charge of aggravated defilement, the defence agreed with the elements of the offence listed by prosecution counsel in his submission. On the first element of performance of a sexual act, Mr Turyamusiima cited ***Section 129(7) of the Penal***

**Code Act**, which defines a sexual act as the penetration of the vagina, mouth or anus, however slight of any person by a sexual organ or the unlawful use of any object or organ by a person on another person's sexual organ and reiterated his earlier submissions regarding sexual exploitation in Count 1 above, as captured under paragraphs 33 and 34 of this ruling.

[36] The defence also submitted that the prosecution's disclosed evidence contains the following grave contradictions and inconsistencies:

1. In PID2, the victim's mother of states that a one Muganga Imuran is her son and was the one who took the victim to the accused's home and later picked her from there. To the contrary, the said Imran in his statement (PID4(a)) states that the victim's father is his biological brother.
2. The victim's mother states that after she got information of the alleged defilement of the victim, she waited until her husband returned home on 16<sup>th</sup> November 2021 and told him about the matter, which he reported police. To the contrary, the victim's father in PID1 states that he learnt of the victim's alleged defilement from a one Nazziwa Nuru whose statement is not on record.
3. The maker of PID4(a) states that the victim informed him that she had been defiled after the accused had attempted several times in vain as she rejected his advances, contradicting PID10 where it is said that the victim was defiled six times.
4. The victim's grandmother in PID5 states that her daughter Fina Namudu is the biological mother of the twins (Kato and Babirye), together with the victim, but contradicts herself when she also states that a one Nabirye is the mother to the twins (Kato and Babirye). She also states that the accused is a good family friend but in the same statement says that she did not know the accused person and where he stayed.

5. The victim in PID3(a) states that she started living with the accused person in June 2021, which contrary to her mother's statement that the victim started staying with the accused in September 2021.
6. The victim also states in her police statement states that Joshua her uncle picked her up from the accused's home but the victim's mother states that it is Muganga Imran who picked the victim up from the accused's home and no statement was obtained from the said Joshua.
7. PID9 shows that the medical examination of the victim occurred on 18<sup>th</sup> November 2021 approximately five days after the alleged incident and yet the report indicates that the victim had an old ruptured hymen with a white milky discharge.

[37] In conclusion, the defence submitted that the evidence tendered is not sufficient to warrant the confirmation of both counts brought against the accused.

## **DETERMINATION**

### ***COUNT 1: Aggravated Trafficking in Children Contrary to Section 3(1)(a) of the PTIPA, 2009***

[38] This offence is provided for under **Section 3(1) of the Act** under which the accused is charged. It provides that a person commits an offence who:

- a) *"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."*

[39] **Section 5 (a) of the PTIPA, 2009** which is the second provision of the law under which the accused is charged, provides that a person commits the offence of aggravated trafficking in children if he or she does any of the acts in Section 3 in relation to a child. **Section 4(a) of the PTIPA, 2009** provides that a person commits the offence of aggravated trafficking where the victim of the trafficking is a child. **Section 2 (a) of the PTIPA, 2009** defines a child as a person below the age of 18 years.

[40] In this case before me, the following elements need to be established by the prosecution to prove substantial grounds to believe that the accused committed the crimes charge of aggravated trafficking in children:

1. The act of recruiting, or transporting, or transferring, or harboring or receiving of the victim;
2. The means of deception or abuse of power or position of vulnerability of the victim;
3. The purpose of exploitation of the victim
4. The aggravating factor of the victim being a child; and;
5. The participation of the accused in the commission of any of the acts, or means or purpose of trafficking complained of.

[41] The Court of Appeal in upholding the conviction of the accused in the case of **Umutoni v Uganda, Criminal Appeal 855/2014 (2019) UGCA 147** confirmed that, where the charge is aggravated trafficking in persons under **Section 3** and either **Section 4 or 5, of the PTIPA**, the offence has five major elements: the act, the means, and the purpose set out in **Section 3**; the participation of the accused; and the relevant aggravating factor from either **Section 4 or Section 5 of the Act**.

[42] Regarding the first element, it can be gleaned from the police witness statements made by the victim as corroborated by her parents, grandmother, uncle and accused's plain statement and charge and caution statement that the accused

received and harboured the victim. I think that this element is sufficiently established for the purpose of confirmation of the charge.

[43] Concerning the second element of the means of recruiting, or transporting, or transferring, or harboring or receiving of the victim being deception or abuse of power or of position of vulnerability as alleged, this court takes note of the submissions of both the prosecution and the defence but shall not delve into those contentions because of the provisions of **Section 3(3) of the PTIPA, 2009**, which stipulate that 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 **Section 3(1)** of that Act.

[44] This takes me to the element of the victim’s age. In the case of **Uganda v. Kagoro Godfrey HC Criminal Session Case No. 141 of 2002** it was held that age can be proved by the production of one’s birth certificate, testimony of the parents or the court’s own observation by common sense assessment. It is also trite that age can be proved by medical examination. According to PID9 and police witness statements made by the victim’s parents the victim was 12 years old at the time of the alleged acts. I find that the prosecution has adduced sufficient evidence to establish substantial grounds to believe that that victim was a child.

[45] Therefore, having found that there is sufficient evidence adduced to establish the age of the victim, I find that there is no need to adduce evidence to prove the element of the means of deception or abuse of power or position of vulnerability of the victim.

[46] As for the element of purpose of trafficking, which from the facts adduced is sexual exploitation, I think that the statements adduced by the prosecution establish it to the

required standard. Sexual exploitation is defined under **Section 2(o) of the PTIPA 2009** as:

*“the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials, or **the use of a person for sexual intercourse** or other lascivious conduct.”*

[47] It is trite law that sexual intercourse or penetration may be proved by direct or circumstantial evidence. Usually, it is proved by the victim’s own evidence and corroborated by medical evidence or any other cogent evidence. There is no hard and fast rule that the victim’s evidence and medical evidence must always be adduced in every case of sexual abuse to prove sexual intercourse or penetration. See **Hussein Bassita v. Uganda SCCA No. 35 of 1995**. The prosecution may adduce any evidence it wishes to prove its case as long as it proves its case beyond reasonable doubt.

[48] To prove the element of sexual exploitation of the victim, the prosecution wishes to rely on PID9 on which the victim was medically examined and the witness statements of the victim, her parents, uncle and grandmother. All that is contained in the statements of the victims’ said relatives regarding the alleged sexual intercourse is what the victim told them. I do not agree with the defence’s submissions that the statements of those proposed witnesses are hearsay. The victim’s statements to those witnesses whom the prosecution intends to call, if proved, will amount to former statements she made at or about the time when the alleged acts took place. **Section 156 of the Evidence Act** provides:

*“In order to corroborate the testimony of a witness, any former statement made by such a witness relating to the same fact, at or about the time when the fact took place, or before authority legally competent to investigate the fact, may be proved”.*

- [49] The said statements are sufficient to corroborate the victim's statement regarding the commission of the offence alleged to the required standard of substantial grounds to believe that the accused sexually exploited her.
- [50] In any case, there is the decision in the case of ***Ntambala Fred v. Uganda SCCA No. 34 of 2015***, where the Supreme Court was dealing with aggravated defilement. It was held that a conviction can be solely based on the testimony of the victim as a single witness, provided the court finds her to be truthful and reliable.
- [51] According to the victim's statement, she was living with the accused (a fact not contested by the defence). Against her will, he had sexual intercourse with her multiple times. The sixth time the accused had had sexual intercourse with her was 13<sup>th</sup> November 2021. PID9 sought to be relied on by the prosecution shows that the victim had an old ruptured hymen. Considering the fact that the victim alleges that several acts of sexual intercourse happened before she reported the matter to her family, the finding in PID9 is not strange. I do not therefore agree with the defence that the said report does not support the victim's allegations since no mention of any injury on the lower and upper limbs or bruises on her vulva is made. It is not a legal requirement that physical force must be used against a victim of sexual assault or that if such force is used it must lead to bodily injury.
- [52] Relying on the case of ***Uganda v. Kagando Samson***(*supra*), defence counsel submitted that the occurrence of sexual intercourse had not been proved because PID9 did not have proof of recent penetration and that there was no corroboration of this fact. It is trite law that proof of penetration may be attained by the victim's own evidence and it is not necessary to adduce evidence to prove fresh penetration. In ***Ntambala Fred's case*** *supra*, the court held



that corroboration is not a legal requirement and the evidence of a single witness can be sufficient in sexual assault cases. The courts have since then departed from previous decisions where the cautionary rule considered female complainants in sexual assault cases inherently potentially unreliable.

[53] By virtue of the above discourse, which in my considered opinion proved that element of participation of the accused for the purpose of confirmation of the charge, I find that the evidence adduced by the prosecution is sufficient to establish substantial grounds to believe that the accused sexually exploited the victim.

[54] The defence also submitted that the prosecution's disclosed evidence contained grave contradictions and inconsistencies. I however find that the contradictions raised by the defence are minor as they do not affect the elements of the charges brought against the accused and the apparent contradictions may be explained by the evidence of the witnesses during the trial.

***Charge 2: Aggravated Defilement Contrary to Section 129(3) and 4(a) of the Penal Code Act, Cap 120.***

[55] The ingredients of this offence are:

- a) That the victim was below 14 years of age
- b) That there was a sexual act performed on the victim.
- c) That it was the accused who committed the offence.

[56] The evidence on the age of the victim has already been discoursed above. The same is true about the element of performance of a sexual act, which I have examined in my discussion of the element of sexual exploitation under the first charge. Similarly, the element of participation of the accused in the commission of aggravated defilement has been discussed with. I find that the prosecution has adduced sufficient evidence to establish substantial grounds to believe

that the accused committed the offence of aggravated defilement contrary to **Section 129(3) and 4(a) of the Penal Code Act, Cap 120.**

[57] In the result, I confirm both charges brought against the accused.

I so order.

Susan Okalany

**JUDGE**

**9<sup>th</sup> November 2023**