

UGANDA / JUDGMENT

Uganda v Odongo Tonny (HCT-CR-SC-155 OF 2020) [2025] UGHC 174 (10 April 2025)

[2025] UGHC 174**COURT**

High Court of Uganda

BEFORE

Okello, J

CASE / FILE NUMBER

HCT-CR-SC-155 OF 2020

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT APAC**CRIMINAL SESSION CASE NO. HCT-CR-SC-155 OF 2020****UGANDA..... PROSECUTOR****VERSUS****15 ODONGO TONNY..... ACCUSED****BEFORE: HON. MR. JUSTICE GEORGE OKELLO****JUDGMENT**

In the indictment of aggravated defilement contrary to section 116 (3) (4) 25 (b) of the Penal Code Act Cap 128, it is alleged by the prosecution that on 12th July, 2020 at Wigweng "A" Village, Oyam District, the accused person who was 31 years old, performed a sexual act on Akello. F (A. F) a girl of 14 years when the accused was HIV positive. During plea taking on 04th March, 2025, the accused pleaded not guilty. During the preliminary 30 hearing, PF3A on which A. F was medically examined at Anyeke health-Centre IV was admitted in evidence as PEX1 and PF24A for mental examination of the accused to which is annexed his HIV positive test result all done from Anyeke Health Centre IV were collectively admitted in evidence and marked PEX2. Mr. Otwang Moses Okello and Ms. Adongo 35 Janet were, with the agreement of both sides, chosen and sworn as court assessors.

The Prosecution was conducted by Mr. Nandhuki Ivan Jonathan, a Senior State Attorney, and Mr. Owor Lewis, a State Attorney, while the accused was defended by Ms. Nakibira Brenda on State Brief.

- 10 A. F and her mother testified and the prosecution closed its case. Court found a prima facie case and put the accused on defence. He gave sworn testimony and did not call other witness. Both counsel opted not to make final submission and left the matter to court. Court summed up the law and the evidence to the assessors who returned joint opinion on 08th April,
- 15 2025. I am grateful to the parties, their counsel, and the assessors.

The following are the ingredients of aggravated defilement contrary to section 116 (3) (4) (b) of the Penal Code Act Cap 128;

- 20 i) The girl/ victim of the alleged sexual act was below the age of 18 at the date of the sexual act
- ii) A sexual act was performed on the girl/victim
- iii) It is the accused who performed the sexual act
- iv) The accused was HIV positive when he performed the sexual act
- 25

I proceed to set out the key principles which shall guide court in this rendition.

Having pleaded not guilty, the accused enjoys a constitutional right of presumption of innocence under article 28 (3) (a) of Constitution of Uganda, 1995. It is, therefore, the duty of the prosecution to prove the accused's guilt and the standard of proof is beyond reasonable doubt. This 10 burden never shifts to the accused person except in cases of insanity and

a few statutory exceptions which are not applicable here. See: *Woolmington*

- *Vs. Director of Public Prosecutions [1935] A. C 462; Chan Kau Vs. R [1955] A. C 206; Uganda Vs. Dick Ojok (1992-93) HCB 54.*
- 15 Each of the above ingredients must be proved by the prosecution beyond reasonable doubt. Proof beyond reasonable doubt does not, however, mean, proof beyond a shadow of doubt. What is required is strong evidence against the accused person that leaves only a remote possibility in his favour. If the court finds on the evidence that what the accused person
- 20 (Odongo Tonny) is accused of, is possible, and not in the least probable, then the standard of proof would have been met. Nothing short of that would suffice. See: *Miller Vs. Minister of Pensions [1947] All ER 272, at 373- 374, Lord Denning.*
- 25 The accused person does not assume any burden of proof, a position supported by section 101 (2) and section 103 of the Evidence Act Cap 8. Where there is any doubt in the prosecution case the accused takes the

- 5 benefit of the doubt. Any defence not raised by the accused but where there is evidence of it, it must be availed to him. See: *Abdu Ngobi Vs. Uganda, SC. Crim. Appeal No. 10 of 1991; Obwalatum Francis Vs. Uganda, SC Crim. Appeal No. 030 of 2015; Mancini Vs. DPP (1942) AC 1; Didasi Kabengi Vs. Uganda (1978) HCB 216.* An accused can thus only be
- 10 convicted on the strength of the prosecution case and not because of the weakness in his defence. See: *Ssekitoleko Vs. Uganda, [1967] EA 531.* The State cannot simply rely on concessions made by the accused person. See: *FW Crowie Vs. R [1961] 1 EA 38 (CAN).*
- 15 Court must consider and evaluate all evidence on record for both the prosecution and the defence, if any. Thus in *Abdu Ngobi Vs. Uganda, S. C Crim. Appeal No. 10 of 1991,* the Supreme Court stated the duty of the trial court:
- 20 **"Evidence of the prosecution should be examined and weighed against the evidence of the defence so that a final decision is not taken until all the evidence has been considered. The proper approach is to consider the strength and weaknesses of each side, weigh the evidence as a whole, apply the burden of proof as always* 25 *resting upon the prosecution, and decide whether the defence has raised a reasonable doubt. If the defence has successfully done so, the accused must be acquitted; but if the defence has not raised a***

5 *doubt that the prosecution case is true and accurate, then the witnesses can be found to have correctly identified the appellant as the person who was at the scene of the incidents as charged."*

I proceed to evaluate the evidence adduced by both sides while keeping the 10 above principles in mind.

Age of a girl can be proved in one or a combination of ways, namely; birth certificate, immunization card, school records, if any of the girl; testimony of the parents of the girl; the girl's own testimony regarding her age; 15 medical evidence e.g. dentition and physical developments of the body of the girl otherwise called tanners scale rating; court observation and common sense assessment of the girl. See: *Uganda Vs. Kagoro Godfrey, H. C Crim. Session Case No. 141 of 2002; Uganda Vs. Fulawak, Crim. Session case No. 85 of 2018; Uganda Vs. Onencan Innocent,* criminal 20 session case No. HCT-08-CR-SC-0190 of 2023. Section 133 (3) of the Children Act Cap 62 also offers a useful guide on how age of a child can be determined although that section is concerned with determination of a child's age for the purposes of criminal responsibility. However, section 133 (3) is also relevant when a court is assessing the age of an alleged 25 victim of sexual violence especially where the victim is alleged to be a child.

- 5 In the instant matter, Auma Milly (PW1) a 45 year old testified that she is the biological mother of A. F. On the date of her testimony on 19th March, 2025, she stated that A. F was 18 years old. A. F (PW2) also testified on the same day as her mother and stated that she was 17 years old. There is a minor variance as to the statement of the age of A. F as at the date they

- 10 testified but nevertheless the aspect of the age of the victim remains undisturbed because, going by the testimonies of the mother and daughter, it means as at 12th July, 2020 (which is five years ago) when the offence is alleged to have been committed, A. F was still a child under the age of 18. The two witnesses' testimonies as to age of A. F were corroborated
- 15 by PEX1 (PF3A) in which a medical officer at Anyeke Health Centre IV stated that A. F was 15 years old based on Tanners Force point, and dentition. The accused person has not cast any doubt as to the age of A. F as at 12th July, 2020. On the strength of the prosecution case, I am in agreement with the assessor's opinion that A. F was below 18 at the time
- 20 of the alleged offence. This ingredient has, therefore, been proved beyond reasonable doubt.

Turning to the element of sexual act, a sexual act is widely defined in section 116 (7) of the Penal Code Act Cap 128. It means (a) penetration of 25 the vagina, mouth or anus, however, slight, of any person, by a sexual organ; or (b) the unlawful use of any object or organ by a person on a sexual organ (the vagina or penis of another person). This definition is

5 disjunctive and thus a sexual act must be viewed widely from the legislative context and that means either definition suffices as may be available in a particular factual setting.

In the case before court, it has been alleged that the accused person

- 10 penetrated the vagina of A. F with his penis. In **Wepukhulu Nyuguli Vs. Uganda, SC. Crim. Appeal No. 21 of 2001,** the Supreme court held that penetration however slight suffices to prove sexual intercourse. That was also the position in **Adamu Mubiru Vs. Uganda; C. A Crim. Appeal No. 47 of 1997.** It appears the foregoing precedents, inter alia, informed the 2007
- 15 amendment to the Penal Code Act by Act No. 8/2007 that unmistakably legislated and cemented the principle that penetration for the purposes of sexual act need not be deep. That is why section 116 (7) (a) of the Penal Code Act Cap 128 and its earlier equivalent provision of section 129 (7) (a) of Cap 120 provide that a sexual act of penetration may be slight.

On aspects of proof of penetration, penetration can be proved either by the victim's evidence, medical evidence, or any other cogent evidence. See: **Remigious Kiwanuka Vs. Uganda, SC Crim. Appeal No. 41 of 1995; Uganda Vs. Sunday Herbert, HCT-01-CR-SC-162/2021**. It is of course not 25 obligatory that medical evidence be produced to prove a sexual act. See: **Hussein Bassita Vs. Uganda, SC Crim. Appeal No. 35 of 1995.** But once medical evidence is adduced by the prosecution court will consider it.

- 5 Court may also consider medical evidence alongside other cogent evidence. It is also settled principle that rapture or non-rapture of the hymen per se is not conclusive proof of sexual intercourse or absence of it. Medical evidence is merely advisory and goes to the fact, not law, and court has discretion to reject it. See: *Rivel (1950) Cr. App R 871; Matheson 42 Cr. App.*
- 10 *R 145.* Court can convict in the absence of medical evidence provided there is strong direct evidence when the circumstances of the offence are so cogent and compelling as to leave no ground for reasonable doubt. See*: Anyolitho Vs. Uganda, Crim. App. No.22 of 2012 (COA).*
- 15 In the case at hand, A. F (PW2) testified that she was gang-defiled. It was on 13th July, 2020 in Apuru-bonyo Village when the accused had sexual intercourse with her three times. The act happened at 9:00pm in the house of Ocen whom the accused calls a brother (clan-brother). A. F testified that Ocen also had sexual intercourse with her two times. The accused and his
- 20 clan brother did it in turns with the accused leading the way. The victim recounted that she had gone to the accused's home to pick pairs of shoes for herself, Auntie Apige Evelyn which the accused (a cobbler) had repaired. The accused did not hand back the shoes but asked A. F to go with him to Apuru-bonyo trading centre to buy alcohol and that he would 25 hand over the shoes on returning from the trading centre. A. F obliged, and
- on their way back from the trading centre, the accused branched into the house of Ocen and with Ocen's assistance, forcefully undressed A. F and
- 5 had sexual intercourse with her in turns. The house had solar light which used accumulator (battery). A. F felt pain in the vagina which was injured. Both men never used condoms. The victim returned home at about 10:00 to 11:00pm. The brother of A. F (Otim) asked where she was coming from (being late) and she narrated to him what happened. The brother rang the
- 10 mother (PW1) who was in Nwoya District, and she travelled back home. The mother took A. F to Oyam Health Centre IV where A. F's vagina was examined, and her blood tested. PW1 Auma Milly, the mother of A. F testified that A. F narrated to her that the accused forcefully had sexual intercourse with her. She stated that A. F was taken by her step father
- 15 (Okwanga David) to Oyam Health Centre IV and given PEP (Post Exposure Prophylaxis) to prevent a possible HIV infection. According to PW1, The accused was also tested and found to be HIV positive. A. F was also later tested and found to be HIV positive. PW1 stated that A. F's HIV positive test result was at home. Court cannot, therefore, rely on the mother's 20 testimony as a substitute for medical proof of HIV positive status of A. F. I am thus not able to conclude that A. F contracted the virus, which in any case is not a legal requirement for the purposes of section 116 (3) (4) (b) of the PCA. Contracting HIV by a victim of aggravated defilement is only relevant during sentencing which is not the case instant and thus 25

premature to write about as court is yet to decide the question of culpability. That aside, PF3A (PEX1) indicates that A. F was checked on

14th July, 2020 and her hymen was found to have been ruptured and the

- 5 bruise was healing. There was also mild tenderness. The examining medical officer, however, did not describe the probable cause of the injuries although he recommended cognitive behavioral therapy and long term psychological support for A. F.
- 10 In his defence, the accused did not dispute the fact that a sexual act took place but only denies his participation in the sexual act. Whereas the medical report (PEX1) is inconclusive on the probable cause of the injuries A. F suffered, I believe A. F's testimony that the injuries resulted from forceful sexual intercourse. There would have been no point in the medical
- 15 officer recommending psychological support had A. F not been sexually assaulted. This ingredient has thus been proved by the prosecution beyond reasonable doubt and I agree with the assessors in that regard.

Regarding participation of the accused person in the sexual act, this can be proved through direct or circumstantial evidence. Circumstantial evidence is where reliance is placed on a set of existing circumstances which when put together irresistibly lead to no other inference but guilt of the accused. See: *Tepper Vs. R (2) (1952) AC 480* (Privy Council Decision); *Simon Musoke Vs. R [1958] E. A 715; Akol Patrick Vs. Uganda [2006] HCB* 25 *7*.

In the instant case, I have already recounted the evidence of A. F while discussing the element of sexual act. She detailed how she ended up in

- 5 the house of Ocen with the accused and the house owner. A. F identified two photographs (admitted in evidence and marked PEX3 (a) and (b), respectively). PEX3 (a) is the photograph of a grass-thatched hut with A. F standing in front near the door way. There is a yellow curtain on the door. A. F identified the house as Ocen's and PEX3 (b) is the photograph of a
- 10 well-covered mattress with something which looks like a light soft/smooth touch blanket or duvet bedcover (as was visible to court) with a factory imprint "Mis You" (sic). A. F testified that it was on that mattress in Ocen's house that she was laid after the forceful undressing by the accused and Ocen. She was then sexually assaulted by the accused and Ocen in turns.

In his defence, the accused person (DW1) testified that he knows A. F and that she was at his home to pick three pairs of shoes he had repaired. He handed back the shoes at 1:00pm and A. F left. Accused says he did not go out of his home. When A. F was picking the shoes, the accused says his 20 daughter, a wife, and other children were at home. On the other hand, A. F disagrees, saying the accused was at home alone. The accused testified that A. F washed her feet at his home and went away saying she was going to buy medicine at the trading centre. A. F paid the accused shs. 1,500 for his services. Regarding Ocen, the accused denied knowing Ocen. He, 25 however, later stated that Ocen's home is about 1 kilometre from his own home. The accused also

stated that the road leading to Apuru-bonyo trading centre does not straddle through Ocen's home. The accused denied

- 5 that the photographs identified by A. F were taken from Ocen's house (and bed). Court notes that, after coming to the realization that he had contradicted himself by speaking about the distance between his and Ocen's home and how the road leading to the centre does not pass through Ocen's house, the accused retreated and vehemently denied ever knowing
- 10 Ocen or Ocen's house.

Aside from his alibi, the accused raised the defence of a grudge. He stated that PW1 (Auma Milly/ victim's mother) was once his concubine but he separated from her in April, 2020 (three months before the alleged 15 incident). He stated that PW1 was not amused by the act of separation so she had reason to frame him in revenge. In response to court question, the accused changed stance and stated that the relationship with PW1 ended in July, 2020. He also stated that he picked the pairs of shoes from the home of A. F's mother for repairs and that Stella- a maternal auntie to A. F 20 had asked him to pick it. The pairs of shoes belonged to Apige Evelyn, Stella, and A. F. According to the accused, PW1 was not at home when he picked the shoes. PW1 had moved on with a new husband. PW1 was living at the home where the accused picked the shoes from although she was not at home on that day. Regarding the alleged grudge, the accused

25 testified that he did not record in his Police statement the fact that PW1 had a grudge with him, and that it was because the Police threatened him.

5 Having evaluated the relevant pieces of evidence, I find the accused's denials and defences incredible. First, he contested the photographs of the house and the beddings which A. F says belong to Ocen. On the other hand, the accused claims he does not know Ocen. To my mind, if the accused does not know Ocen and Ocen's home, then there was no point in denying 10 the photographs identified by A. F. I find the photographs (PEX3 (a) and (b)) were correctly identified by A. F. In any case, Ocen did not come to court as a witness to disown it. Whereas the accused claims PEX3 (a) is

for a house of A. F's brother, he neither named the said brother nor called him as his witness. Relatedly, A. F was categorical that Ocen's home is 15 along the route they use when going to Hospital.

Regarding the accused's claim that he never left his home on the material day, this claim was not confirmed by any family member whom he claims were at home with him on the day in question. On the claim of a grudge, 20 the prosecution witnesses especially PW1 was never cross-examined by the defence regarding it. I also find it inconceivable that the accused could go to the home of PW1 to pick shoes of her daughter and sisters for repair well aware PW1 would be at home as he claims. PW1 had moved on with her love life and had a husband (Okwanga David) whom she said took A. F 25 to hospital for PEP. The accused's defence of a grudge was destroyed by the prosecution witnesses. Moreover, the alleged grudge was never recorded in the accused's

own statement made at Police. His claim that he

- 5 was threatened by Police and, therefore, did not record the bit regarding the 'grudge', is false. A. F placed the accused at Ocen's house as her assailant. Her testimony is corroborated by the fact that she was put on PEP to prevent a possible HIV infection. PW1 affirmed the same. It is also inconceivable for a person who has not been sexually assaulted to be put
- 10 on PEP. Unfortunately, A. F contracted HIV, according to the mother. I have of course ignored the latter claim in the absence of medical proof. On the whole, I find the prosecution evidence cogent and has proved beyond reasonable doubt the accused's participation in the sexual act and the victim's evidence was well corroborated. See: *Republic Vs. Cherop A Kinei*
- 15 *& another [1936] 3 EACA 124; Chila Vs. Republic [1967] EA 722 (CA); Kibale Ishma Vs. Uganda, Crim. App. No. 21 of 1998 (SCU); Livingstone Sewanyana Vs. Uganda, Crim. Appeal No. 19 of 2006 (SCU).*

Before I take leave of this matter, I should state that although I noted a 20 contradiction in PW1's and A. F's testimony regarding the actual day and time A. F returned home after the sexual ordeal, I found the contradiction minor. I believed A. F and not the mother (PW1) that A. F indeed returned on the very night of the sexual assault, and not the following morning. Thus whereas the mother also claims she was at home when A. F returned home, I believe A. F that her mother was in Nwoya and only returned when A. F's brother called and narrated the ordeal to her. That is why by the time the mother intervened, the step-father of A. F had already taken her for

- 5 PEP. I also note a minor contradiction regarding the date of the ordeal. Whereas the victim and mother say it was on 13th July, 2020, the indictment indicates 12th July, 2020 which appears correct as the case of defilement, according to Police case number captured on PF3A (PEX1), details the number 04/13/07/2020, meaning 13th July, 2020 was the
- 10 offence reporting date at Police. According to A. F's testimony, she returned home at 10pm on the night of the ordeal implying the reporting at Police happened the following morning of 13th, thus leaving the date of 12th July, 2020 as per the indictment to be correct. Whereas an indictment is not evidence but contains mere allegations, I have alluded to the indictment
- 15 to demonstrate these minor variations with the victim's and mother's testimonies. I have already found them to be inconsequential and immaterial as they do not take away the fact that A. F was defiled by the accused in July, 2020. There was no deliberate untruthfulness on part of the witnesses regarding the aspect of dates.

Last but not the least is the aspect of the accused's HIV positive status at the date of the offence. This element is not in doubt. PF24A which was admitted in evidence by consent of the parties is clear that the accused was tested for HIV on 27th July, 2020 and found to be HIV positive. This 25 was only 04 days after he had had unlawful sexual intercourse with A. F. The accused also confirmed in his cross-examination of A. F whereby in a sort of plea with her, he asked the victim why she would think he could

- 5 have sexual intercourse with her when he is HIV positive. This confirms the accused's knowledge that he was HIV positive although knowledge of ones' HIV positive status is immaterial for the purpose of the offence of aggravated defilement albeit material at sentencing stage. This element has, therefore, been proved beyond reasonable doubt.
- 10

In conclusion, having found sufficient corroboration in the victim's testimony, and that she was under 18 and was sexually assaulted by the accused person who was HIV positive, I have found no need for the usual warning to self and the assessors, but if one were required, I hereby warn

15 myself and the assessors accordingly. Therefore, and in complete agreement with the lady and gentleman assessors, I find the prosecution has proved beyond reasonable doubt all the ingredients of the offence. I thus find the accused Odongo Tonny guilty as charged and I convict him of aggravated defilement contrary to section 116 (3) (4) (b) of the PCA Cap 20 128.

Dated, signed and delivered at Apac this 10th April, 2025

George Okello 25 JUDGE

Judgment read in Court 4: 00 pm 10th April, 2025

5 Attendance

Accused person in Court Mr. Owor Lewis, on State Attorney, for the Prosecution Ms. Nakibira Brenda, Defence counsel on State Brief Assessors in court

10 Ms. Sophia Akello, Court Clerk/ Lango Language Interpreter

George Okello JUDGE

SENTENCING, THE SENTENCE, AND REASONS

On convicting the accused for aggravated defilement contrary to section 116 (3) (4) (b) of the Penal Code Act, Mr. Owor for the state submitted that 10 the offence is rampant in Apac District and indeed countrywide and there is a lot of public outcry. He added that the convict was HIV positive and risked infecting the victim. Learned counsel went a notch higher to claim that although there is no medical proof that the victim contracted HIV that was because the victim has been uncooperative to undergo HIV tests and 15 thus continues to live in denial yet according to her mother she was

infected by the convict. This Court of course straight away rejected learned counsel's claim as he presented no medical proof. Mr. Owor concluded his submission in aggravation by proposing life imprisonment for the convict. He cited **Bonyo Abdul Vs. Uganda, SCCA No. 7 of 2011** where the appellant

20 had infected his 14-year-old victim with HIV which the present case, on the evidence, is not.

In her submission in mitigation of possible punishment, Ms. Nakibira argued that the convict is a first offender with no past criminal record, and 25 seeks for forgiveness. She added that the convict is HIV positive but there is no evidence that he infected the victim. She also submitted that the convict is a sole breadwinner and is also relatively young at 35 and promises to reform. Learned counsel proposed 15 years imprisonment. On

5 his part, the convict stated that he used to take care of orphans left by a brother prior to incarceration. He was caring for his younger brother of 08 years. He proposed 10 years imprisonment.

The Chief Warder II Mr. Ongom James informed court that the convict has 10 spent 04 years 08 months and 06 days on remand.

The maximum punishment for aggravated defilement under section 116 (3) of the Penal Code Act Cap 128 is death sentence. However under paragraph 18 of the Constitution (Sentencing Guidelines for the Courts of

- 15 Judicature) (Practice) Direction, L. N No. 8 of 2013, death penalty is reserved for cases that fall in the category of the "rarest of the rare" Here death penalty has not been proposed but life imprisonment which is the second heaviest punishment. I find no basis for Mr. Owor's proposal, on the facts. I have also noted the sentencing range for aggravated defilement
- 20 provided in part 1 of the Third Schedule to the Guidelines which is 30 years imprisonment up to death with the starting point being 35 years. But these guidelines have to be applied while taking into account past sentences in cases bearing similar resemblance though not precedents. See: **Ogalo s/o Owoura Vs. R (1954) 21 EACA 270**; **Livingstone Kakooza Vs.**
- 25 **Uganda, SC Crim. Appeal No. 17 of 1993**; **Ninsiima Gilbert Vs. Uganda, C. A Crim. Appeal No. 180 of 2010**.

- 5 In **Twesigye Esau Vs. Uganda**, **Criminal Appeal No. 031 of 2018** where the appellant defiled an 08 year old girl when he was HIV positive and was 45 years old (thus 37 years gap with the victim), the Court of Appeal set aside the sentence of 32 years imprisonment imposed by the High Court and substituted with a sentence of 25 years imprisonment. There, the

- 10 appellant did not infect the victim with HIV. After deducting the period spent on remand, the appellant was to serve 22 years and 11 days imprisonment. The court of Appeal in that case cited **Tiboruhanga Vs. Uganda, Criminal Appeal No. 0655 of 2014** where the Court imposed a sentence of 22 years' imprisonment for aggravated defilement where the
- 15 appellant who was HIV positive defiled a 13-year-old girl but did not infect the victim. In the present case, the victim was 15 years old as per the medical evidence while the convict was 31 thus 14 years' age gap. The victim was sexually assaulted by the convict and his colleague (Ocen) who is at large. Force was used to subdue the victim. She suffered injury in the
- 20 genital although it was found to be healing although she still experienced some tenderness. She also suffered emotional torture hence the medical recommendation for psychological support. Being HIV positive, the convict risked infecting the victim. The offence is rampant. These aggravate the punishment and thus I find the 15 years imprisonment proposed by Ms.
- 25 Nakibira and the 10 years proposed by her client to be disproportionately low. I do not accept either proposals. That said, the convict is a first offender without any past criminal record. At his current age of 35, he is
- 5 relatively young and capable of reforming. He is a family man and has sought for leniency and forgiveness. These mitigate the punishment. I do not, in the circumstances agree with the life imprisonment proposed by the learned state counsel. The decision the state counsel cited is quite distinguishable from the facts of the instant case. However, on the overall 10 assessment of the aggravating and mitigating factors, I find that the
- aggravating factors far outweigh the mitigating factors. Accordingly, taking into account all the circumstances, I find the instant matter similar and closer to that which obtained in **Tiboruhanga Vs. Uganda** although here, the victim was 15 years while there she was 13. Accordingly, I would find
- 15 21 years imprisonment appropriate. I deduct the 04 years 08 months and 06 days spent on remand from the 21 years. I now sentence the convict Odongo Tonny to 16 years 03 months and 24 days' imprisonment for aggravated defilement contrary to section 116 (3) (4) (b) of the Penal Code Act Cap 128 starting 10th April, 2025 being the date of conviction. The
- 20 convict Odongo Tonny is advised of his right of appeal to the Court of Appeal of Uganda at Kampala against both conviction and sentence within 14 days from today 11th April, 2025 being the date of sentencing, if dissatisfied.
- 25 Dated at Apac this 10th April, 2025

George Okello JUDGE

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