



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

**CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 37 OF 2020**

**(Being Criminal Case No. 35 of 2020 in the Chief Resident Magistrate Court  
sitting at Lilongwe)**

**THE REPUBLIC**

**And**

**LEVISON HARLOD**

**CORAM: HON. JUSTICE ANNABEL MTALIMANJA**  
Gamadzi, Principal State Advocate, of Counsel for the State  
Nkosi, Senior Legal Aid Advocate, of Counsel for the Convict  
Mrs. Namagonya, Court Reporter  
Mrs. Choso, Court Interpreter

**ORDER ON CONFIRMATION**

1. Levison Harlod was charged in the Chief Resident Magistrate Court sitting at Lilongwe with the offence of Defilement, contrary to section 138(1) of the Penal Code, Cap. 7:01 of the Laws of Malawi. On his own plea of guilty he

was convicted as charged and sentenced to a custodial sentence of 11 years imprisonment with hard labour (IHL). Upon review, the conviction was confirmed, but the matter was set down for hearing to consider enhancing the sentence.

2. The offence of Defilement is one of the serious offences on our statute book, as evidenced by the maximum sentence of life imprisonment prescribed in section 138(1) of the Penal Code. As my brother Judge Professor Kapindu stated in the case of ***Brian Shaba v Republic (Criminal Appeal No. 19 of 2014)***

*“defilement is a very serious and heinous offence. It is both a carnally and psychologically invasive offence...This maximum sentence was imposed for a very specific reason: to show the seriousness, public revulsion and societal abhorrence for this kind of offence”.*

3. For purposes of reviewing the propriety of the sentence meted by the lower Court, the pertinent facts, as narrated by the Prosecution in the trial and admitted by the Convict as correct, are that the Convict defiled LY, a 4 year old girl. He is 33 years old, married and has 3 children. On 28<sup>th</sup> December, 2019, LY’s mother went for prayers and left LY at home. When she got back around 12 noon, she noticed that LY was not home.
4. LY appeared around 1pm and explained that she was at the Convict’s house. LY further explained that whilst at his house, the Convict slept on her back whilst undressed. On hearing this, the mother became suspicious and went to get her neighbor, so that they together could check LY. Upon checking, they discovered that LY was bleeding from her vagina. The matter was reported to the Police and subsequently LY was taken to Kamuzu Central Hospital for examination. A Medical Report (tendered as EX P1) showed that LY presented with blood stains on her underwear and bruises on her vagina. Her hymen was intact. She was treated with antibiotics.
5. Counsel for the Convict submitted that the sentence imposed by the lower Court should be confirmed as it was befitting of the crime, the Convict and the need to protect the public and children from would be offenders. Counsel

for the State submitted that the aggravating factors far outweighed the mitigating factors, such that the sentence was manifestly inadequate. The State prays the sentence be enhanced to 40 years IHL.

6. As per Mwaungulu J, (as he then was) in *Republic vs Bright Jamali, Confirmation Case No. 421 of 2013 (HC) (PR)*, based on the maximum sentence of life imprisonment, the starting point for sentencing in defilement cases should be 14 years imprisonment. The sentence may be scaled up or down this starting point to reflect mitigating and aggravating circumstances and that the sentence must fit the offender.
7. The Convict, at 33 years of age, is a mature man. He is married and has 3 children. He defiled a 4 year old girl. In the lower Court he expressly told the Court that he knew that LY was only 4 years old. It is quite perplexing why a grown man would sexually exert himself on such a young child.
8. At 4 years old, the victim, practically a toddler, was nowhere near sexual maturity. She was also nowhere near being physically, emotionally and psychologically developed to process a sexual encounter. In defiling her, the Convict stole not only her innocence and childhood, but also desecrated her right to choose her sexual debut. Further, the Convict subjected LY not only to physical trauma, as evidenced by the Medical Report, but also to emotional and psychological trauma.
9. Defilement is often associated with psychosocial problems in children. A study in Kenya showed that children who are victims of defilement were found to have significant negative outcomes in terms of poor academic performance, low self-esteem, depression and poor social relationships<sup>1</sup>.
10. I observe at this point that the general trend following incidents of sexual violence, including defilement, is that the default reaction by first responders is to take the victim to the Police and a medical facility for medical

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<sup>1</sup> Mutavi T, Mathai M, Kumar M, Nganga P, Obondo A. Psychosocial Outcomes Among Children Following Defilement And The Caregivers Responses To The Children's Trauma: A Qualitative Study From Nairobi Suburbs, Kenya. *Afr J Trauma Stress*. 2016;5(1):38-47.

examination. I am yet to encounter a case where the victim was referred for assessment of psychological impact. This court believes that it is high time the criminal justice system progresses to make the said psychological assessment a routine requirement in sexual violence cases, in particular defilement. This will assist courts to make informed decisions when it comes to sentencing.

11. Presently, LY was not assessed for psychosocial impact. It is therefore difficult to state with exactitude the said impact of the crime upon her. This notwithstanding, it will be remiss of this Court to conclude that the sexual violence inflicted upon LY by the Convict left her without any psychosocial trauma.
12. Contrary to the Convict's submission that the sentence of 11 years is appropriate, this Court, in agreement with the State, is of the considered view that the aggravating factors in the present case far outweigh the mitigating factors, rendering the sentence manifestly inadequate. In concluding thus, the Court is mindful of the fact that the Convict readily pleaded guilty and he is a first offender. Ordinarily, these two factors would motivate the Court to pass a lenient sentence on the Convict.
13. However, these factors significantly pale in the face of the gravity of the Convict's action in sexually violating a child of only 4 years old. As indicated, the Convict is 33 years old and he actually knew that LY is 4 years old. Being known to him, the Convict was in a position of trust by the child. Instead of protecting her, he breached that trust and violated her. This requires a meaningful sentence.
14. In the *Brian Shaba* case, a 47 year old teacher who defiled his 12 year old pupil had a sentence of 6 years enhanced to 18 years on appeal. In *Fabiano Maliko v The Republic (Criminal Appeal No. 13 of 2020, HC)* a 43 year old man who on multiple times defiled a 10 year old girl had his sentence enhanced from 14 years to 40 years.

15. Whilst these cases are not on all fours with the facts in the present case, the reasoning behind these decisions that sentences in cases of defilement should be stiff enough to match with the grave seriousness of these offences, particularly in respect of sexual offences against children, resonates with this Court's views.

16. In the premises, I set aside the sentence of 11 years IHL imposed by the lower Court and substitute therefore a sentence of 45 years IHL, with effect from his date of arrest, 3<sup>rd</sup> January, 2020.

Pronounced in Open court this 19<sup>th</sup> Day of April, 2021.

Annabel Mtalimanja  
**JUDGE**