

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 169 OF 2021**

**(Being Criminal Case No 13 of 2021 in the First Grade Magistrate Court sitting at  
Chikwawa)**

**THE REPUBLIC**

**-V-**

**STEVEN LAMILTON**

**CORAM: HON. JUSTICE AGNES PATEMBA**

Ms. Kulesi, Counsel for the State

Mr. Panyanja, Counsel for the Convict

Ms. Chiusiwa, Court Reporter

Mr Amos, Official Interpreter

1. The Convict Steven Lamiton, an adult, from Mbenderama village, Traditional Authority Kasisi in Chikwawa district was convicted by the First Grade Magistrate of the offence of defilement contrary to section 138 (1) of the Penal Code and was sentenced to 14 years IHL.
2. The matter was set down to consider enhancement of the sentence.
3. The summarized facts are that the convict invited a young girl of 10 years old to his house. The girl complied and went into his house. While in the house the convict asked the girl to undress. The 10-year-old girl innocently complied and undressed and the convict defiled her and he gave her K200.00 to shut her mouth. Her in law saw her running away from the house of the convict and informed her mother about what had happened. Her mother came

and confronted the convict. Medical report revealed that the child has been engaging in sex for a number of times.

4. In defence the convict denied to have committed the offence and denied that when the mother of the victim came to check her daughter she did not find her in the house of the convict. The Court found him guilty and convicted him of the offence of defilement and sentenced him to 14 years IHL.
5. At the hearing, the State submitted that the sentence should be enhanced from 14 years to 25 years on the basis that this was a planned offence and the victim was threatened with a knife. While the Defence Counsel submitted that the court should enhance the sentence from 14 to 18 years IHL.
6. In the case of **Brian Shaba v. Republic** (Criminal Appeal No. 19 of 2014 the Court stated that;

*Defilement is a very serious and heinous offence. It is both carnally and psychologically invasive offence....the maximum sentence was imposed for a specific reason; to show the seriousness, public revulsion and society abhorrence for this kind of offence.*

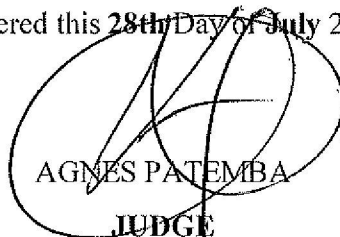
7. In the recent years, the courts have moved forward to impose stiffer penalties in defilement cases, disregarding the principle that the worst offender is yet to come hence the maximum sentence should be reserved for worst offenders. In the case of **Republic v. Aubrey Kalulu**, Criminal Case No. 1503 of 2017 (HC) (LL), a case was referred to the High Court for purposes of sentencing by the Principal Resident Magistrate under section 14 (6) of the Criminal Procedure and Evidence Code. The High Court imposed a life sentence on the Accused person for the offence of defilement. The Court considered among other things that the Convict was the Victims family landlord, that the Accused person was HIV positive and he was aware about his condition, that he was suffering from syphilis and tinea genitals and as a result of the violation of Victim's private parts were corroded and she had difficulties walking. The court considered the young age of the victim at 12 years of age

and that she was a friend to the convict's child or sister. The sentence was delivered in 2020.

8. In the case of **Republic v. Petro Biliati**, Confirmation Case No. 509 of 20 (HC) (Principal Registry) a 33 year man, defiled a 9 year old girl, had his sentence enhanced from 10 years to 40 years considering his HIV status.
9. In the case of **Republic v. Afete Daniel**, Confirmation Case No 2123 of 2020 (HC) (LL), the Convict aged 29 and married defiled a 4-year-old girl. He was sentenced to 14 years IHL. Upon review, Justice Mtalimanja enhanced the sentence from 10 years to 45 years IHL. This was pronounced on the 19<sup>th</sup> April 2021.
10. In the case of **Fabiano Maliko v. Republic**, Criminal Appeal No. 13 of 20 (HC), (Zomba Registry) a 43-year man, who on multiple times defiled a 10-year-old girl, had his sentence enhanced from 14 years to 40 years. The Court held that *'any case where a mature man of more than 30 years of age defiles a child of 10 years or less, more than once, must fit in the category of the worst instances of the offence and must, unless the Court is significantly moved by mitigating factors, attract a maximum sentence of life imprisonment.'*
11. The present case is not very different from the **Fabiano Maliko** case. The Convict is an adult person and over 30 years old, an adult person. He enticed a girl of 10 years to be sleeping with him by giving him money, and he did this not just once but several times. This was a well-planned offence. The convict is a danger to young child and deserves stiffer penalty. I therefore enhance the sentence from 14 years to 40 years IHL with effect from the date of arrest.

12. So I order.

Delivered this ~~28th~~ 6<sup>th</sup> Day of July 2021.

  
AGNES PATEMBA  
JUDGE