

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION**

CONFIRMATION CASE NO.100 OF 2021

**(Being Criminal Case No 23 of 2020 in the First Grade Magistrate Court sitting at
Chikwawa)**

THE REPUBLIC

-v-

CALVIN MATABWA

CORAM: HON. JUSTICE AGNES PATEMBA

Ms. Kulesi, Counsel for the State
Mr. Panyanja, Counsel for the Convict
Mrs. Chiusiwa, Court Reporter
Mr Amos, Official Interpreter

ORDER ON CONFIRMATION


1. The convict Calvin Matabwa, aged 22, from Mtepela village, Traditional Authority Mbawela in Thyolo district was convicted by the First Grade Magistrate of the offence of defilement contrary to section 138 (1) of the Penal Code.
2. The summarised facts of the case are that on the 8th September 2020, the girl aged 15 was sent by her parents to buy sugarcane from the garden of the convict. It happened that the wife to the brother of the convict was a friend to the girl who was defiled by the convict. After finishing getting the sugarcane and as she was about to leave the wife to the brother of the convict told the girl not to go but that she should spend her night right there at the sugarcane garden because there were some huts. Indeed she did spend her night at the garden and during the night the convict defiled her twice. The following day her mother followed her and when the girl saw her mother she ran away because she was scared of her

mother. The convict admitted that indeed he had defiled the girl twice but that she was her girlfriend.

3. The Court found him guilty and convicted him of the offence of defilement contrary to section 138 (1) of the Penal Code and sentenced him to 10 years IHL.
4. Upon review, the reviewing judge was of the considered view that the sentence imposed by the lower court was on a lower side and ordered that the matter be set down to consider enhancement of the sentence.
5. At the hearing, the State Advocate submitted that the sentence should be enhanced from 10 years to 15 years while the Defence Counsel submitted that the Court should enhance the sentence from 10 years to 14 years IHL considering that the Convict is the first offender.
6. The court finds that the conviction was proper and this court confirms the same. The Court agrees with the reviewing Judge that indeed the sentence was on a lower side and should be enhanced.
7. The offence of defilement attracts a maximum sentence of life imprisonment and in the recent years, the courts have moved forward to impose stiffer penalties in defilement cases. 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 sentenced was delivered in 2020.

8. In the case of *Fabiano Maliko v. Republic*, Criminal Appeal No. 13 of 20 (HC), a 43 year man, who on multiple times defiled a 10 year old girl, had his sentence enhanced from 14 years to 40 years.
9. In the case of *Zeeshan Jaral Raja v. Republic* Criminal Appeal No. 36 of 2017, the Convict defiled a girl of 15 years old and was sentenced to 16 years by a lower court. On appeal, Justice Kapindu enhanced the sentence from 16 years to 30 years IHL.
10. In the present case the Convict is 22 years old, he is the first offender and there was a relationship. The Court will therefore exercise leniency in favour of the Convict and I therefore enhance the custodial sentence from 10 years to 17 years IHL with effect from the date of arrest.
11. So I order.

Delivered this **28th** Day of **July** 2021.



AGNES PATEMBA,
JUDGE