

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON TUESDAY THE 22ND DAY OF DECEMBER 2022 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM PHILOMENA SACKY AND VIDA DANQUAH AS PANEL MEMBERS

SUIT NO. R16/07/23

THE REPUBLIC

VS

JEFFERY ABANWINE alias AKLUGO

Juvenile present with Father

Complainant present with Victim

Chief Inspector Havor with Rebecca Ackerson for the Republic.

Komivi Dzotsi Esq. for Martin Kpebu Esq. for the Juvenile.

RULING

This is a Ruling on a viva voce Application by Counsel for and on behalf of the Juvenile herein praying for the court to discharge the Juvenile.

Brief Facts:

On the 16th of August 2022, the Juvenile was charged and arraigned before the court for the offence of Defilement contrary to Section 101(2) of the Criminal Offences Act, 1960 (Act 29). The Particulars of Offence stated that the Juvenile, aged Fourteen (14) years, on the 19th of July 2022 at Sahara Dansoman in the Greater Accra Region and within the jurisdiction of this court had carnal knowledge of Victoria Yeboah alias Dansoa, a female child aged 11 years. Trial commenced on the 10th of November 2022 but on the 15th of December, 2022 when the Investigator was being cross-examined, learned Counsel for the Juvenile prayed for the Juvenile to be discharged. The basis of his submission is that the trial is contrary to Article 17(1)(2)(3) of the Constitution 1992. He stated that the facts as demonstrated shows clearly that both the Juvenile and the alleged victim are below the age of sexual consent below per the laws of Ghana. He

argued that the age of sexual consent in Ghana is Sixteen (16) years and since the Juvenile just like the alleged victim is below the age of 16, it is discriminatory and contrary to the constitution to single out the Juvenile merely because he is a boy or a male and prosecute him. He argued further that assuming without admitting that there was indeed any sexual contact between the Juvenile and the alleged victim, Defilement as defined by Section 101(1) of Act 29 emphasizes on any child and does not refer to male or female, so that where a girl engages in sexual intercourse with a male child below 16 years, with or without the male child's consent is liable for the offence of defilement. He submitted that where the girl is below the age of 16, she cannot be the subject of prosecution of Section 101(1) supra because she is below the age of sexual consent and the law presumes that she does not know what she is doing.

Counsel continued that same principle is applicable where a male child engages in sexual intercourse with a girl. He relied on an article written by Prof J.A.N. Mensa-Bonsu (as she then was) titled **The Road not Taken: A Perusal of the Deficiencies in our Criminal Law Jurisprudence** as published in a book titled **Mobilising the Law for Ghana's Future: Appraising to Revolutionise**, Edited by Dowuona-Hammond, Christine and Ors, 2020 at page 1. Counsel for the Juvenile concluded by saying that the purpose of Section 101(1) supra is to punish irresponsible males and females above the age of 16 who take advantage of innocent boys and girls below 16 years and abuse them sexually but not to be used as a tool for criminalizing children who per adventure respond to the natural dictates of growing up not knowing what they are doing. He concluded further by praying for the Juvenile to be discharged and the trial discontinued. The Prosecutor responded to Counsel's submission by saying that since Counsel's submission is based on legal issues, she leaves the decision to the discretion of the court.

Analysis

The issue for determination is whether or not a Fourteen (14) year old boy can be charged and tried with the offence of defilement of an Eleven (11) year old girl. To make a determination, there is the need to appreciate the offence of defilement. **Section 101 of Act 29 provides as follows;**

- (1) For the purposes of this Act, defilement is the natural or unnatural carnal knowledge of a child under Sixteen (16) years of age.*
- (2) A person who naturally or unnaturally carnally knows a child under Sixteen (16) years of age, whether with or without the **consent** of the child, commits a criminal offence ...*

These provisions were made gender neutral and thus applicable to both male and female children. However, the key word in the above mentioned Section is **Consent** and the Black's Law Dictionary, 2nd Pocket Edition defines consent as '... agreement, approval or permission to some act or purpose, especially given voluntarily by a competent person. To that end, the age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity. Ghana's Criminal Offences Act, 1960 (Act 29) outlines the age of sexual consent at Sixteen (16) years old. So that the minimum age at which an individual is considered legally old enough to consent to participation in any sexual activity is Sixteen (16) years. This means that persons under the age 16 are not legally able to consent to sexual activity and such consent can be void even after an individual has given permission for sexual contact because they are not regarded legally old enough to.

Counsel's prayer however, is to the effect that since the Juvenile is below the age of consent, then he ought to be discharge and the trial discontinued. The Juvenile is however in this court because he is alleged to have committed a crime and for that matter is in conflict with the law. This implies therefore that the law recognises the fact that children can be responsible certain actions and/or inactions which are offences in the eyes of the law. To this end, The United Nations Convention on the Rights of the child, ratified by all UN member states (including Ghana) in 2007 recommended a minimum age of criminal responsibility of at least Twelve (12) years. In 2019, the UN Committee on the Rights of the Child updated its recommendation to a minimum age of 14 years. Children and for that matter, Juveniles in conflict with the law in Ghana are

tried under the Juvenile Justice Act, 2003 (Act 653) which was enacted to provide a juvenile justice system, to protect the rights of juveniles, ensure an appropriate and individuals response to juvenile offenders, provide for young offenders and for connected purposes. **Section 1 of Act 653** provides that *for the purposes of the Act, a Juvenile is a person under eighteen years who is in conflict with the law*. So that, in so far as the Juvenile is alleged to have committed an offence, is under the age of Eighteen (18) years, has been charged with an offence and arraigned before this instant court, the court having commenced with trial must reach a logical conclusion where the guilt or innocence of the Juvenile is determined. Counsel's arguments, to a large extent bothers on Human Rights issues and he is at liberty to seek redress at the appropriate forum.

DECISION:

Counsel's prayer is hereby dismissed and the suit shall take its normal course.

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H/H HALIMAH EL-ALAWA ABDUL-BAASIT.
PRESIDING JUDGE

I AGREE

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MADAM PHILOMENA SACKEY
PANEL MEMBER

I AGREE

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MADAM VIDA DANQUAH
PANEL MEMBER