

HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 14TH DAY OF JANUARY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/26/2023

BETWEEN:

COMMISSIONER OF POLICE

COMPLAINANT

AND

MANSON ANDREW AKWASHIKI

DEFENDANT

JUDGMENT

The Defendant is standing trial on a two-count charge of unlawful carnal knowledge of two minors. Specifically, the Charge reads as follows:-

Count 1: That you Manson Andrew Akwashiki male, 32 years of Lavilla Estate Gaduwa FCT Abuja, between the month of August and September 2023 at Lavilla Estate Gaduwa FCT Abuja, within the jurisdiction of this Court did had the unlawful carnal knowledge of one ChidinaEjikefemal of 7 years old by inserting your fingers into her vagina. You thereby committed an offence punishable under section 31 of the Child's Rights Act.

Count 2: That you Manson Andrew Akwashiki male, 32 years of Lavilla Estate Gaduwa FCT Abuja, between the month of August and September 2023 at Lavilla Estate Gaduwa FCT Abuja, within the jurisdiction of this

Court did had the unlawful carnal knowledge of one Amanda Okwenma female of 5 years old by inserting your fingers into her vagina. You there committed an offence punishable under section 31 of the Child's Rights Act.

The case came up on the 29th of February, 2024. On that day, the Defendant was arraigned. The two-count Charge was read out to the Defendant and he pleaded "Not Guilty" to the two counts in the Charge. Following his plea of not guilty, the court adjourned to the 20th of March, 2024 for the Prosecution to open its case against the Defendant.

The matter could not proceed to trial on that day because Joseph Kudu Esq. informed the Court that he was taking over the defence; but had yet to file the necessary applications, to wit, notice of change of Counsel. The case was therefore adjourned to the 22nd of May, 2024. On the 24th of May, 2024, the Prosecution opened its case by calling its first witness, MrsEzikeChizoba, who testified as PW1. She was sworn and proceeded to give her evidence.

In her evidence, she gave her address as L1 Laville Estate, Gaduwa, Abuja. She described herself as a businesswoman and the mother of 7 years old EzikeChidimma, one of the victims of the alleged crime. She confirmed that she reported the defilement of her daughter on the 6th of September, 2023 at the Efab Estate Police Station at Lokogoma, Abuja. She swore that she noticed that something was wrong with her daughter's genitals whenever she washed the genitals and whenever the daughter urinated. According to her, she attributed the pain her daughter felt to infection. For that, she procured medications from a pharmacy.

In spite of the treatment, the pain persisted and she had to interrogate her daughter to find out if somebody had touched her genitals. Initially, the

daughter did not want to confess to her; but on a particular day, the pain that accompanied her daughter's urination was excruciatingly painful that it was difficult for her to urinate alone. As if that was not alone, the PW1 noticed traces of blood in her daughter's genitals which she wiped with a tissue paper. This, according to the PW1, was a source of alarm and concern to her. She subjected her daughter to further questioning and this time the daughter confessed to her that the Defendant had been inserting his fingers in her genitals and the genitals of her friend, 5 years old Amanda Okwenma.

According to the PW1, she hurried to the residence of the Defendant but met his absence as he had gone to his business. She therefore went to the police station where she lodged a complaint. The police swung into action and arrested the Defendant upon his return from work. At Efab Police Station, the Defendant confessed to the alleged crime and the matter was transferred to the Apo Police Station. It further emerged at the Police Station that the Defendant was always presenting pornographic videos to the children in the course of the act.

The PW1 swore that she took her daughter to the Federal Staff Hospital where her daughter was examined and it was found that her hymen had been breached with bruises found around the genitals. Similarly, she added, the police in the course of their own investigation, took the girl to Police Hospital, Garki, where examinations were conducted on her and similar findings reached.

Under cross-examination, the PW1 confirmed she was MrsEzikeChizoba, the biological mother of EzikeChidimma and forty years old. She confirmed that she bought the medications at H-Medix, though she admitted that she did not have receipts of purchase of the medications. When she was asked a question to that effect, she replied that she had never seen a pornographic

content from the Defendant. She further testified that her testimony was not based solely on what her daughter told her, though she conceded that she was not there when her daughter watched pornography on the Defendant's phone and that she was equally not there when the Defendant placed her daughter on his laps. She answered, when she was asked a question to that effect, that she got to know the Defendant because of this incidence.

There was no re-examination. The PW1 was accordingly discharged and the Court therefore adjourned to the 25th of September, 2024 for continuation of trial. The matter could not proceed on the 25th of September, 2024 in spite of the presence of the PW2 and the willingness of the Prosecution to proceed. This was because of the absence of Counsel for the Defendant in Court. The matter was therefore adjourned to the 7th of October, 2024 for continuation of trial.

On the 7th of October, 2024, the matter came up. Considering the young ages of the PW2 and PW3, the proceeding was conducted in chambers.

The PW2 gave her name as EzikeChidimma. She said she was eight years old, having been born on the 4th of September, 2016. She gave the name of her school as Fortitude and the name of her Church as Christ Embassy. She confirmed that lying was a bad at that liars would end up in hell fire. She confirmed that she knew the Defendant and gave his name as Mr Manson and that he lived at the back of her friend's, Amanda's, house. She stated that the Defendant had been touching her and her friend's genitals.

According to the PW2, when she was playing with Amanda and two boys, the Defendant took them to his room, sent the boys to buy biscuits and locked the door to his apartment. Behind the locked doors, he asked the girls to lay on the bed and to move their trousers down. He began to fondle

their genitals, an act he terminated when he heard the return of the boys. At that point, he asked them to put on their trousers before he unlocked the door.

The PW2 how she experienced pains in her genitals when she wanted to use the restroom at home. She added that her mother saw blood on her genitals. Upon inquiries from her mother, she told her mother what happened, whereupon her mother took her to the hospital. She added that the Defendant would show them pornographic contents in his mobile phone. In conclusion, she gave the name of the two boys the Defendant sent on errand as Williams and Somto. While the Defendant was taken to the police station, she said her parents took her to two hospitals.

Under cross-examination, the PW2 confirmed that her evidence-in-chief was borne out of her direct personal experience. When asked a question to that effect, she stated that she and her friends used to go to the Defendant's house to play, adding that she had been to the Defendant's house five times while William and Somto had been there only once. She insisted that the Defendant touched her private parts the five times she visited his room, and that it was the last incident that caused her so much pain and caused blood to flow from her genitals. She insisted that the Defendant, and none other, opened the pornographic contents in his phone. She confirmed that the doctor who examined her was a male, adding that apart from the doctor, her classmate also touched her private part.

There was no re-examination. The PW2 was therefore discharged.

The PW3 was called up to testify. She gave her name as Okwenma Amanda. She was born, according to her, on the 13th of September, 2017. The name of her school was Madonna Model School at Area 3, Abuja and

she was in Basic Two Class. She gave the name of her Church as Twelve Apostles Church. She confirmed that it was not good to lie, and that all liars would end up in hell fire. She confirmed that she knew the Defendant, that his name was Mr Manson and that he lived in their house.

In her evidence-in-chief, she testified that on a fateful day, the Defendant gave her brothers – Somto and Williams – money to go buy biscuits. It was her evidence that when the brothers left, the Defendant inserted his hands in her privates after he had undressed her, adding that he even went as far as inserting his penis inside her vagina. She stated that she was together with Chidimma, as Somto and William had gone out to buy biscuits. He confessed the Defendant had been that several times. At this point in the examination-in-chief, the Court had to take a short adjournment.

The PW3 continued her evidence-in-chief on the 22nd of October, 2024 when this Court reconvened. In her resumed evidence-in-chief, the PW3 narrated how her friend, the PW2, reported what happened to the PW2's father. She said the PW2 was taken to a hospital while she was taken to the police station and later taken home. She confirmed that the Defendant showed them pornographic videos which she described as a video of a man and woman touching each other.

Under cross-examination, she confirmed that the Defendant touched her several times, adding that she was taken to a hospital. She confirmed that the doctor examined her privates, adding that she cried when the Defendant inserted his fingers in her privates.

During the re-examination, the PW3 confirmed that she was taken to a hospital.

On the 31st of October, 2024, the PW4 took the stage in the witness box. She is Inspector Akonjoh Karen, a police officer attached to Gender Unit of the Federal Capital Territory Command of the Nigerian Police Force. She confirmed that she knew the Defendant. She narrated how, on the 14th of September, 2023, the Defendant was brought to her office alongside other persons. She swore that the Defendant, Amanda then seven years old and Chidimma then five years old wrote down their statements. According to PW4, and deducible from the statements, on Saturday, the 2nd of September, 2023, when they were playing with their two brothers, the Defendant called them to his room and gave the two boys N250.00 (Two Hundred and Fifty Naira only) to buy snacks, chewing gum and pure water, leaving him alone with the two girls. Given this opportunity, the Defendant inserted his fingers into the genitals of the two girls.

Testifying further, the PW4 swore that the Defendant also made his statement and was videoed while making the statement wherein he admitted to having carnal knowledge of the two girls. She swore that the Defendant was taken for medical examination while the victims were taken to the Police Hospital at Area 1 for medical examination whereupon a medical report was prepared. She confirmed that she could identify the documents. After the PW4 had identified the documents, the Prosecution Counsel sought to tender them in evidence. Though the Defence Counsel objected to the admissibility of the video, the statement and the certificate of compliance, he reserved address till the Final Written Address stage. As a result, the Court admitted the documents in evidence and marked them as exhibits as follows: the Defendant's statement dated the 14th of September, marked as Exhibit A1-A2, the compact disc (CD) plate and certificate of compliance

marked as Exhibit B1-B2. At this stage, the Court adjourned the case to the 13th of November, 2024 for continuation of trial.

The matter could not proceed on the day because of the absence of PW4. The case was therefore adjourned to the 26th of November, 2024 for continuation of hearing. On that day, the PW4 continued with her evidence-in-chief. She confirmed that the Police Unit at Area 1 issued medical reports in respect to the two victims to the Police Divisional Officer, Apo. This document was tendered in evidence without any objection from the Defence Counsel. It was accordingly admitted in evidence and marked as Exhibit C1-C2 and D1-D2 respectively.

Under cross-examination, the PW4 swore that she joined the Nigerian Police Force in 2008 and that she had been in Investigation for fourteen (14) years. She also averred that the matter was transferred from Apo Police Station to her office, adding that there was evidence of transfer of the case file. She admitted that she was not there when the Defendant raped the Chidimma and Amanda. She also admitted that the evidence she gave was derived from what Chidimma, Amanda, their parents, the Defendant and the Investigating Police Officer who transferred the case to the Gender Unit of the Federal Capital Territory Command relayed to her.

There was no re-examination. The PW4 was discharged, and with her discharge, the case of the Prosecution came to an end.

The Defendant opened his defence that same day. After being sworn, the Defendant who testified as DW1 gave his name as Manson Andrew Akwashiki, his occupation as a dispatch rider and his address as No. 3 Lavila Estate Gaduwa District, Abuja. He confirmed that he knew Amanda and Chidimma, describing Chidimma as the daughter of his boss.

Chidimma, on the other hand, he described as the daughter of his next door neighbour.

He swore that he was arrested on the 4th of September, 2023 at about 6pm when he was about to enter his apartment. According to him, he had parked his motorcycle when someone walked up to him, asked him if he was the owner of the motorcycle and informed him that his boss wanted to see him. He stated that he followed the man to Chidimma's house where her father asked him if he knew his child. At this point, the Court adjourned the case to the 12th of December, 2024 for continuation of trial.

The Defendant on that day, he continued his evidence-in-chief and narrated how the PW2, PW3 and PW3's brother went to his room, picked up his phone and began to watch the contents therein while he was outside washing his boss's car. He swore he collected his mobile phone from them, sent them away, locked his house and went to work. He further stated that the PW3's father accosted him on the 4th of September, 2023, asking him what transpired on the 2nd of September, 2023. He swore that it was at that point that the PW3's mother came with policemen to arrest him.

Under cross-examination, the DW1 confirmed that his highest qualification educationally was the National Certificate of Education (NCE). He also admitted that Chidimma used to enter his room, adding that until 2nd of September, 2023, she never saw any movie on his mobile phone. He further confirmed that he made a statement on the day that the police arrested him. He also agreed that he was a dispatch rider and that he lived in the boys quarters of the house of the father of the PW3. When asked a question to that effect, he admitted that what he told the court was different from what he told the police.

There was no re-examination. He was therefore discharged as a witness. The Court then adjourned to the 16th of December, 2024 for the adoption of final written addresses.

On the 16th of December, 2024, the Court sat and the parties proceeded to adopt their Final Written Addresses.

In the Defendant's Final Written Address dated and filed on the 13th of December, 2024, learned Counsel for the Defendant formulated a sole issue for determination, to wit: "*Whether or not from the totality of the evidence placed before this Honourable Court, the Prosecution has not failed to prove their case beyond reasonable doubt as required by law entitling the Defendant to be acquitted and discharged.*" Learned Counsel began his argument by a restatement of the time-honoured principle of law that it was the duty of the Prosecution in a criminal case to prove its case beyond reasonable doubt while the Defendant in such criminal case is considered innocent until the Prosecution had discharged that duty incumbent on it. He contended that in view of the principle of law enunciated in a number of judicial authorities which he cited, the Prosecution had failed to establish the guilt of the Defendant beyond reasonable doubt.

Learned Counsel embarked on a judicial of the offence of rape and concluded that the evidence of the Prosecution did not establish the offence of rape. He hinged his contention on the absence of corroborative evidence strong enough to support the evidence of the two Prosecutrixes, adding that the evidence of the two Prosecutrixes who were minor was not taken under oath and that the corroborative evidence was not credible enough to sustain the allegation of rape as it was based on hearsay. He further took a swipe at **Exhibits C1-C2** and **D1-D2** and urged the Court to discountenance the contents thereof. He also highlighted the absence of penetration of the

vaginas of the Prosecutrixes by the penis of the Defendant as he contended that the offence of rape has not been made out.

For all his submissions on this sole issue, learned Counsel relied on and quoted liberally from the following cases among other numerous cases cited: ***Ukpong v. State (2019) LPELR-46427 (SC)***, ***Chukwuma v. FRN (2011) 13 NWLR (Pt. 1264) at 408***, ***Idi v. State (2017) LPELR-42587(SC)***, ***Muhammadu v. State (2020) 17 NWLR (Pt. 1753) 252 at 267-268, para H-C***, ***Posu v. State (2011) 2 NWLR (Pt. 1234) 393 at 416***, ***Danladi v. State (2017) LPELR-4627(CA)***, ***OludotunOgunbayo v. The State (2007) LPELR-2323(SC)***, ***Mohammed Ali v. The State (2020) LPELR-53409(SC)***, ***Afor Lucky v. The State (2016) LPELR-40541(SC)***, ***Boniface Adonike v. The State (2015) LPELR-24281(SC)***, ***Brossetee Manufacturing (Nig) Ltd v. M/S Ola Ilemobola Ltd &Ors (2007) LPELR-809(SC)***, ***AminuYahaya v. Kano State (2024) LPELR-62304(CA)***, and ***Tumbido v. INEC &Ors (2023) LPELR-60004(SC)***. He also referenced the provisions of section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 as well as the provisions of sections 37(a), 38, 84(4), 135, 167(d), 209(1) and (3) of the Evidence Act, 2011. Reference was also made to section 31(1) of the Child Rights Act, 2003 as well as section 1(1) of the Violence Against Persons Act, 2015.

The Prosecution's Final Written Address was dated the 16th of December, 2024 and filed on the same date. In the said Final Written Address, learned Counsel distilled the following sole issue for determination: "*Whether the Prosecution has proved the case of rape against the Defendant beyond all reasonable doubt pursuant to section 31 of the Child Rights Act?*" Learned Counsel prefaced his submissions on this sole issue by a reference to the

case of *Isa v. State (2016) 6 NWLR 249 SC* where the apex court enumerated the ingredients of the offence of rape.

Counsel submitted that though penetration of the victim's vagina by the Defendant's penis was one of the major ingredients of rape, this requirement could be obviated if the Defendant confessed to having committed the offence. He cited the case of *Benjamin v. State (2019) 15 NWLR (Pt. 1696) 541 SC at 555, paras D-F* in this regard. He further urged the Court to discountenance the requirement of consent or absence of it in this instant case as the Prosecutrixes were minors who lacked the legal capacity to give consent to sexual activities., adding that the Defendant never challenged the age of the Prosecutrixes. He referred to section 264 of the Administration of Criminal Justice Act, 2015.

It was the case of the Prosecution as made out in the Final Written Address that penetration, however slight, was enough to ground conviction for rape, adding that the hymen need not be ruptured before penetration could be said to have been happened. He referred to **Exhibits C1-C2 and D1-D2**. He also relied on *Olali v. Nigerian Army (2016) 4 NWLR (Pt. 1502) 358 CA*.

He also contended that the independent evidence before the Court also corroborated the evidence of the Prosecutrixes. This corroborative evidence, learned Counsel submitted, were the testimonies of the other witnesses as well as the medical reports already tendered and admitted in evidence. He cited *Mohammed v. State (2018) 13 NWLR (Pt. 1635) 85 SC* as well as the case of *Posu v. State (2011) supra* cited by Counsel for the Defendant and the cases of *Muazu v. State (2022) 12 NWLR (Pt. 1845) 567 SC*, *Adesina v. The People of Lagos State (2019) 8 NWLR (Pt. 1673) 125 SC* and *Boniface Adonika v. The State (2015) LPELR-24281(SC)*.

Learned Counsel further submitted that the Prosecution complied with the provisions of the law on the taking of evidence of a minor. He referred to the case of ***Mbele v. State (1990) 4 NWLR (Pt. 145) 484 at 497, para D, 500, paras D-E***. The Prosecution Counsel also urged the Court to give full effect to the confessional statement of the Defendant notwithstanding that the Defendant retracted the confessional statement. Learned Counsel cited the cases of ***Solola v. State (2005) 11 NWLR (Pt. 937) 460 at 497-498, paras H-B*** and ***Ofordike v. State (2019) 5 NWLR (Pt. 1666) 395 at 415-416, paras G-A*** in this regard.

In all, learned Counsel for the Prosecution urged this Court to find that the Prosecution has proved its case beyond reasonable doubt and to convict the Defendant accordingly.

I have taken the time to bring out the evidence as well as the legal submissions for the Prosecution in proof of its case as well as those of the Defendant in defence of the two-count Charge that has been preferred against him. The sole issue that presents itself for determination is this: ***“Whether the Prosecution has not been able to establish the offence of unlawful carnal knowledge of the two minors mentioned in the Charge, to wit, ChidinmaEjike in Count One and Amanda Okwenma mentioned in Count Two?”***

The terminus a quo in the resolution of this issue is the relevant provision of the Child Rights Act, 2003 which created the offence of unlawful sexual intercourse with a child. The section is section 31 of the Act and it provides that:-

“(1) No person shall have sexual intercourse with a child.

(2) A person who contravenes the provision of Subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.

(3) Where a person is charged with an offence under this section, it is immaterial that-

(a) the offender believed the person to be of or above the age of eighteen years; or

(b) the sexual intercourse was with the consent of the child.”

Section intercourse is not defined in section 277 of the Act, that is, the interpretation section of the Act. However, the courts have provided a working definition of the term as used in the domesticated Child Rights Law of the various states. For instance, in the case of **Adenekan v. The State of Lagos (2021) 1 NWLR (Pt. 1756) 130 CA at 189, paras. E-F** which was decided within the context of the Criminal Law of Lagos State, 2015, the Court of Appeal held thus: **“The Criminal Law of Lagos State, 2015 does not define what constitutes “sexual intercourse” for the purpose of the offence of defilement. Sexual intercourse has, however, been defined as the physical activity of sex, usually describing the act of a man putting his penis inside a woman’s vagina.”**

Central to the offence of created and defined in section 31 of the Act is that the victim must be a child within the meaning of the Act. Section 277 of the Act defines “child” as “a person under the age of eighteen years”. This definition has been accorded judicial approbation in a number of cases such as **Adenekan v. The State of Lagos (2021) 1 NWLR (Pt. 1756) 130 CA at 189, paras D-E, Onyegbu v. State (1994) 1 NWLR (Pt. 320) 328 CA at 339, paras E-F.**

Subsection (2) of the section explains that the offence of having sexual intercourse with a child is rape. The punishment stipulated therefor on conviction is imprisonment for life. In proving the offence of unlawful sexual intercourse with a child, the Prosecution is required to establish the existence of the same elements, or ingredients, required to ground the offence of rape. These elements, or ingredients, within the peculiar circumstances of the Child Rights Act, 2003, are these:-

- (1) That the Defendant had sexual intercourse with the woman, or, as in this Charge which is brought under the Child Rights Act, 2003, the child in question;
- (2) That the act was done when the victim was a child within the meaning of the Child Rights Act, 2003;
- (3) That there was penetration.

As in the case of rape, there must be evidence linking the Defendant in the case of sexual intercourse with a child with the offence alleged. In the case of *Francis Okpanefe v. The State (1969) 1 All N.R. 420*, the Supreme Court held, in a case of rape and attempted rape preferred under section 282(1)(e) of the Penal Code applicable to the northern parts of Nigeria including the Federal Capital Territory, Abuja and which deals with a minor, that there the evidence of commission of the offence must be such that it connects the Defendant effectively with the offence.

In *Yau v. State (2022) 18 NWLR (Pt. 1863) 601 SC at 635, paras. D-G; 647, paras. C-H*, the apex court laid down the ingredients that must be proved before rape can be said to have been proven. The Court enumerated the ingredients thus:- **“For the prosecution to succeed in proving the offence of rape, it must be proved that:(a) the accused had sexual intercourse with the woman; (b) the act of sexual intercourse was done**

without her consent or that the consent was obtained by fraud, force, threat, intimidation, deceiver impersonation; (c) the woman was not the wife of the accused; (d) the accused had the *mens rea*, the intention to have sexual intercourse with her without her consent: or that the accused acted recklessly not caring whether the prosecutrix consented or not; (e) there was penetration.”

In the case of **Nseudoh v. State (2021) 11 NWLR (Pt. 1787) 234 CA at 246, paras A-C**, the Court of Appeal explained that “***Sexual intercourse is deemed complete upon proof of penetration of penis into vagina. Even the slightest penetration constitutes the act of sexual intercourse. The fact that a prosecutrix who is allegedly defiled is found to be virgointacta (i.e. a virgin) is not inconsistent with partial sexual intercourse, and the court will be entitled to find that sexual intercourse has occurred if it is satisfied on that point from all the evidence led and surrounding circumstances of the case. Where a penetration was proved but not of such a depth as to injure the hymen, it was held to be sufficient to constitute the crime of rape. In other words, proof of the rupture of the hymen is therefore unnecessary to establish the offence of rape.***”

By virtue of subsection (3) of the section, it is immaterial that (a) the offender believed the person to be of or above the age of eighteen years; or (b) the sexual intercourse was with the consent of the child. See the case of **Anyigor v. State (2019) 14 NWLR (Pt. 1691) 45 CA at 56, paras D-E** where the Court of Appeal considered similar provision under the Ebonyi State Child Rights and Related Offences Law and held that “***The general defence of consent does not avail a person accused of having sexual intercourse with a child under section 34 of the Ebonyi***

State Child Rights and Related Offences Law or wherever a child is the prosecutrix as the law is clear that a child is incapable of giving sexual consent.”

It is against this backdrop that I return to the case at hand. The Defendant, Manson Andrew Akwashiki, is standing trial for having sexual intercourse with one ChidimmaEzike who at the time of the incident was seven years old and one Amanda Okwenma who at the time of the incident was five years old. Both ChidimmaEzike and Amanda Okwenma qualify as children under the Child Rights Act. Both children testified in Court as PW2 and PW3 respectively. Because they were children, the provisions of section 209 (1) of the Evidence Act, 2011 was applied. The subsection n provides that ***“In any proceeding in which a child who has not attained the age of 14 years is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking.”***

In the evidence of PW2, the first Prosecutrix, ChidimmaEzike positively identified the Defendant as the person who allegedly defiled her. I have already reproduced her evidence above. The particular section relevant to the present charge is where she said this: *“When I was playing with my friend Amanda and two boys, he took us to his room and sent the two boys to go and buy biscuits. After the two boys went, the Defendant locked his door and told us to move our trousers down. After removing our trousers, he started touching our private parts. When the two boys came, he asked us to put our trousers back and unlock the door.”* Though the PW2 did not specify the nature of the touching, there is no doubt that the touching was sexual in nature.

This piece of evidence was not shaken under cross-examination. In fact, it was fortified under cross-examination. Responding to a question to that effect, the PW2 responded thus: *“Yes, I have been to the Defendant’s five times. Only one time William and Somto were there. Yes, the Defendant touched my private part five times I went to his room. In all the five times the Defendant touched my private part, it is only the last one that pained me.”* Elsewhere and still under cross-examination, the PW2 swore: *“It was the Defendant and not anybody that opened pornographic videos in his phone.”*

The second Prosecutrix, Amanda Okwenma, testified as PW3. This is the relevant portion of her: *“One day, the Defendant gave my brothers money to go and buy biscuits, Somto and Williams, to go and buy. When they left, the Defendant used his hands and put in my private part. He removed my clothes before putting his hand in my private part and went further to insert his penis in my private part... When William and Somto came back, the Defendant stopped. The Defendant has been doing that to me several times.”*

The second Prosecutrix was quite explicit as to the nature of the touching. Apart from his hands on their genitals of the Prosecutrices, the second Prosecutrix stated that the Defendant inserted his penis into her vagina. This bit of evidence takes me back to the evidence of the first Prosecutrix, Chidimma, who testified as PW2. She had stated as follows in the course of her evidence: *“When I went back home, I wanted to use the restroom and my private part started paining me. When my mom came to check on me, she saw blood and asked me what happened. I explained to her and my mom took me to the hospital.”* Under cross-examination, the PW2 confirmed the evidence she gave in her examination-in-chief when she said *“The fifth attempt pained me and I saw blood in my private part.”* The gamut of PW2’s

evidence and the PW3's evidence of the events of that day, that is, the 2nd of September, 2023, sets up the existence of sexual intercourse between the Defendant and the PW2 on one hand, and the Defendant and the PW3 on the other hand.

But, I am not unaware of the law of evidence on the unsworn evidence of a child. The practice has been that the unsworn evidence of a child must be corroborated by another evidence before the Court can act on the unsworn of a child. It is immaterial that the evidence of PW3 is consistent with the evidence of PW2. It is an unsworn evidence just like the evidence of PW2 and, both evidence cannot corroborate each other. See the case of **Igbine v. State (1997) 9 NWLR (Pt. 519) 101 at 110, paras D-E** where the court held that **“The unsworn evidence of a child cannot corroborate the unsworn testimony of another child. In the instant case, the evidence of the victim (PW3) was damning against the appellant. Going by her evidence, it was the appellant who had that nasty indecent assault on her. The evidence of her elder brother (PW2), a child under 14 years of age cannot, however, possibly corroborate her own evidence as both made unsworn testimonies.”**

What then, can be done in the circumstance? The Court in *Igbine v. State (1997) supra* at 110, paras A-G stipulated the nature of corroborative evidence required to fortify the unsworn evidence of a child when it held thus:

“Corroborative evidence must be evidence which confirms in some material particular not only that the crime has been committed but also that it was the accused who committed it. In the instant case, assuming without conceding that the medical report amounts to corroboration of the act of the rape as narrated by the victim, the same

report does not in any way corroborate her story that it was the appellant who has raped her. It was not a situation where evidence shows that both the victim and rapist have venereal infection. Once there was no independent corroborative evidence coming from the prosecution, medical report alone cannot serve as the required corroboration under Section 182 (3) of the Evidence Act. That medical report must go further and state that it was in fact the accused that raped the victim. The medical evidence shows somehow that there was an act of rape but nothing in the evidence linked or tried to link the appellant with the commission of the offence called rape.”

What other evidence did the Prosecution present that linked the Defendant with the offence alleged in the charge? The PW 1 is MrsEzikeChizoba. She is the mother of PW2, the first Prosecutrix. In her evidence, she testified as to how to find out that her daughter, that is PW2, had been violated. She saw evidence of violation of her genitals. In her words, *“My daughter, whenever I am washing my daughter’s vagina, she used to cry out. It happened on different occasions. When I asked her did anybody touch her private part she said no. I thought it was just an infection. I went to a pharmacy to get a medication till on that Monday morning when she went to urinate. I heard her voice shouting from the toilet. So, I have to rush and meet her. She was crying that her vagina was paining her and she was urinating when she completed urinating, I collected tissue paper and cleaned her. On the tissue paper, I noticed like a blood... I sat her down and asked her to tell me. It was that time she opened up to me that there is a man in her friend’s house that used to put his hand in her vagina and her friend’s own, Amanda. When she told me, I rushed to the Defendant’s compound and met that the Defendant went to his business. From there I proceeded to*

the Police Station and reported the matter... I took my daughter to the Federal Staff Hospital on my own where she was examined. Her hymen was broken and there were bruises around the vagina...

Though the Defence attempted to discredit the evidence of the PW1 as hearsay, there is however evidence that the PW1 directly saw the bruises on the PW1's genitals, wiped off blood from the vagina and experienced the PW2's traumatic aftermath of the sexual activity.

There is the evidence of PW4 too. The PW4 Inspector Akonjoh Karen, a police officer attached to the Gender Unit of the Federal Capital Territory Command of the Nigerian Police. She and her team investigated the report of sexual intercourse with minors brought against the Defendant. Her evidence was consistent with the evidence of the PW2 and PW3. In the course of her evidence, she tendered a number of documentary exhibits. I have enumerated them earlier. They are the Defendant's statement which this Court marked as Exhibit A1-A2, the compact disc containing the video as proof that **Exhibit A1-A2** was made under legally endorsed conditions and the certificate of compliance required under section 84 of the Evidence Act, 2011 marked as **Exhibit B1-B2**. There is also the medical report which is marked as **Exhibits C1-C2 and D1-D2** for the two Prosecutrixes respectively.

The Defence also applied the same approach he adopted in the cross-examination of the PW1 in the cross-examination of the PW4. Again, no much dent is inflicted on the evidence of the PW4. Instructively, the following excerpts from Exhibits C1-C2 and D1-D2 are instructive: "*Suspect admitted to patient's claims but claimed he did not penetrate her vagina with his penis*" and "*hymen breached.*"

Though the direct evidence of sexual intercourse that linked the Defendant with the act is the unsworn evidence of the PW2 and PW3, there are circumstantial evidence that linked the Defendant with the act and therefore corroborated the unsworn evidence of the two Prosecutrices. The external evidence of the PW1, PW4, **Exhibits A1-A2, Exhibit B1-B2, Exhibit C1-C2 and Exhibit D1-D2** are sufficient corroborative evidence of the evidence of PW2 and PW3 that, indeed, the Defendant had sexual intercourse with the PW2 and PW3. I so hold. This is notwithstanding that the Defendant in his evidence denied having sexual intercourse with the two Prosecutrices.

In the case of *Aiwuyor v. State (2022) 13 NWLR (Pt. 1846) 89 SC at 156-157, paras. G-E*, the apex court had reason to consider what amounted to circumstantial evidence and the nature of circumstantial evidence required to ground a conviction. The court held thus: “***Circumstantial evidence requires an inference to be made to establish a fact, and in certain cases, circumstantial evidence may be even more powerful than direct evidence, which proves or disproves a fact directly. Circumstantial evidence is very often the best evidence. It is said to be evidence of surrounding circumstances, which is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say it is circumstantial. But the circumstantial evidence sufficient to support a conviction must be cogent, complete, and unequivocal. It must be compelling and must lead to the irresistible conclusion that the accused person, and no one else, was the offender. The facts must be incompatible with innocence of the accused and incapable of explanation on any other reasonable hypotheses than that of his guilt.***”

The circumstances of the present case before me inexorably tied the Defendant to the offence contained in the Charge. He was with the two

Prosecutrixes and the siblings of PW3. He sent the siblings away to buy snacks. He locked the door. He did what he did with the PW2 and PW3. When the boys returned, he unlocked the door. And the PW2 and PW3 ended up with breached hymens, bruised genitals, funny gaits, painful genitals. I therefore find that the Defendant had sexual intercourse with the PW2 and the PW3.

On the basis of the body of evidence before this Court, I hold that the Prosecution has been able to prove the two-count Charge of sexual intercourse with a child contrary to the provision of section 31 of the Child Rights Act. Beyond reasonable doubt. I therefore resolve the sole issue in this Judgment in favour of the Prosecution and against the Defendant.

Before I proceed to sentencing, I must note that the conduct of the Defendant was egregious not only because the victims of his undisciplined libido were children aged five and seven at the time of the commission of the offence; but because one of the victims, Amanda Okwenma, who testified as PW3, is the daughter of the Defendant's benefactor. It was the father of Amanda, DrIfediOkwenma, who provided accommodation for the Defendant at no costs to the Defendant but out of DrOkwenma's sense of shared humanity and sense of philanthropy. It is regrettable that the Defendant's idea of gratitude was to turn the living quarters which Amanda's father provided for him free of charge into a slaughterhouse where he defiled the daughter of his benefactor. Such conduct is not only repulsive to the senses but also offensive to the morality of the society at large. It should not be condoned or rewarded with a pat on the back.

SENTENCING

Accordingly, on Count One of having sexual intercourse with ChidimmaEzike, female, aged seven (7) years old between August and September, 2023 when the offence was committed, I hereby find the Defendant Manson Andrew Akwashiki guilty as charged. On Count Two of having sexual intercourse with Amanda Okwenma, female, aged five (5) years old between August and September, 2023 when the offence was committed, I hereby find the Defendant Manson Andrew Akwashiki guilty as charged.

Section 31(2) of the Child Rights Act, 2003 provides that “***A person who contravenes the provision of Subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.***” On the basis of this statutory provision under which the Defendant is charged, I hereby sentenced the Defendant Manson Andrew Akwashiki to life imprisonment for the offence of having sexual intercourse with ChidimmaEzike aged seven (7) at the time the offence was committed in 2023 and Amanda Okwenma aged five (5) at the time the offence was committed in 2023.

This is the Judgment and Sentence of this Court delivered today, the 14th day of January, 2025 in this case.

HON. JUSTICE A. H. MUSA
JUDGE
14/01/2025

APPEARANCE:

For the Prosecution:

Fidelis Ogbobe, Esq.

P. N. Nwokolo, Esq.

For the Defendant:

AdeoluSalako, Esq.
Michael Ayuba, Esq.
Joseph Kudu, Esq.