

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA  
AT KAMPALA**

5 **CORAM:**        *HON. JUSTICE C.N.B.KITUMBA, JA.*  
                         *HON.JUSTICE C.K.BYAMUGISHA, JA.*  
                         *HON. JUSTICE S.B.K.KAVUMA, JA.*

**CRIMINAL APPEAL NO. 192/02**

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**BETWEEN**

LAWRENCE KIZZA:::::::::::::::::::::::::::::::::::::APPELLANT

15

**AND**

UGANDA::: RESPONDENT

[*Appeal from the judgment of the High Court of Uganda at Kampala sitting at Nakawa*  
20 *High Court Circuit (Akiiki-Kiiza J) dated 4<sup>th</sup> November 2002 in HCCSC No.52/02*]

**JUDGMENT OF THE COURT**

Lawrence Kiiza, the appellant in this case was indicted with the offence of defilement  
25 contrary to **section 129(2)** of the **Penal Code Act**.

It was alleged in the particulars of the indictment that during the month of November 1999 at  
Katogo village in the Kiboga District the appellant unlawfully and carnally knew Mukakalasi  
Sylvia a girl under the age of 18 years.

30 The facts as found and accepted by the trial judge are that the appellant worked as a  
herdsman at the home of the victim. She used to graze calves while the appellant grazed the  
cows. On 22<sup>nd</sup> November 1999 the father of the victim, Spedito Twagiramungu (P.W.2)  
returned home and found the victim quarrelling with her mother. The cause of the quarrel was  
that the victim had delayed in bringing the calves home. On being questioned, she revealed

that the appellant had asked her to take the calves to a nearby school. When she reached the school the appellant removed his trousers she also removed her pants and they had sex. P.W.2 reported the matter to the local council 1 chairperson. The appellant was arrested and charged. The victim was taken for medical examination at Polly Clinic Bukomero. He was  
5 examined by Dr Serunyigo (P.W.1) on 23<sup>rd</sup> November 1999. He made a report (exhibit PE.1)

At the trial the prosecution called two witnesses who testified orally. The evidence of the examining doctor was admitted under the provisions of **section 66** of the **Trial on Indictments Act**.

10 The appellant denied the offence and raised the defence of a grudge which was rejected by the trial judge who convicted him as charged and sentenced him to 14 years imprisonment hence the instant appeal.

The memorandum of appeal filed on his behalf contains only one ground of appeal namely  
15 that

***“The learned trial judge erred in law and fact when he convicted the appellant on the basis of the uncorroborated evidence of a single witness and found him guilty of defilement”.***

Mr Ambrose Tishekwa represented the appellant. In his submission he stated that there was  
20 no direct evidence to prove penetration and there was no independent evidence to prove that the appellant defiled the victim. On medical evidence learned counsel pointed out that it did not show any fresh rapture of the hymen.

On the testimony of the complainant, counsel submitted that force was used to obtain it. She also told court that her father had told her what to say in court.

25 Counsel further submitted that there was no evidence to corroborate the testimony of the complainant. Such evidence, counsel contended must come from an independent source confirming not only that the offence was committed but that the appellant committed it.

Mr Semalemba, Principal State Attorney, in his reply supported the judge’s evaluation of the  
30 evidence. On medical evidence, the learned Principal State Attorney pointed out that the absence of penetration can be explained by the fact that the victim had had sexual intercourse with the appellant on previous occasions.

He also submitted that a conviction can be based on the uncorroborated evidence of the victim and the learned trial judge was satisfied that the victim was a truthful witness.

Moreover Mr Semalemba submitted, the victim reported to her father and this amounted to corroboration.

5 There is no dispute that the only evidence implicating the appellant was given by the victim herself. The most single factor that influenced the trial judge in convicting the appellant was that he had had previous sexual encounters with the victim. He thus disregarded the need for corroboration or some other cogent evidence pointing to the guilt of the appellant.

10 With respect, the learned trial judge erred in his evaluation of the evidence adduced at the trial. The appellant was not charged with having multiple sexual intercourse with the victim on previous occasions. He was charged with the incident that allegedly took place on 22<sup>nd</sup> November 1999. The victim was examined the following day. The findings of the medical officer were not contested at the trial. In particular the examination revealed that there were no signs of defilement in the past few days. She had no injuries either in her private parts or  
15 any part of the body.

It is our considered opinion that the whole purpose of subjecting the victim to medical examination was to enable the prosecution confirm that penetrative sex had taken place between the victim and a male human being. It was not an academic exercise.

20 Contrary to what the learned State Attorney submitted, the victim did not voluntarily tell her parents what had taken place. She was first quizzed and even threatened with beatings. She was not in any distressed condition.

We are not satisfied that the prosecution proved its case beyond any reasonable doubt. The appellant is entitled to an acquittal. Consequently we allow the appeal. Quash the conviction  
25 and set aside the sentence. We order for his immediate release from custody unless he is being held on other lawful charges.

**Dated at Kampala this 30<sup>th</sup> day of August 2007.**

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**C.N.B.Kitumba**  
**Justice of Appeal**

**C.K.Byamugisha**

**Justice of Appeal**

**S.B.K.Kavuma**

**Justice of Appeal**

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