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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 068 OF 2011

[Coram: Bamugemereire, Gashirabake, Kihika, JJA]

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1. **OMOLLO BEN**
2. **ECUDO PATRICK** **APPELLANT**
3. **ELOMUNAIT GABRIEL**

VERSUS

UGANDA **RESPONDENT**

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*(Appeal against the decision of Margaret Oguli J, in High Court Criminal Session
Case No. 0053 of 2011 dated 4th February 2011 at Kumi)*

JUDGMENT OF THE COURT

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The appellants were charged with the offence of rape contrary to sections
123 and 124 of the Penal Code Act Cap. 120. It was alleged that on the
14th day of March 2010 at Kaler village, Mukura subcounty in Kumi
District, the appellants had unlawful carnal knowledge of AS.

Background

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This is a case of gang rape in which the appellants were sentenced to 50
years' imprisonment. The facts as accepted by the lower court were that
on the night of 14th March 2010, AS, a nursing student at the Jinja School
of Nursing and Midwifery who also helped out with an NGO, was one of
the guests at a traditional marriage ceremony at Kaler village, Mukura
subcounty in what is now Ngora District. She left her company of
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girlfriends to go ease herself. Just as she was in the process of answering
nature's call, A1 and A3 surfaced from nowhere and stood over her. She
asked them to leave. They declined and watched her ease herself and still

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5 watched as she pulled up her pants. She attempted to negotiate herself
out of their trap, by offering them money but they declined the offer for
money and insisted they had to have sex with her, even if it was against
her will. She recalls that the appellants acted in concert with each other.
One held her back while two pulled her down her pants. They raped her
10 in turns with one saying he was eager to have sex with a girl from town.
They also momentarily prevented her from returning to join the other
guests at the ceremony and held her hostage, forcing her to join their
'malwa' or 'ajon', drinking joint. The victim was able to escape after over
twenty minutes. She found her way back to the ceremony where she
15 narrated the ordeal to her friends. They reported the matter to the
relevant authorities and the accused persons were arrested and charged.
The appellants denied the charges and were subsequently tried,
convicted and on the 4th day of February 2011 were each sentenced to 50
years imprisonment. The appellants being aggrieved by the judgment of
20 the High Court, appealed to this court against conviction and sentence
on 5 grounds.

The grounds of appeal as raised in the amended memorandum of appeal
are as follows:

- 25 1. **The learned trial Judge erred in law and fact when she relied on
the improperly conducted identification parade leading to a
miscarriage of justice.**
2. **The learned trial Judge erred in law and fact when she relied on
the prosecution evidence, which was marred with inconsistencies
and discrepancies.**

  