

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
CRIMINAL SESSION CASE NO. MME 58 of 2003**

UGANDA :: PROSECUTOR

VERSUS

MUTEBI RONALD :: ACCUSED

BEFORE: THE HON. MR. JUSTICE V.A.R. RWAMISAZI KAGABA

PROCEEDINGS

19/4/2004 Mr. Muguluma for Accused.

Mr. Niyonzima for me State.

Accused in Court.

Suubi Interpreting

Court: Case fixed for hearing on the 22/4/2004.

V.R.Kagaba

Judge

19/4/2004

Assessors

Buyongo

Mutwala

22/4/2004: Mr. Muguluma for Accused

Mr. Niyonzima for the State

Accused in Court.

Mr. Suubi Interpreter - English/Luganda

Court: The Indictment is read to the accused in English and translated to him in Luganda.

Accused States: I deny the charge. Plea Not Guilty entered.

Preliminary Hearing

Mr. Niyonzima

We have agreed to admit the evidence of Mityana Hospital.

- (1) Dr. Muchunguzi - PF.3
- (2) Twinamasiko - No. 19081 (D/CPL) Arresting Officer

PW1.

Dr. Muchunguzi of Mityana Hospital states:

That he examined the victim – Namaganda Christine on 8/6/2001. He found her to be nine years. There were signs of penetration. Her hymen was intact. There were signs of inflammation or her labia minora. There injuries consistent with force having been used to abuse sexually. There were no injuries on thighs, legs and elbows. The victim was capable of putting up some resistance. The injuries were two days old. There were no signs of Virginal Disease. No evidence of sperms in her vaginal canal. The information was entered on P.F.3 – which was signed and stamped.

The medical report on P.F 3 is received as Exhibit P1.

PW2. No. 11908 - D/CPL Twinamasiko of Kasaana Police Post states:

That on 27/6/2001 - at around 9.30 a.m – he was at Kasaana Police Post with a Woman P.C Kadondi. The LCI – defence of Gambwa Village – called Henry Samanya brought the suspect Mutebi Ronald on allegation that he had defiled Namaganda Christine on the 6/6/2001. The defence secretary with the parents of the kid, namely, Edward Bukenya, her father and Nakasi Erivanson as her mother. Twinamasiko rearrested the suspect and W/Constable Kadondi entered the report in the S/D of the station.

P.F.3 was issued to the victim – Namaganda and her mother advised to take her to Mityana Hospital. The mother returned the results of the examination to the police post.

On 8/6/2001 - Twinamasiko forwarded the suspect to Mityana Police Station.

Court: The admitted evidence is read over to the accused.

Signature of the accused _____

Signature of the defence Counsel _____

Signature of the State Attorney _____

Signature of the trial Judge _____

Selection and swearing in of the assessors. Accused asked if he has any objection against any of them to act as an assessor in his case.

Accused States: I have no objection.

Defence Counsel: I have no objection

State Attorney: I have no objection

Assessor: (i) Buyongo Aloysius Salongo 46 years

Mansion Kibale Village Mubende Municipal Council Catholic – Sworn

Assessors (2)

Mutwala Samuel - 57 years farmer Kyamukona village Bageza Sub County Mubende District Christian - Sworn

PW3 : Namaganda Christine - 13 years P.5
Kampiri Primary School Myanzi S/C Mubende District.

Voire Dire Proceedings

I am 13 years - I am in P.5. My father is Bukenya Edward. My mother is Nakasi Erivanson. We live at Gambwa Village. I have come to inform Court about that man. Mutebi Ronald. He found me in the Kitchen while cooking food. He lifted me to another kitchen. He removed my knickers and put his penis in my vagina.

I know the difference between telling lies and telling the truth I have come to tell court the truth.

I go to church on Sundays to Pray to God. God in heaven.

If I swear by the bible – I will have promised to tell the truth.

Court: On the basis of the questions put to the witness and her answers in reply thereto, I am satisfied the witness is possessed with sufficient intelligence to give evidence, understands the meaning of telling the truth and giving evidence on Oath. She will give her testimony on oath. I shall write a detailed ruling on these voire dire proceedings here after.

V.R. Kagaba

Judge

22/4/2004

PW3 - Christine Namaganda 13 years P.5 Kampiri Primary School Myanzi S/C
Mubende District
Church of Uganda – Sworn.

I am 13 years. I am in P5 in Kampuri Primary. My father is Bukenya Edward. My mother is Nakasi Erivansoni. I know the accused. He is Mutebi Ronald. He was living in Gwaffu village. It is along distance from Gambwa village. I moved through Gwaffu village on our to buy food from the farmers.

It was a Sunday – on the 6th 2001 – at 7.00 p.m (evening), I was in the kitchen cooking food. I was alone at the time. Mutebi lifted me from the kitchen and took me to another kitchen. It was also our kitchen. He removed my knickers. I was trying to struggle to get away from him. He threw down to the floor. He held my lips. I was lying on my back.

Accused was lying on my stomach. Accused was wearing a shirt and long trousers. He removed his trouser and shirt and hang them on a pole. He (Accused) then held on the floor. He put his penis in my vagina. He pushed it deep inside. He had set intercourse for about five minutes.

I felt pain in my vagina. After he had sexual intercourse with me I saw some fluid flowing from my vagina. It was whitish in colour. It was not my urine but Ronald's liquid.

I then went to my mother who was at the bar and reported to her that Ronald Mutebi had defiled me. My mother and myself went to Kakembo, the Chairman L.C I. Mutebi ran away. I, Kakembo and my mother went to Mutebi's home. Kakembo was at home. Kakembo arrested him and took Mutebi to his home. Next day Mutebi my mother and I were taken to Kasanda Police Post. My Statement was recorded. We were told to go to Mityana Hospital. I and my mother went there. A doctor examined me at Mityana Hospital. This was my first time to have sexual intercourse with a man. I had also reported to Nakate, before reporting to my mother. I am not related to Nakate. She is called Harriet Nakate. She lives at Gambwa. My home is forty metres from that of Harriet Nakate. She is a wife to Muwonge.

I met her as she was going to collect water from the borehole well. It was at night. There are many people at the well during the day.

Mr. Muguluma:

I am in P.5. My father and mother lived together. My father was at the bar with my mother. They left at 5.00 p.m . I was the only child of my parents. I have other brothers and sisters. They had gone to Namasengere.

I was alone at home. It was about 7.00 a.m. The bar where my mother and father were is about 35 metres from our residence where I was cooking. I was not afraid of being at home alone. The bar is near the residence.

I saw the attacker by means of light from the lamp-tadoba. The lit tadoba was in the kitchen where I was cooking.

There was no light in the kitchen when I was taken and raped. It was dark when the attacker pounced on me in the kitchen. I had even seen the accused before I used to see him in bars. I would see him in those bars when my mother sent me to buy alcohol from those bar.

I had known the accused for a long time before he rapped me. I used to meet him in bars. My mother's operated during the day.

Accused was a regular customer to my mother's bar. I had known the accused for about two months. I would meet him after some days. I always met him during day time. I and the accused had never talked to each other. I had already known the accused's name before he rapped me.

I used to hear people call him by the name of Mutebi. The accused held me from the back lifted me and took me to the other kitchen.

Accused came in the kitchen with his face facing me. I saw him by means of the tadoba light.

Accused did not speak to me before lifting me to the other kitchen. I was shouting as he carried me to the other kitchen – I was also crying. I was shouting for help – but he held my mouth.

Nakate responded to my rescue in response to my shouting and alarm. Nakate came when the sexual act was over and accused had run away.

I told Nakate that had defiled me and run away.

There was no light in the second kitchen – it had not been plastered. The light from the main kitchen did eliminate the kitchen when he took me.

There was no other person whether in the first kitchen – second kitchen where I was raped except me and Mutebi.

It was about 7.00 p.m but dark outside. It was not very dark. He did not speak to me before and during the attack. There was no other person at the scene - It is only the accused who was there – and who ravished me.

The accused was arrested as result of information I gave to my mother as to the identity of my attacker.

I made a statement to the police at Kasanda on the 7/6/2001. The statement was taken from in Luganda – by a Police Officer. He was not conversant with Luganda. He was speaking broken Luganda. The statement was read over to me. I put my name to the Statement.

It is true I told the police that I was at home – at the kitchen with my brother – Wamala – when accused came. I said we were putting Irish Potatoes in a basin. I said Mutebi lifted me and took me to our store next to the room where our goats and hens sleep. I said he removed my knickers and put his penis in my vagina. I felt pain. I told him to leave me but he refused.

It is true I said in the statement that Mutebi said he would give me shs 300/=. This is after we act. I told the police that Nakate, our neighbour – found Mutebi having sex with me. She asked him what he was doing. Then Mutebi released me and ran away. But after Nakate had told him that he was going to report me to my parents. I told the police that my mother took me to the nurse that night for examination.

I also told the police that Mutebi had in May – same year, taken me to the bush – under the Mabanda tree and had sex with me. And that I feared to tell my mother.

The contractions

1. That I was not alone at home but was with my brother Wamala.
2. I was taken to the store not a second kitchen
3. Nakate found Mutebi still having sex – Mutebi ran away and she said she was going to report him to your mother.
4. Mother took me to the nurse for examination.

I had forgotten what I told the police. The statement I gave to the police contains the correct information.

The accused pushed the whole of his penis into my vagina. I was feeling pain during the sexual intercourse with the accused.

I and my parents discussed this case before I came to court. I, father and another discussed this case.

I am giving evidence of the events as they occurred on the 6/6/2001 and not according to what my parents told me to state. My parents told me to tell court the story of my rape as it happened.

Mr. Muguluma

I pray to tender her statement as an exhibit.

Mr. Niyonzima: No objection

Court: The statement of PW3 - Namaganda is admitted as Exhibit D1.

PW4: Edward Bukenya - 54 years Farmer Gambwa village Myanzi sub county Kasanda county
Mubende District Church of Uganda - Sworn.

I am the biological father of Christine Namaganda. Her mother Nakasi Erivanson. Namaganda is about 13 years. She was born on 8/9/1992. I know the accused - he is Ronald Mutebi. He is a villagemate. There is a distance of ½ mile between my home and that of the accused.

On the 6/6/2001 - at about 8.00 p.m my wife came and told me that Namaganda Christine had been defiled by Ronald Mutebi.

I told my wife to collect old women to check Namaganda. She was among the women who checked the victim. She reported that Namaganda had been defiled. I told my wife to take Namaganda to a local clinic for checking. She returned and told me our daughter had indeed been defiled. Later I, my wife and the victim to the Chairman – LCI – Kakembo Peter. I reported my daughter had been defiled by Ronald Mutebi.

The Chairman mobilized his defence secretary to go and arrest the accused. The accused was brought to the house of Kakembo. I saw him. I was there.

Next day – we were forwarded to Kasaana Police Post. I went with my wife Namaganda, the Defence Secretary (dead) the accused. From Kasaana Police Post, we were forwarded to Mityana hospital. The doctor examined her and found her defiled. My wife told me that Namaganda had been defiled in a store adjacent to the kitchen. I did not talk to my daughter that night because my wife was in charge of the whole business. I know Robinah Nakate. She was not part of the women who examined the victim. I handed the job of examining the victim to the older women. Nakate has since deserted her husband's home and gone to a place I do not know.

Cross Examination - Mr. Muguluma

No questions.

Mr. Niyonzima

I have two witnesses to call.

I can avail them in.

Court: The hearing of this case will proceed on the 5/5/2004

V.R.Kagaba

Judge

22/4/2004

5/5/2004 Mr. Muguluma for Accused.

Mr. Niyonzima for the state.

Accused in Court.

Both Assessors in court.

Mr. Suubi - English/Luganda Interpreter.

Mr. Niyonzima

I have one witness to call. The mother of the victim.

PW5 - Erivansoni Nakasi - 36 years sells fish. Gambwa Nyanzi S/C Mubende District Church of a Sworn.

I know Christine Namaganda. She is my biological daughter. She was born on 8/9/1991. I know the accused. He is Ronald Mutebi. I and accused are village mates. Our homes are half a mile (1/2) apart. I used to sell alcohol but I gave up selling it 2002.

On 6/6/2001 - I had to sell my fish. I had left Christine Namaganda at home. A certain lady – Robinah Nakate, prepares my food at home. Robinah Nakate came for me where I was selling my fish at about 7.30 P.m. As a result of information I got from Nakate, I went home. I found Namaganda crying. She was at home I spoke to her. She told the Ronald Mutebi – lifted her and to her to the house. While in the house he had sexual intercourse with her without her consent.

I examined her vaginal area. I observed blood on the vaginal lips. He had ruptured her vagina. I saw also saw some male semen which was whitish and slippery in her vagina.

I touched the slippery liquid in her vagina – besides seeing it.

I took her to a local clinic. The nurse examined Namaganda – after which she advised us to take the kid to the chairman. The nurse's name is Nakityo.

I went to the Chairman – Peter Kakembo. The Chairman forwarded us to the defence secretary by the name of Samanya.

I and Samanya the defence. Secretary went to the accused's home.

Accused was at his home. We called his name at first he refused to reply. Samanya persuaded him (accused) to come out. Accused came out. It was then about 11.00 p.m.

Samanya arrested him and told him he had done something wrong. We took the accused to the Chairman Kakembo who gave us a letter to deliver to Kasanda Police Station.

Next day I and Samanya took the accused Kasanda Police Station. Accused was detained. I was given a letter by the police to take Namaganda to a doctor at Mityana Hospital.

I took Namaganda to Mityana Hospital. She was examined by a male doctor. I was present when she was examined. I do not know the name of the doctor.

The doctor gave me some documents to take to the police at Mityana. The documents were a report of the doctor and his findings on examining Namaganda. I know Bukenya Edward. He is my husband. I went with him to the chairman and later to the police.

I left Namaganda with my son Wamala when I went to sell fish. Wamala is not 14 years. He was then 11 years. Wamala is older than Namaganda.

Cross Examination Mr. Muguluma

I had two businesses on that day. I was selling beer inside the building and fish outside.

The house where I was selling fish and alcohol is 100 metres from my residential premises.

Mr. Muguluma:

My client has instructed me to inform court that he wants to change his plea.

Court: The indictment is read over to the accused in English and translated to him in Luganda.

Accused States: I admit the offence I agree I had sexual intercourse with her (Namaganda)

Plea Guilty entered.

Facts of the case given by Niyinzima - State Attorney

The victim Christine Namaganda, then 9 years old, was at home in the evening of 6/6/2001 at about 7.30 when the accused found her at her home and had sexual intercourse with her. The sexual act took place in a store at the victim's home. Robinah Nakate caught the victim and accused in the act. Nakate reported the sexual act between the accused and victim to Erivanson Nakasi the mother of the victim - Nakasi examined the victim's private parts and later took the victim the nurse called Nakityo. Nakityo confirmed the victim was defiled. The accused was arrested taken to Kasanda Police Post and later forwarded to Mityana Police Station.

The victim was examined on P.F. 3 on the 8/6/2001. The doctor found she was 9 years old. She had been penetrated. There was inflammation on the labia minora which were consistent with force having been used during sexual intercourse. The injuries were two days old. No sign of V.D or Sperm.

The report of the doctor on P.F.3 is admitted as Exhibit P1.

The accused was not examined on P.F.24. But the police record indicate he was 30 years old in 2001.

Court: The facts are read over and translated to the accused in Luganda.

Accused replies: The facts as narrated are what exactly happened. They are true and correct.

Court: The accused is convicted on his own plea of guilty for the offence of defilement contrary to section 129 (1) of the Penal Code Act.

Allocutus

Mr. Niyonzima

This offence is grave and serious in society. The maximum sentence for this offence is death. Court can, however give a lesser sentence. I pray for a deterrent sentence considering the fact of this case. The aggravating circumstances are first and foremost the age difference between the victim of 9 years and the accused who was 30 years.

The victim was found at her home and was forced into the sexual act by the accused.

Mr. Muguluma:

The accused has pleaded guilty thereby saving the court's time and money. He is sorry for what he did. The accused says he was acting under the influence of Enguli. Which he had not been used to drinking. After being seen by Nakate he went home. He did not run away. Accused came

out voluntarily and surrendered himself to being arrested when confronted by the mother of the victim and the defence secretary.

The accused/convict is a first offender. He has been on remand for nearly three years which he prays should be taken into account.

The accused has a wife and five children. The eldest is 12 years, the youngest is four years. His wife is unemployed and subsists by cultivator. His father, who was looking after his family has since died. His children are at home. Accused should be treated with mercy. He promises never to repeat the mistake.

Accused/Convict States

I will never repeat what I did. I have become a scandal in society.

Sentence and Reasons for the Same.

This is yet another case of defilement which has dominated this session. The offence of defilement is so frequent and rampant that the public and society is crying foul about it. The death sentence as the maximum sentence for it has not achieved much to deter people from committing the offence. Courts must not give up the fight and crusade of combating the scourge by awarding stiff and deterrent sentences to those convicted of this offence. Such stiff sentences could act as deterrent mechanism against those who are tempted to commit the same crime.

This case presents ugly circumstances where the girl (victim) is raped at her home and her reproductive system shattered at that tender age of nine years. She was innocent or for all purposes and intents. She has been exposed to this unfortunate anguish, mental and physical torture let alone physical harm to her body and mind. Society may even condemn her for an act to which she did not voluntarily contribute. The experience she went through may remain a permanent scar on her life.

The fear and chances being infected with any of the sexually transmitted diseases including the deadly AIDS further aggravates the offence of defilement. The symptoms of such disease may

shows now or several years after the sexual assault. If it happens, why should the victim suffer this painful ordeal to her life?

Lastly, the convict should have exercised better judgment given his married and family status. The age of nine of the victim falls within the age group of his own children. He had a wife and children whose dignity and respect he had to uphold and respect. I do not accept the plea for being drunk. Drunkenness is not a licence for committing crimes. A drinker must apply self control even when he has consumed alcohol. In mitigation, however, it has been submitted on his behalf that he is a first offender, has pleaded guilty thereby saving further loss of court's time and money.

He has been on remand for two years and 11 months to date. I will take into account his period he has been on remand as the constitution requires. He (accused) says he is sorry for what he did and promises not to repeat in. He is a young man of thirty three years who is capable of living a useful life from now on.

After considering both the aggravating and mitigating circumstances of the case, I feel the accused/convict should not be treated with kind gloves. He committed a very serious offence. He should have directed his sexual appetite to his wife rather than to the child of 9 years. Anything less than a custodial sentence would not meet the justice of the case. Justice of this case require to look at the antecedents of the accused and the harm done to the victim and society. I would have sentenced the convict to between ten and fifteen years imprisonment if he had not been on remand for three years, had not pleaded guilty and was not a first offender. I will however exercise leniency in his favour and sentence him a lesser harsh punishment.

Sentence:

The convict is sentenced to six (6) years imprisonment. This period does not include the period he has been on remand.

V.R. Kagaba

Judge

5/5/2004

Right of Appeal

The convict is explained his right of appeal within 14 days (fourteen days) from the date hereof.

V. R. Kagaba

Judge

5/5/2005