THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL SESSION CASE NO. 0458 OF 2006

UGANDA::PROSECUTOR

VERSUS

1. **SHEIKH ABDU SAID NYANZI MASUMBUKO**
2. **LUBEGA JOEL**
3. **SEKAMATE GEOFFREY:::ACCUSED**

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

JUDGMENT

The accused persons, Abdu Said Nyanzi Masumbuko (A1), Lubega Joel (A2) and Sekamate Geoffrey (A3) were indicted for rape contrary to sections 123 and 124 of the Penal Code Act. It was stated in the indictment that on the 29th day of June 2006, Abdu Said Nyanzi Masumbuko, Lubega Joel and Sekamate Geoffrey had unlawful carnal knowledge of Nansamba Zaitune without her consent. The accused persons pleaded not guilty to the indictment and the prosecution called 4 witnesses to prove its case. All accused persons gave sworn evidence in their defence.

The prosecution case was that on the 29/06/06 Nansamba Zaitune, the complainant and her husband Muwambi Francis (PW2) went to A1's shrine to seek treatment for the complainant. A1 was a traditional doctor who had a shrine at his home in Buligobe, Nama sub-county in Mukono District. A2 and A3 were employees and/or relatives of A1.

At the shrine the complainant and her husband were given some noxious substances that caused them to feel drowsy and weak. The accused persons then forced the complainant into sexual intercourse and assaulted and locked up her husband in the shrine. It was alleged that after all three accused persons and one Walakira (still at large) had sexual intercourse with the complainant, they carried her to a swamp that was about 1 ½ kms from A1's home and left her for dead.

When Muwambi (PW2) was released from the shrine, he demanded for his wife but A1 informed him that she had disappeared. A1 assured him that she would soon return. Further evidence was that a search was mounted for the complainant and she was not found until about two weeks after the ordeal. During the search, PW2 found her blouse and under wear hidden in the shrine and came to a conclusion that she must have been killed at the shrine. He reported to police that his wife had gone missing and the accused persons were arrested and charged with the offence of abduction.

On the 17/08/06 (more then two weeks after the incident) the complainant was finally discovered in a swamp by one Kato, a herdsman from the next village. Kato took the complainant to the LC1 Chairman (PW3) who summoned police. The complainant was taken to the police post at Namataba and later to Lugazi Hospital where a medical examination was done. She was hospitalised for three days. The accused persons who had first been charged with abduction were later indicted for rape.

The case for defence was briefly that all the accused were not at the shrine on the night or at the time that the complainant claims she was raped. They all set up alibis. A2 and A3 claimed they were not even employees of A1 in his practice as a native doctor. A1 claimed they were his employees but they assisted him with other businesses and not with his practice as a traditional doctor. A1 claimed that the complainant disappeared because she was mentally ill. He alleged that he had previously treated her for a mental illness which her relatives complained caused her to leave home and disappear.

In all criminal cases an accused person is presumed innocent until he is proved or pleads guilty. This is provided for by Article 28 (3) (a) of the Constitution of the Republic of Uganda. The burden of proof rests upon the prosecution, throughout the trial, to prove all ingredients of the charge. The burden does not shift to the accused except in a few statutory cases. This is the long established position of the law since the decision in **Woolmington v. DPP (1935) AC 462** which has been affirmed by courts in Uganda in several cases including **Oketcho Richard v. Uganda, Supreme Court Criminal Appeal No. 26 of 1995** (Supreme Court of Uganda Certified Criminal Judgments 1996 – 2000 at 148). The accused is also to be convicted on the strength of the prosecution case and not on the weakness of his defence (**Israel Epuku s/o Achietu v. R [1934] 1 E.A.C.A. 166**).

In order to sustain the indictment against the accused persons, the prosecution must prove all the three ingredients that constitute the offence of rape beyond reasonable doubt that:

i. Sexual intercourse occurred with the complainant;
ii. Sexual intercourse was without the consent of the complainant;
iii. The accused persons forced the complainant into sexual intercourse.

In order to prove the first ingredient, the prosecution relied on the testimony of the victim herself who testified as PW1. Her evidence was that on the 29/06/06 when she and her husband visited A1's shrine at Buligobe, they were given drugs which made them feel drowsy and weak. The complainant was dragged out of the shrine, taken to the back of it where she had sexual intercourse with A1, A2, A3 and Walakira, in that order. She testified that A1 took a long time which she thought was about 30 minutes while the others each took a shorter time. The prosecution also produced a medical examination report (Exh. P1) that showed that when she was examined on the 17/07/06 she had injuries that were classified as grievous harm on the chest, thighs, and in the vaginal parts. The defence did not contest the first ingredient and I find that the prosecution proved it beyond reasonable doubt.

As to whether the sexual intercourse was without consent, the prosecution again relied on the evidence of the complainant who testified that A1 gave her and her husband drugs which made both of them get drowsy. Thereafter she was forcefully dragged out of the shrine and carried to the back of it in her drowsy state. A1 removed her knickers and blouse, Walakira gagged her mouth, A2 held her hands while A3 held her legs as A1 had sexual intercourse with her. Thereafter, A2, then A3, followed by Walakira also had sexual intercourse with her. The complainant testified that in the process she felt a lot of pain and after the act she felt pain in her private parts, her arms and legs and could not walk. She testified that after the act she bled from her private parts. The defence did not contest the second ingredient and I find that the prosecution proved lack of consent of the complainant beyond reasonable doubt.

The only ingredient of the indictment that was strenuously challenged by the defence was the participation of the accused persons in the rape. The accused persons all denied having been at the scene of the crime at the time the complainant alleges she was raped. Mr. Shaban Muziransa for the accused persons contended that the incident took place at night and the prosecution relied on the evidence of a single identifying witness –the complainant. It was further contended that the complainant was under the influence of the drugs that had been given to her and that her senses, sight and thinking had been compromised and she could not properly identify the accused persons when the only source of light was moonlight. Mr Muziransa added that notwithstanding the proximity of the assailants and the victim during the act of sexual intercourse, she could have made a mistake about the identity of her assailants.

The law applicable to identifications was discussed in **Abudalla Nabulere and others v Uganda, [1979] HCB at 77,** where it was stated that:

> *"A conviction based solely on visual identification evidence invariably causes a degree of uneasiness because such evidence can give rise to*

miscarriages of justice. There is always the possibility that a witness though honest may be mistaken. For this reason, the courts have over the years evolved rules of practice to minimise the danger that innocent people may be wrongly convicted."

The rules that have evolved to guide courts in dealing with such evidence are briefly that: The testimony of a single witness regarding identification must be tested with the greatest care; The need for caution is even greater when it is known that the conditions favouring a correct identification were difficult, and where the conditions were difficult, what is needed before convicting is 'other evidence' pointing to the guilt. Otherwise, subject to well-known exceptions, it is lawful to convict on the identification of a single witness so long as the judge adverts to the danger of basing a conviction on such evidence alone (**Roria v R [1967] EA 583**).

I do agree that the conditions in which the complainant and PW2 claim to have identified the accused persons were difficult. The circumstances in which the identification took place have therefore been examined with the greatest care using the time honoured rules established by the courts.

In order to establish whether a witness properly identified the accused in difficult circumstances court must examine the presence and nature of light; whether the accused person was known to the witness before the incident or not; the time and the opportunity the witness had to see the accused; and the distance between them (**Roria v R [1967] EA 583, Abudalla Nabulere and others v Uganda, [1979] HCB at 77,)**.

In to the instant case, the prosecution relied on the evidence of the complainant and PW2 to prove the participation of the accused persons. The complainant testified that when she and her husband (PW2) arrived at A1's home on the afternoon of the 29/06/06, A1 was not present. However, A3 was present and he welcomed them and led them into the shrine. PW2 called A1 at about 5.00 p.m. and told him that he and the complainant were

waiting for him at the shrine. A1 responded and about 30 minutes later he returned home. A1 ordered for and administered the treatment i.e. the various drugs which made the complainant and PW2 drowsy shortly after his return. The complainant testified that before A1 returned to give them treatment, she saw A2 and A3 in the shrine with A1's wives. It was also the testimony of both PW2and the complainant that they had visited A1's shrine on three occasions prior to the 29/06/06 and that A2 and A3 were at the shrine on all the three occasions. Their visit on the 29/06/06 was the fourth visit. These facts were not denied by A1. He admitted that the complainant and her husband had visited his shrine on four occasions. I am satisfied by this evidence that the complainant and PW2 had become familiar enough with the three accused persons before the incident occurred to enable them to identify them.

Regarding the contention that the complainant and PW2 were under the influence of drugs that compromised their senses, the complainant was cross-examined on her degree of consciousness. She maintained that after she took the 4 seeds given her by A1 she felt drowsy but she did not fall asleep. The complainant testified that she had gotten up to go outside for fresh air when A1's wives pushed her back into the shrine where she fell, face up. Her testimony was not shaken in cross-examination and she maintained that she was conscious when the accused persons dragged her out of the shrine and took her outside. It is clear from this that though she felt dizzy and weak she was fully conscious and could walk even after she chewed the seeds. The fact that she felt pain when she was manhandled and raped further confirms her consciousness at the material time. I therefore find that though the complainant's senses were compromised, she was still able to see and feel enough to identify her assailants as they raped her.

Regarding the presence of light or lack of it, there is no doubt that the events started during the day. According to PW2, the couple arrived at the shrine at 5.00 p.m. A1 was summoned and came to the shrine at about 5.30 p.m. The couple were given seeds which they chewed and became drowsy at 6.00 p.m. PW2 approximated that he was locked in the shrine by A3 between 7.00 p.m. and 8.00 p.m. but there was moonlight outside at the

time. The complainant testified that when it started growing dark, a candle was lit in the shrine. She testified that she saw the people who pushed her into the shrine as she tried to get out and get fresh air. She was certain she saw A1's two wives. She was also able to see A2, A3 and Walakira as they pulled her out of the shrine and dragged her to the back of it, where A1 was waiting.

As to whether the complainant was able to identify her assailants or not can further be deduced from the immediate circumstances in which she was raped. The complainant named each of the participants and was able to tell court the order in which they raped her. She testified that A1 pulled off her knickers and her blouse after which Walakira gagged her mouth. A2 held her hands while A3 held her legs. A1 then raped her. After that A2, A3 and then Walakira raped her, in that order. The complainant maintained this order even when she was cross-examined. She did not break down or change the order in which the events unfolded as she was dragged out of the hut and taken to the back of the shrine and raped. The consistency of the complainant in her testimony indicates that she had identified the persons earlier and was able to see each of them with the limited lighting that there was even after it grew dark. Additional weight is given to this by fact that when persons have sexual intercourse they are close to each other.

The accused persons did not only have sexual intercourse with the complainant but thereafter, they carried her away from the scene of the crime. The process of identifying the assailants therefore went on even after the rape had occurred. The complainant testified that after she was raped, A1's wives rejoined the group. The three accused persons and Walakira lifted the complainant and carried her to a forest/swamp. In order to light the way, one of A1's wives carried a torch. She also heard the three accused persons and A1's wives talk as they carried her away to the swamp. The complainant had been in the company of A1, A2, A3 and Walakira, as well as A1's wives for about 4 hours by the time she was carried to the swamp.

According to the testimony of Detective Constable Ogwang William (PW4) who drew the sketch plan (Exh. P2), the swamp was 1 ½ km. away from the shrine. The complainant testified that as they carried her to the swamp, the accused persons had to put her down three times, so that they could rest, before they finally got to the swamp. She also stated that she could see and hear what was happening around her and at one point a torch was flashed into her face by one of A1's wives who declared that she was dead. That though she had protested as they began the journey to the swamp, she stopped protesting because she became afraid that if she did they could kill her. I find that though the conditions of identification were difficult, the complainant had ample time and opportunity and was able to correctly identify her assailants. It is clear from her testimony that she was able to see and hear that the persons who carried her to the swamp included A1, A2, A3, Walakira and A1's wives. I therefore have no doubt that the complainant had ample time and opportunity to identify A1, A2 and A3 as persons who participated in the offence.

On the basis of the testimonies above, I am inclined to agree with the prosecution submission. These acts of the accused persons lend strong credence to the evidence of PW1 and PW2 that the accused persons participated in the rape of the complainant and then tried to cover their trucks by dumping her in a swamp for dead. But before I conclude, several issues were raised by counsel for the accused persons about credibility of the complainant's story and the quality of the evidence adduced by the prosecution. I shall deal with those concerns before I conclude.

Mr. Muziransa for the accused contended that because the conditions in which the accused persons were difficult, there was need for independent corroboration of the evidence of the complainant. He further asserted that the testimony of PW2 was not corroboration enough because PW2 was also under the influence of the same drugs that were given to the complainant at the shrine. His thinking faculties and senses may have also been impaired leading to a wrong identification of the assailants. In addition to that, PW2 was the husband of the victim and may have given evidence with the intention of securing a conviction at all costs.

These observations call for further examination of the evidence of PW2. PW2 testified that a short while after they chewed the 4 seeds that A1 gave them, he began to feel drowsy and weak. He also realised that his wife had become very weak. He testified that his wife was proposing to go home at that point, and then he saw A1's wives who came and pulled out of the shrine. He saw the two women hold her by both hands and pull her out. He protested and asked where they were taking his wife but they pulled the door of the shrine and locked him in. He tried to hit the door but it was futile.

When PW2 was cross-examined about the effect of the drugs on him, he told court that after he chewed the seeds he became weak and could not stand up but he remained conscious. He narrated what happened in the same manner that the complainant narrated it. It is clear from his testimony that PW2 was not so influenced by the drugs as not to see what was happening.

As to whether the testimony of PW2 can be accepted to corroborate that of the complainant in the circumstances of a case of rape, I have found no rule of law that prohibits this court from admitting the evidence of a spouse to corroborate that of the other spouse where they have been victims of crimes that occurred in the same transaction. S. 120 (a) of the Evidence Act provides that in criminal proceedings, the wife or husband of the accused person shall be a competent (but not compellable) witness for the prosecution without the consent of the accused person. S. 120 (b) provides that the wife or husband of the accused person shall be a competent and compellable witness for the defence whether the accused person is charged alone or jointly with another person. These rules do not deal with the situation at hand. The evidence of PW2 can therefore be used to corroborate that of the complainant though the two were husband and wife.

Mr. Muziransa also submitted that the evidence of PW2 was suspect and could not be relied upon because after the incident occurred, he failed to report the disappearance of his wife for three days. Even after he found the knickers and blouse in the shrine he did

not report immediately. It was submitted that this behaviour cast doubt on PW2's evidence. Close scrutiny of Pw2's evidence shows that when A3 opened the door of the shrine for him the morning after the incident, PW2 asked for his wife. A1 told him that she had gone home. A1 gave him back the motor cycle that they had used to come to the shrine and PW2 went home. He did not find his wife at home. PW2 returned to the shrine and A1 told him that his wife had disappeared. He stayed around A1's home in the shrine waiting to see if his wife would return. It was then he saw the knickers and blouse in the shrine which led him to believe that his wife might have been killed.

However, A1 kept reassuring PW2 that his wife would be found. There were also efforts going on to try and find her. According to PW3 the day after the incident, A1 went to him to report the disappearance of a patient (the complainant) from his shrine. A1, A2 and A3 testified that they were all involved in the search for the complainant for several days after she was alleged to have disappeared from the shrine. A1 in his own testimony confirmed that he reported the disappearance of the patient to the LC1 Chairman and also put up announcements on radio.

PW3 testified that after one day of searching for her, the complainant's relatives went to him and reported that their relative had been killed and the body was at A1's shrine. PW3 and others proceeded to the shrine and mounted a search but did not find the body. PW3 further testified that the relatives went back to him the following day and told him that their relative had been killed and her body had been taken up on a hill. PW3 got a drum and sounded an alarm and people gathered to search for the complainant but in vain.

In cross-examination PW2 was challenged about his failure to report the disappearance of his wife to police and told that he could have made up the whole story. His response was that the allegation could not be true. And according to PW2, during the course of the search, A1 confirmed to one Mamma Phina that the complainant would be found because there was a lot of pressure put to bear on A1 to find her. PW2 had the reassurance that his wife would be found. Besides other efforts were being made by A1 and the LC1

Chairman to look for the complainant in Buligobe and elsewhere. The circumstance detailed in PW2's testimony show that PW2's conduct was not unnatural. They confirm that the evidence of PW2 was credible and could be used to corroborate that of the complainant.

There was also concern raised by counsel for the accused persons about the gaps in evidence adduced by the prosecution. The main concerns were that the prosecution did not produce the complainant's knickers and blouse that PW2 alleged he found in the shrine; neither did they call Kato (Omulalo) who recovered the victim from the swamp. Counsel for the accused also submitted that the prosecution did not provide any plausible reason why the knickers and blouse were not produced in court.

The duty to keep and produce exhibits in criminal cases lies with the police. The prosecution cannot be penalised for the failure of police to keep and produce the required exhibits at the time of trial. This gap in the prosecution evidence did not in anyway detract from the evidence that was given by the complainant about the events that occurred on the 29/06/06. The gap in evidence can therefore be ignored without any prejudice to the accused persons.

Regarding the failure to summon Kato *(omulalo)* who recovered the victim from the swamp, Mr. Muziransa for the accused submitted that the evidence of Sendawula (PW3) and the investigating officer (PW4) was hearsay. The two were not at the swamp when the complainant was recovered and were only told about what happened by Kato. Further that the complainant did not herself take them to the swamp.

The prosecution did not summon Kato because according to PW3, he had migrated from the next village to Buligobe where he used to stay. PW3 and PW4 are both witnesses who testified about the circumstances and the place where the complainant was found. According to PW3, sometime in July 2007 a man called Kato went to his home with a woman on a bicycle. He informed PW3 that the woman he carried on the bike was the

one who had disappeared from A1's shrine. The woman was very weak and could not explain how she got to be in the swamp. She had scratches all over her body and was only wearing a skirt. PW3's wife gave her a blouse to wear and PW3 summoned the police who came and took her to Namataba Police Post.

PW4 was the investigating officer. He testified that when they received the call from PW3 they went to his home where they found PW3, the complainant and Kato present. The victim was taken to Namataba Police Post. The prosecution produced photographs for identification by PW3 that were taken at the police post immediately after. PW3 ably identified the scene and the complainant in the photographs.

It was the evidence of, PW4 that after a few days he went to the scene where the complainant was found with PW3 and the herdsman, Kato who recovered her from the swamp. PW4 testified that he drew a sketch plan which was admitted in evidence as Exh. P2. He described the place which Kato identified to him as one where he found the victim (located on the sketch plan as point 2). PW4 stated that there were 2 places in the swamp that look like someone had been sleeping in them. The grass was dry and flattened in those spots. He also described the nature and height of the papyrus in the swamp. PW4'S evidence cannot be said to have been hearsay. Kato took him to the place where he recovered the victim and showed him exactly where he found her. He therefore testified about what he saw at the scene and his impressions about what he saw. All this is circumstantial evidence that strengthens the testimony of the complainant.

As to whether the prosecution was under the obligation to summon all witnesses that participated in the recovery of the complainant, the law on the number and quality of witnesses is first of all that the prosecution has the discretion to summon witnesses and they can thus summon any witnesses that they chose. S.133 of the Evidence Act provides that subject to the provisions of any other law in force, no particular number of witnesses shall in any case be required for the proof of any fact. The prosecution were thus under no obligation to call Kato. And given that they experienced difficulties in finding him,

they had no other option but to bring other witnesses who could testify about other circumstantial evidence relating to the recovery of the complainant.

Counsel for the accused persons was also sceptical that the complainant could have stayed in the swamp for two weeks without being discovered or getting out of the swamp. He expressed doubt that though she was found only 50 meters from the edge of the swamp, she had all along failed to attract attention of any person to rescue her. The evidence on record in this regard is that when she was left in the swamp, the complainant was first afraid to make any noise because she had been left for dead. Later on she screamed and wailed but no one came to her rescue. When she narrated the events under which she was found she stated:

> *"On one occasion, there were many monkeys surrounding me, a crocodile had caught a monkey. The monkeys chased the crocodile. I made a very loud noise and my voice opened (returned). I had wounds in my throat. Because I had not been eating I had wounds in my throat."*

There is no doubt that the victim could be heard from outside the swamp if she made noise loud enough. However, her evidence shows that she got incapacitated after making alarms for help and failing to get rescued – she lost her voice. It is not inconceivable that the victim was not rescued immediately. PW4 testified that the distance between the shrine and the swamp was 1 ½ km. The distance between the swamp and PW3's home was 2 km. There were no houses/homes between A1's shrine and the swamp – this is evident from the sketch plan (Exh P2). It would then appear that though the ground outside the swamp was grazing ground, it took the complainant sometime to be discovered because she could not walk out of the swamp. In her testimony she stated that Kato who rescued her carried her out of the swamp. I am inclined to believe that she could not attract attention because for sometime she had lost her voice.

As to whether she could have survived in the swamp without nourishment, the complainant testified that she survived on water which she got out of a hole she dug in

the ground. This is not unbelievable considering that the complainant was in a swamp where she testified she dug a hole in the ground and had access to water to drink. According to an article by Alan D. Lieberson, a medical doctor and lawyer ***(How long can a person survive without food; Scientific American, November 8, 2004)*** the period of survival without food or water depends on factors such as body weight, genetic variation, other health considerations and, most importantly, the presence or absence of dehydration. At the age of 74 and already slight of build, Mahatma Gandhi, the famous non-violent campaigner for India's independence, survived 21 days of total starvation while only allowing himself sips of water.

And according to Lieberson (supra) much more is known about survival without any sustenance (neither food nor hydration). The situation comes up frequently with terminally ill patients for whom artificial maintenance of life is no longer desired, and individuals who, although not terminally ill, no longer want to live and decide to refuse food and hydration to end their lives. A well-known example of the former is Nancy Cruzan, the subject of the famous 1990 U.S. Supreme Court decision in **Cruzan v Director, Missouri Department of Health, (88-1503), 497 U.S. 261 (1990),** Cruzan was in a persistent vegetative state (PVS) for many years until the Supreme Court of the United States ordered that she be removed from her life support systems. She died 12 days after artificial sustenance was discontinued. The complainant's survival in the swamp, where she had access to water to drink, cannot therefore be explained away as a myth.

The accused persons each put up a separate defence of alibi. A1 raised an alibi claiming that at that time the complainant alleges she was raped he was far away in Entebbe and only returned home at 3.00 a.m. in the morning; That when he got home the complainant had already disappeared and he only joined the search that was already going on. A1 further testified that he reported the complainant's disappearance to the LC1. He confirmed that he put announcements on radio to try and find the complainant. He

asserted that the complainant disappeared because she was in the habit of disappearing; that she had demons in her head for which he had treated her before the incident.

A1 claimed that he continued with the search for the victim even after he was arrested by giving money to people who eventually found the victim. He alleged that she was found with a woman called Brown in the next village and that Brown was the aunt of the complainant, a story that was not repeated by any of the other accused persons. He admitted that A2 was his son and resided at his home but denied that he helped him in his practice as a native doctor. A1 claimed he had no workers in his shrine and he did all the work alone. However, PW3 testified that A2 and A3 where A1's workers and they all lived at his home. And according to PW4, on the morning that the accused persons were arrested at about 6.00 a.m. they were all found at A1's home.

A2's defence was that he was the son (nephew) to A1 and he did his own business in Namawojolo – trading in chicken and using A1's home as a base. A2 claimed he returned home on the night of the 29/06/08 and just went to bed. He claimed he was woken up in the morning by A1's wives and told that a woman (patient) had disappeared and he was asked to join the search. He claimed he had never seen the victim because he was always at work. He added that they continued to search for the victim for two days – this is in spite of the fact that he claimed he had never seen the complainant before.

A3 agreed that he was at A1's home on the 29/06/06 and informed court that the complainant and her husband came to the shrine for treatment at 3.00 p.m. Further that because A1 was not at home, PW2 asked him for A1's telephone number. He gave him the number and left for his own place in Nakabago Mukono at 3.15 p.m. A3 also claimed to have been away from the shrine till 7.30 the following morning when he returned and found that the complainant had disappeared. He too claimed to have joined the search at that time. However, in his evidence A1 informed court that on the fateful day, he received a call from A3 at about 6.30 p.m. to tell him that there were patients at the shrine. A3 therefore did not leave the shrine at 3.15 p.m. as he alleged in his evidence.

I am convinced that each of the accused persons was put squarely at the scene of the crime by both PW1 and PW2. The accused persons made up the defences for purposes of the trial. This court considers that most of what they told court was lies. On the basis of the evidence of the complainant and PW2, I find that the prosecution proved the participation of all the accused persons in the rape of the victim beyond reasonable doubt.

In the event that any doubt remains about the guilt of the accused persons, it was submitted for the state that carrying the complainant away from the scene of the crime and dumping her in a swamp that was 1 ½ km. away was conduct from which the guilt of the accused persons could be inferred. In her testimony the complainant stated that as they carried her to the swamp, she heard A1 tell the others not to leave her at a certain point; he instructed them to carry her further into the swamp so that they would not be caught (suspected) in relation to what they had done to her. The evidence of the complainant ties in with A1's assurances to the police during the search for the complainant. PW3 testified that when they interrogated A1 about the disappearance of the complainant, A1 told him that the drug that they gave her always made people disappear but she would eventually come back. The act of carrying her away and dumping her in the swamp was supposed to make the situation look like she had wandered away from the shrine and gone to the swamp on her own because of the drugs that the accused had administered.

The assessors in this case gave a joint opinion and the advised me to find the accused persons guilty and convict them as charged. I agree with them. The prosecution having proved all the three ingredients of the offence, the accused persons, Sheik Said Nyanzi Masumbuko, Lubega Joel and Sekamate Geoffrey are hereby convicted of rape as indicted.

Irene Mulyagonja Kakooza

Judge

28/08/08