

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL CASE NO CSC 74/2010
CRB 812 of 2009

UGANDA :::PROSECUTOR

VERSUS

HAKIZA :::ACCUSED

BEFORE HON. MR. JUSTICE J.W. KWESIGA JUDGMENT

The Accused, HAKIZA is indicted for Aggravated Defilement contrary to Section 129 (3) and 4 (a) of the Penal Code Act. It is stated in the particulars of the offence that the Accused on 4th July, 2009 at Nyabaremura village, Rubuguri Parish, Kirundo sub-county Kisoro District unlawfully performed a sexual Act on Kiconco Catherine, a girl aged 12 years.

The Accused person denied participation and the State proceeded to prove the charges against the Accused person. The movement the Accused person pleaded not guilty the Burden of proof wholly fell on the shoulders of the prosecution to prove every element of the offence and the standard of proof is proof beyond reasonable doubt. These principles of Law were settled in the decisions in **WOOLIMINGTON VS DPP (1935) AC 462** and **MILLER VS MINISTER OF PENSIONS (1947) 2 ALL ER 372.**

For the State to prove Aggravated Defilement, the evidence adduced by the prosecution must prove the following essential elements of the offence:-

- (a) The victim is a girl aged below 14 years.
- (b) That a sexual Act was performed on her.
- (c) That the Accused person is the culprit or he participated in commission of the offence. The moment any one of the above elements is not proved the prosecution case would fail.

From the available evidence (See Prosecution exhibit P1) The victim was examined on 4th July, 2009 at Rubuguri Health Centre by Mugisha Sison (PW 1) a Senior Clinical Officer. He found the victim bleeding from her private parts. She had a freshly ruptured hymen and other fresh injuries. He established that she was 12 years at the time of the offence. He concluded that the injuries were consistent with forceful sexual intercourse that occurred on the 4th day of July 2009.

PW 4 Kiconco Catheline who gave evidence on oath court that she is 13 years old at the time of testimony. She knew the Accused as a worker for one Karasha. That the Accused attached her in the valley where he found her, put her down, tore her underwear and raped her. She started bleeding from the private parts. She identified the Accused as the man who worked for Karasha. She used to see him guarding Karasha's gardens as she

went to school. She was later told he is called HAKIZA.

PW 3 TUMUSIIME GIRADINA confirmed the girl was below 14 years, she was born on 1st December, 1998 which would make her 11 years in 2009 when she was defiled.

PW 2 TUMWESIGYIRE STIDIA corroborated the victim's evidence that she found the victim and another young girl on the roadway crying at about 2:00 p.m and when she inquired, the victim told her Karasha's worker had raped her, she had blood on her clothes. PW 2 took the victim to Local Council Chairman (CL I) under cross examination she confirmed she knew Karasha had only one worker. In Defence, HAKIZA confirmed that he worked for Karasha, guarding his gardens. This confirmed the evidence of identification by description given by the victim. He confirmed that he saw the girls at 2:00 p.m while crying but that he did not defile any one of them. I am satisfied that from the evidence given by the victim, corroborated by the medical evidence and the observation of PW 2 and PW 3 who was subjected to sexual intercourse. Her appearance as she testified considered together with guardian's (PW 3)evidence I have no doubt that the prosecution proved that she was below 14 years when she was defiled.

Participation of the Accused person depends on the credibility of evidence of identification. The victim did not know the Accused by name before this incident.

However she ably described him as the man she always saw on her way to school, she always found him guarding Karasha's garden. I find her source of knowledge, the children she moved with who informed her that he is called HAKIZA not reliable. There is no evidence as how these children came to know the name of HAKIZA. On the other hand the Accused person accepted he is called HAKIZA and that he worked for Karasha to guard gardens against birds. He also accepted he met the victim and another girl which supports the victim's evidence that she was not mistaken as to the identity of the person she met. The evidence of Tumwesigyire (PW 2) is that she met the victim crying at about 2:00 p.m. This was in broad day light. The victim was crying, she had blood stains on her dress and she immediately reported to the witness (PW 2) that she had been rapes by the Accused person.

I have considered the fact that the victim is a child of tender age, whose evidence requires corroboration by independent evidence. The fact that PW 2 and PW 1 confirmed the injuries on the very day of alleged offence fresh and still bleeding in the private parts corroborates the sexual Act that was performed on her. The evidence of the Accused person, PW 2 and the circumstantial evidence of adequate light, her previous knowledge of the assailant when considered together leave no doubt that the victim had property identified the culprit. I am satisfied that the prosecution has proved beyond reasonable

doubt that:-

On 4th July 2009 Kiconco Catherine was less than 14 years old, she was a victim of an unlawful sexual act which was performed on her by HAKIZA. I agree with the advise of the Assessors to convict the Accuse. The Accused person is hereby convicted as charged.

J.W. KWESIGA
JUDGE 1-8-
2011

SENTENCING

STATE:

We do not have any Criminal record. Let him be treated as first offender. He was convicted with a serious offence. He has been on Remand since 17th July, 2009 making it two years and one month. He is convicted for a rampt offence.

He defiled a girl aged 12 years. We are not praying for maximum sentence but along custodial sentence.

DEFENCE:

The convict is a young man of 20 years. He is remorseful and sorry for what he did. He has been on remand for two years. He is a complete orphan who came to Uganda for employment. He has other orphans to look after. Since there is no Criminal record we pray for a lenient sentence.

COURT:

SENTENCE AND REASONS FOR IT

I have listened to the submissions made for and against the convict I have considered the fact that he has been on remand for 2 years and one month. He is a young man capable of reforming, he must be helped by keeping him in custody where he will be reformed and given opportunity to reflect over his criminal behaviour. In my view 7 (seven) years will be appropriate. The convict is sentenced to **7 years imprisonment.**

**J.W . KWESIGA
JUDGE 16-8-
2011**

Read in the presence of :-

Mr. Arinaitwe Rajab Resident State Attorney for State. Mr. Bwagi for

Accused absent.

Mr. Milton Turyamubona Court-Clerk.