**THE REPUBLIC UGANDA**

**IN THE HIGH COURT OF UGANDA AT NAKAWA SITTING AT ENTEBBE**

**SESSION CASE NO. 319 OF 2012**

**CRIMINAL CASE NO. 025 OF 2012**

**CRB. NO.538 OF 2012**

**UGANDA ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::**

**::::::::::::PROSECUTOR**

**VERSUS**

**BALIKAMANYA PATRICK::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::**
**ACCUSED**

**Before: HON JUSTICE WILSON MUSENE MASALU**

# JUDGMENT

The Accused, Balikamanya Patrick, was indicted for Rape C/S 123 & 124 of the Penal Code Act.

The particulars were that:

The accused on the 18th day of May, 2012 at Nakiwogo Trading Centre in Entebbe Municipality, in Wakiso District, had unlawful Sexual Intercourse with Nakiganda Sheila without her consent.

On arraignment, the accused pleaded not guilty. By that plea, the Accused set in issue all the essential elements of the offence charged. In a nutshell, that meant that each and every ingredient of the offence charged had to be proved beyond reasonable doubt in order to secure a meaningful conviction of the Accused. It is trite law that the Accused bears no burden to prove his innocence since he is presumed innocent until proved guilty. This principle

of law was laid down since the decision in **Woolmington Vs. DPP [1935] A.C 462**. The same principle was enshrined in **Article 28(3) (a)** of the Constitution of Uganda.

The essential elements requiring proof beyond reasonable doubt in the offence of Rape are:

1. That there was Unlawful Sexual Intercourse with the complainant.
2. That the complainant did not consent to that Sexual Intercourse
3. That it was the accused who had the unlawful Sexual Intercourse with the complainant.

In a bid to discharge the burden of proof placed on it by law, the prosecution called evidence of three witnesses, including PW1, Nakiganda Sheila, the complainant.

The Medical Examination Report, Police Form 3 in respect of the complainant or victim was tendered in under S.66 of the Trial on Indictment Act.

As to whether there was unlawful Sexual Intercourse with the complainant, the prosecution relied on the Medical Report, Police Form 3 and its appendix. The same was tendered in under S. 66 of the Trial on Indictment Act and signed by the Medical Supretendent of Entebbe grade B Hospital. The Medial examination revealed injuries in form of bruises around the lateral vaginal wall and stated that the injuries were consistent with force having been used sexually.

The injuries were found to be one day old. The complainant, Sheila Nakiganda testified as PW1. She testified that on the 18th day of May, 2012 at around 1:30am in the night, as she was returning from a Pub in Nakiwogo, accused met her and promised to take her to the Police Station to spend a night.

PW1 added that in the process, accused took her to a bush, removed her panties and skirt and forcefully played Sexual Intercourse on her as she shouted. She further stated that a good Samaritan came after the act of Sexual Intercourse, grabbed accused and took him to the nearby Nakiwogo Police Post. And that she came along to Police to make a Statement and was able to identify and recognize the Accused.

Consequently, PW1 concluded that the action of forceful Sexual Intercourse lasted 10 minutes. The evidence of PW1 on the act of Sexual Intercourse was ably corroborated by the testimony of PW2, No. 37490 P/C Oguti, who was at the Police Station by the then. He narrated to this Court how one Nsubuga Emmanuel forcefully dragged accused to Police reporting that he had found him playing sex with the complainant after responding to the alarm. PW2 added that by the time the Accused was taken to the Police Station, the trousers (Zip) was still open.

The law with regard to prove of sexual Intercourse has long been settled. In **Bassita Hussein Vs. Uganda, Criminal Appeal No. 35 of 19**95, the Supreme Court of Uganda held as follows:

**“The Act of sexual Intercourse or penetration may be proved by direct or circumstantial evidence and corroborated by Medial evidence or other evidence. Though desirable, it is not a hard and fast rule that the victim’s evidence must always be adduced in every case of Defilement to prove sexual intercourse or penetration. Whatever evidence the Prosecution may wish to adduce to**

**prove its case, such evidence must be such that it is sufficient to prove the case beyond reasonable doubt".**

In the present case, not only did the complainant confirm to this Court that Sexual Intercourse on her lasted 10 minutes, the same testimony was corroborated by the Medical evidence, Medical report, Police Form 3 which was tendered or admitted under S.66 of the Trial on Indictment Act. In **Abasi Kanyike Vs. Uganda, Supreme Court Criminal Appeal No. 34 of 1989.** It was held that such evidence admitted or agreed upon under S.66 of the Trial on Indictment Act is deemed proved.

And as already stated, there was further evidence from PW2 who told this Court that accused's zip/trousers was still open by the time he was dragged to the Police Station by one Nsubuga.

In the circumstances, I find and hold that the Prosecution has proved the first ingredient of the offence beyond reasonable doubt.

On the second ingredient of whether there was lack of consent, the testimony of the complainant was elaborate. She testified that she was taken to the bush by accused who forcefully removed her knickers and skirt and played Sexual Intercourse. The shouting by the complainant which attracted the good Samaritan, Nsubuga, was a clear indication that she did not consent to the act of Sexual Intercourse. And the Medical Report referred to her in above revealed bruises in the virginal wall and the bruises were said to be consistent with forceful Sexual Intercourse. In the result, I find and hold that the 2nd ingredient of the offence has also been proved beyond reasonable doubt.

On the third ingredient as to whether the accused participated in the offence, the prosecution relied on the evidence of PW1, the complainant.

PW1 did not only raise an alarm which attracted a good Samaritan but accused was immediately dragged to the police Station with the trousers zip still open. PW1 also testified that the act of sexual Intercourse lasted 10 minutes and so that was more than enough time to identify the ravisher. And as already noted, the testimony of PW1 on identification was corroborated by PW2, P/C Oguti, who re-arrested accused and detained him.

Even PW3, D/Corporal Kirunda Stephen who investigated the case visited the scene and found signs of struggle and drew the Sketch Map. And even if Nsubuga who caught the accuse red- handed was said to be out of the country, he made a statement to PW3, the Investigating Officer. And PW3 clearly narrated the same to this Court. The evidence of the accused that he was framed up after escorting the girl to police is in the premises unacceptable because the Prosecution evidence squarely put him at the scene of the crime with his trousers zip open.

The purported defence of a grudge with Kirunda, PW3, is in the circumstances far- fetched and an after thought.

For the above reasons, I find and hold that the Prosecution has proved the 3rd ingredient of the offence beyond reasonable doubt. And as advised by the one Assessor who remained after, the other one gave birth, I am in total agreement that the prosecution has proved all the ingredients of the offence beyond reasonable doubt.

I therefore, find accused guilty and he is hereby convicted as charged.

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Signed by: ***WILSON MASALU MUSENE***
***JUDGE***

**9/01/2014;**

Accused present

Cate Basutte for State

M/S. Sarah Awero for accused

Assessors present

Betty Lunkuse- Court Clerk Present

Signed by:
***WILSON MASALU MUSENE***
***JUDGE***

**COURT:**

Judgment read out in Open Court

Signed by:
***WILSON MASALU MUSENE***
***JUDGE***

**PROSECUTION;**

We do not have any previous records, but the offence is rampant. The Convict was a serving UPDF Officer who took the law in his hands. I pray for a deterrent Sentence.

Signed by:
***WILSON MASALU MUSENE***
***JUDGE***

**SARAH AWELLO;**

Convict is a frist offender. He has spent almost 3 years on remand. I pray for leniency.

***SENTENCE & REASONS;***

The offence of rape is a very serious offence. It demeans the character of women in society and the perpetrator is gender insensitive. It carries a maximum penalty of death and in most instances, Court sentence such convicts to life imprisonment. The other factor is being a serving UPDF Officer, which army is renown for its high level of discipline, Courts will not allow such few Officers to spoil the name.

Nevertheless, Court will take into a Count the fact that convict is a first offender. I shall also reduce the imprisonment by the period of remand. In the premises, I do hereby sentence you to serve 7 years imprisonment.

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Signed by: ***WILSON MASALU MUSENE***
***JUDGE***
9/01/2014