

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT IGANGA**

CRIMINAL SESSION CASE NO. 166 OF 2011

UGANDA.....PROSECUTOR

VERSUS

MUDEEGA ALI.....ACCUSED

BEFORE: THE HONOURABLE LADY JUSTICE FLAVIA SENOGA ANGLIN

PROCEEDINGS

11.03.13:

Accused before court

Katami Lydia for State present

Mukaaga Johnson for accused present

Counsel for State:

Case is for plea I have amended indictment under Section 50 (2) PCA to include an alternative indictment.

Court:

Charge read and explained to the accused person.

Accused: I have understood the charge but its not true.

Count 2: I have understand the charge but I deny it.

Court: PNG entered against accused person.

Assessors: 1. Ziraba Abdallah Bogere.
2. Nakibauka Betty

Accused: No objection to Assessors.

State: No objection to Assessors.

Court: Adjourned till 20.03.13. Accused further remanded till then.

Flavia Senoga Anglin

Judge

11.03.13

20.03.13:

Katami Lydia for State present

Mukaaga Johnson for accused present

Accused before court

Both Assessors present

Counsel for State:

Case is for hearing. 4 witnesses in court. No agreed documents.

Court: Hearing begins.

PWI – CAPT. TUMUHIMBISE AARON, Christian sworn and states:

I am 45 years of age. I am a Security Personnel Rank of Captain. Regional Security Officer South Western Region, Mbarara.

During the month of February, 2010 I was the District Security Officer Busia District currently I am a resident of Boma, Mbarara, Kamukuzi Division.

I recognise the accused before court. He is called Ali Mudeega I first met Ali on 24.02.10. In relation to a matter where he wanted to sell a child called Sadat Maganda. He wanted to sell the child to Kenya. It was 23.02.10 when GISO Busitema sub-county, Mr. Wanyama Patrick came to my office and told me that there was a man called Abudallah Ndimwibo had some who

wanted to sell a child, that that person sent him to look for a market in Kenya. He said the person was Ali Mudega. He also told me he had come with Ndimwibo who he had left outside the office.

Ndimwibo came to the office and told me the story. That a traditional Doctor Ali Mudeega a resident of Muwayo Trading Centre, Bugiri District had asked him to look for a market for a boy child in Kenya since Kenyans give good money. He went and informed the GISO who brought him to my office. After that I took the GISO Wanyama and Ndimwibo to Busia police station. We met the O/C CID Madam Asiimwe Rose with the purpose of involving police to meet the accused.

After talking to Asiimwe Rose he called O/C Station who was acting DPC Mr. Kainamura. When Kainamura came, we told him the whole story during which we hatched a plan to arrest the accused person.

During the meeting I was given the task of finding someone trustworthy who looks like a Kenyan Arab, someone from Mombasa, I called one Nuru Mugerwa to my office she was our contact also known as Maama Muzungu. The Acting DPC/OC Station, O/C CID knew the lady. We agreed that the operation be conducted the next day 24.02.10.

We agreed with DPC and O/C CID that since the buyers were Kenyans, we look for Kenyan money. But we did not have enough so we added fake dollars and fake Kenyan money. I don't know the amounts.

On 24.02.10 we went to Nuru's home and briefed her about the operation. When I told her we were going to buy a child she was surprised and got interested in joining us in the operation.

At about 10.00am of that day I called my colleague Lt. Asiimwe Jewel, In-charge CMI Busia. We needed his help in the operation and he had a vehicle which we wanted to use. We did not want to use police vehicles to raise suspicion.

Lt. Asiimwe handed his vehicle to Ndimwibo Abudallah. The vehicle was Corona Kibina white in colour. I can't recall the Registration number.

Before that we had bought a Safari Com Telephone card to show the sellers that the buyers were actually Kenyan. I cannot recall the number of the Safaricom card. The line was handed to Mr. Ndimwibo and Ouma. They were communicating with the accused.

After convincing accused that money was there we drove off with Asiimwe's car, and me and Asiimwe used my official car.

Lt. Asiimwe's car had Nuru Mugerwa, Ouma CID Department, Busia and the Driver Ndimwibo Abudallah. We set off to Muwayo Trading Centre border between Busia and Bugiri where the accused comes from. We followed them in my official car coming from Busia.

Before that I briefed Nuru Mugerwa to dress like Arab woman.

At Muwayo Trading Centre I parked at a distance to monitor the people in Asiimwe's car. We got to Muwayo around 11.00am. Ndimwibo left the Trading Centre after the car and went away. He returned with the accused Ali Mudeega. They boarded Lt. Asiimwe's vehicle and drove towards Bugiri. Me and Asiimwe remained in Muwayo monitoring on phone.

At about 4.00pm Nuru Mugerwa rang me to say things were okay and were on their way back to Muwayo. When we saw Lt. Asiimwe's vehicle return we followed them. And that's what we did.

When they got to a bush they stopped and as accused received the money we arrested him. The vehicle stopped in a small valley at the border between Busia and Bugiri when they stopped Ndimwibo pretended that he was going to ease himself and never came back.

We arrested the accused receiving the money. The child was in the vehicle. Child is called Maganda Sadat

After that Lt. Asimwe drove his vehicle to Busia Police and I followed them in my vehicle.

The accused was handed over to police together with the victim i.e. to O/C Station and O/C C.I.D. The boy was between 8-9 years then. The accused had informed Nuru that he also had a girl child.

I made a statement about 26.02.10. That's all.

Cross-examination by counsel for the accused:

The accused and Ndimwibo were communicating before we went to police. I don't know when communication began. I first met Ndimwibo on 23.02.10.

The accused and Ndimwibo are from the same village but I don't know if they are related.

Accused did not know the purpose for which the buyers were buying the child.

I don't know how much money was paid in exchange. We arrested after he had received the money and was getting out of the vehicle.

Ndimwibo and others told me they got the child from Bugiri District. I have forgotten the names of the parents of the child. It cannot be true that the child belonged to Ndimwabo. I don't know how accused and Ndimwabo are related.

That's all.

Re-examination: Nil.

Court:

PW2-NURU MUGERWA, Moslem affirmed and states:

I am also known as Maama Muzungu. I am 40 years of age, Businesswoman, take beans and maize flour to Sudan. I am a resident of Naminya village, Wakisi sub-county, Buikwe District. I don't know the accused very well but I have ever seen him. I saw him on 24.02.10 when he was selling a child to me. The child was a boy between 7-9 years. The child was called Sadat Maganda.

On 24.02.10 the DISO came to my home at a time I can't recall in the morning. The DISO was from Busia. He is called Aaron. He told me that a man was selling a child but they needed someone to help them by dressing up like a Moslem woman. By then I was a resident of Sophia A village, Busia.

After the briefing I had refused but DISO insisted that I assist since they needed someone who looked like they were from Mombasa. Being a parent myself, I accepted.

I dressed up like a Moslem woman covered my face with a veil and got in the car and we left. We went to Busia Police.

At police the matter was discussed in my absence and I was handed money that included dollars and Kenya money (some was fake) as the buyer wanted Kenya money.

I was driven up to Muwayo where the seller was said to be. We did not find the said seller. In the car I was with one Abudallah who drove the vehicle, Mr. Ouma CID police who accompanied me.

Abudallah called the seller telling him the people for the business were with him and asking where we should meet him. Then Abudallah told me the seller was coming. Accused came, sat in the vehicle and we went to Bugiri.

At Bugiri, accused introduced his business and bought us sodas and boiled eggs and also added fuel into the vehicle. Abudallah introduced me to the accused as the wealthy person who was interested in the business accused had mentioned. We drove away deep into Busoga to a place I had never been. We stopped at a home but the child was not there. We continued to the place where the child was and accused brought him.

When accused brought the child he said that that was the business he had and asked if I had appreciated it. Abudallah then told the accused that I do not speak any other language apart from Swahili. I also pretended not to understand. Abudallah translated into Swahili and I replied in the same language saying I had appreciated the business.

Abudallah and accused spoke in Lusoga and Lunyole and I pretended not to understand. The accused asked Abudallah if we had the money he wanted. Abudallah asked me in Swahili and I said there was no problem as I had the money with me in a white handkerchief. Even accused could see the money in dollars and Kenya shillings.

The child was put in the vehicle and accused after wasting time sat in the vehicle when I complained it was late. It was about 3.00pm by then. We moved off and the child wanted to cry. Accused told the child not to cry as he was taking him to school with his auntie. At the Trading Centre accused bought books and other things I don't know. They were in a plastic bag. I don't know the name of the Trading Centre. It's in the village and I have never gone back.

The child was not satisfied. We got to Namayemba and accused said that since we were going far I should give him the money. He wanted to sell me 2 children a boy and a girl. I told him I would give him the money and we should continue with our journey.

When we got to Muwayo and as we were counting the money the colleagues we had left behind came and arrested the accused. The Police Officer I was with handcuffed him. The colleagues were Aaron – DISO and Lt. Asiimwe. We were taken up to Busia police.

The accused was detained at police and I was moved to the side where I made a statement. The child went with us to Busia police. Once I finished my part I went back home. I made the statement on 24.02.10.

That's all.

Cross-examination by counsel for accused:

I never paid accused any money. I remained with the money. I never gave it to the accused. I never told the accused why I wanted to buy the child. I was buying the child to save him but its not my business.

The accused was selling a child and I was buying the child to sacrifice in Mombasa. I had never seen the accused before that date.

I had also never seen Ndimwibo Abudallah before then.

I trusted the stranger because the DISO had introduced him to me and handed me over I was not with the DISO in the same vehicle.

I never got to know the real parents of the child. My aim was to save the child. I would not be surprised if it turns out that the accused was the owner of the child.

That's all.

Re-examination: Nil.

Court:

PW3: WANYAMA JOHN, Christian sworn and states:

I am 46 years of age. GISO Busitema sub-county, Busia District. I have been GISO since 1996. I reside in Busitema sub-county, Busia village, Busia District.

I don't recognise the accused's face.

I know I am in court to give evidence in the matter concerning one Mudega Ali. On 22.02.10 around 9.00am a good Samaritan one Abudallah Ndimwibo came to my residence in Busitema sub-county. He told me that there was a person who was selling a child and he wanted to rescue the child. He told me the seller was Ali Mudeega of Muwayo Trading Centre. I was not told the name of the child.

On 23.02.10 I got fuel and went to Muwayo Trading Centre and picked Ndimwibo and he rang me Mudeega to tell him he was going to get the buyers. Me and Ndimwibo went up to Busia to the office of Aaron Tumuhimbise, DISO of Busia District.

I informed the DISO and then we began making plans of how to rescue the child. Me, Aaron and Ndimwabo went to police Headquarters Busia CID Section and got one Ouma and planned the mission with him.

We looked for a lady to help us. We went to one Nuru to pose as the buyer. Because Mudeega preferred a Kenyan buyer. We went to Kenya: Me, Aaron and Ouma and Nuru went to Kenya to buy a safari Com line to talk to Mudeega Ali so it would seem it was Kenyans coming to buy the child.

After getting the line, it was handed to Ndimwibo and he began negotiating with Ali.

The operation was carried out by police and Nuru.

On the evening of 24.02.10 Aaron rang me and told me the mission had been successful. The culprit had been arrested and the child rescued.

I made a statement at Busia police on a date I cannot recall.

That's all.

Cross examination by counsel for accused: Nil

Re-examination: Nil.

Court:

PW4 NO. 33314 CPL. WAMUKULU SAMUEL, Christian sworn and states:

I am 40 years of age. I am a Police Officer attached to Police Training School, Kabalye, Masindi District.

In February 2010, I was attached to Busia Police station. By then I was a Police Constable. Resident of Police Training School, Kabalye, Masindi.

As Police Constable my general duties were to receive complaints from the public, make entries in the Counter Diaries and lock up register. I would also search suspects brought in at the counter and ensure security at the station.

I am in court today to testify in a case of child stealing/trafficking.

I recall having seen the accused in the dock. On 24.02.10 at Busia Police station I received the accused as a suspect, at the counter.

When I received him I searched him and recovered a white 5 litre jerrican with water. It was full. A red seed that looked like a bean seed. A black substance which I later came to know was

a herb used by traditional healers. The accused person is the one who told me that substance was a herb.

The water, accused told me was to clean the panga after sacrificing the child, and that the red seed and black substance if administered to the victim would make him lose his senses.

Accused was put in the lock up register and accused was detained in the cells. I put him in the cells.

That's all.

Cross examination by counsel for the accused:

I have been in the Police force for 14 years. By the time they brought the accused I was the station Diary Constable who works at the counter.

Accused was led to the counter by D/Constable Ouma. I do not recall seeing handcuffs. I recovered the seed and the black substance from accused. He had the jerrican in his hand.

The accused had been arrested by the Constable who handed him over to me and I received accused.

It was necessary to re-arrest accused which I did because I received him. Receiving and re-arresting are similar. Once suspect is brought to the counter he is cautioned and re-arrested.

Before a suspect is taken away he is written in the book and upon being brought back he is entered in the book. It is my duty to re-arrest the suspect.

I re-arrested and received accused. I know the words of caution when re-arresting the suspect and I cautioned the accused.

Suspect had a jerrican of water and he told me it was to wash the panga after sacrifice but I did not see the panga among the items he had.

The victim was also received at the counter. I received the victim. The victim was a boy of about 9-10 years. He was conscious. I don't know if the herb had been administered to the victim.

That's all.

Re-examination: nil.

Counsel for State: Our last witness is the victim.

Court: We move to Chambers since he is a child of tender years.

Flavia Senoga Anglin

Judge

Court in Chambers: **Voire Dire**

SADAT MAGANDA, 13 years of age. I go to school at Budaya Primary School. I am in P4. Subjects are English, Science, SST, Mathematics. Maths is my favourite subject.

I am a Moslem by faith. The faith teaches us how to pray. The purpose of prayer is to get a reward.

If you are accused of doing something you have not done. I don't know the purpose of taking an oath. However I have ever taken an oath to pray.

Out of school I got to fetch water and do other jobs like washing dishes and sweeping the house.

I have ever told lies before. But its not good to tell lies. It is a sin/crime. If someone promised to buy me nice things or give me money I would not tell lies.

Court:

After the examination of the child Sadat Maganda. Court finds that he doesn't understand the nature of an oath but he is possessed of sufficient intelligence and understands the duty to speak the truth.

To give unsworn evidence.

Flavia Senoga Anglin

Judge

Court:

PW5 SADAT MAGANDA Moslem. I am 13 years of age. Resident of Budaya village, Bugiri, Bugiri District. I live with my mother Madina Yolya. I have lived with my mother for a long time although not since I was born.

I have brothers and sisters Amudani, Kamili, Abed, Hassan. My father's name is Kiduma Muhammed. He does not live with us at home. I do not know where he is. I don't see him these days ever since he sold me I have not seen him.

I don't recall the year he sold me.

I know the accused before court. He is called Mudeega. I don't know the 2nd name. Accused used to come to our home. His home is at Bulebi some distance from our home. I have known Mudeega for a long time.

I don't know why I am in court today.

I recall what happened on 24.02.10 I was at home I was with an In-law whose name I don't know we were coming from the garden and preparing for lunch. It was about 4.00pm.

My father Muhammed Kiduma came and asked me to wash my feet, because my aunt was coming and wanted to stay with me for some time. That I would continue with school from her place. He did not tell me the names of the Auntie. Afterwards father told me to go with those people. 2 men in the car, the driver, Mudeega and a woman. I was seated in between the woman and Mudeega. The car was white. The woman was light skinned. My father did not enter the car.

After I sat in the vehicle it moved off. They told me they were taking me to my auntie but they did not tell me where. When we got to a place where it was raining one of the men got out of the car. The driver got out to ease himself then the police came to the car and took me away.

The car had a jerrican of water, a black polythene bag, bottles of sodas and eggs. 2 people arrested us and took us to police at Busia.

At police they asked me my age. I recall thumb printing a document at police. But I don't know what document it was.

We were taken to a room and a photo of myself the woman and the man was taken. I did not know the man and woman.

That's all.

Court:

My father sold me to Mudeega and the men who were in the car. I was not there when they gave him money. My father told me to sit in the car and go with the people.

Flavia Senoga Anglin

Judge

Counsel for State:

I seek an adjournment to enable me get remaining witness.

Court: Adjourned till 18.04.13. Accused further remanded till then.

Flavia Senoga Anglin

Judge

18.04.13:

Accused present

Katami Lydia for State present

Mukaaga Johnson for the accused present

Both assessors present

Counsel for State:

Case is for further hearing. However we have decided to close prosecution case.

Counsel for accused: We leave it to court.

Court:

Court finds that a prima facie case had been made out sufficiently against the accused to require him to be called upon to give his defence. Section 73 TIA explained to the accused.

Flavia Senoga Anglin

Judge

Accused:

I will give a sworn statement. I have 4 witnesses:

1. Festo Ngolobe – chairman LC.1 Muwayiro village, Bulugwi sub-county, Bugiri District.
2. Chairman Luwere village Bulega sub-county, Bugiri District.
3. Alisat, Muwayiro village.
4. Masitula Namangemba of Muwayiro

Court: Defence begins.

DW1: ALI MUDEEGA, Moslem affirmed and states:

I am 59 years of age. Resident of Muwayiro village, Bugiri District. Farmer and Traditional Doctor. I am in court because I was accused of kidnapping a child with intent to kill him.

I don't admit the charges. It was on 16.02.10 one Abudallah Ndimwibo called me on telephone saying he had a visitor from Nairobi, in his office who needed treatment. I told him I was not at home, I was arrested the next day 17.02.10.

I returned home on 17.02.10 and I called the said Abudallah and told him I was at home and at work. He told me they were coming. He came with 2 other people in the car it was about 12.30pm. Abudallah with 2 others I did not know. When they got home I had left to go for tea. Abudallah called me and told me they were at my office at Muwayiro. I returned to the office and welcomed them. The two refused to leave the vehicle only Abudallah entered the office. Abudallah informed me the 2 had a patient at Bugiri whom they wanted me to go and treat. I went with them to see the patient. When we got to Namalemba, Budala told me that the vehicle had run out of fuel. They requested me for money for fuel saying they had dollars and Kenya money. I gave them Shs.50,000/- and he returned a balance of Shs.30,000/-. The vehicle was driven up to Nankoma and from there I did not know where we were going.

When we got to a place I did not know after Nankoma, they stopped the vehicle and Abudalla went to a certain home, came back with my neighbour and they got into the vehicle. My neighbour was from Bulesa, Luwero. I have 2 homes. This neighbour was from Luwero, Bulesa.

When my neighbour got into the vehicle, I asked where the sick child I was supposed to treat was, Abudallah shouted at me. I kept quiet.

We moved back to my home in Luwero at my neighbours. I came out of the vehicle and went to my home. I told them that if they had a patient they should bring him to my home for treatment.

While at my home, they later brought the child. I did not know the child. I asked what the child was suffering from and they said he was suffering from fits. I boarded the vehicle with them and the child to go back to Muwayiro to treat the child. The neighbour remained there he did not go

with us. They did not stop at my home. They passed it and proceeded to where I was handed over to the officers who appeared here. They were armed but in civilian clothes.

I had a 5 litre jerrican of water. A bottle of local medicine called Herbert Sauda. I also had red tablet called enjano. I had a black stick called vunja moji treats- snake bites. I picked the materials from Muwayiro to be used in treating the child.

As we went back with the kid we were 5 in the vehicle. Abudala, a woman whose names I did not know she was light skinned (brown) a dark skinned man, myself and the child.

When we left Muwayiro Trading Centre, they stopped and Abudallah got out of the vehicle. When I came out of the vehicle the two people put me at gun point put me back in the vehicle and took me to Busia.

The rest remained in the vehicle up to Busia police.

At Busia they brought a News reporter next day who took photographs of me and the child. The only people I know in the while saga were Abudallah and my neighbour. Abudallah is like a brother to me. My father adopted him. We grew up together in the same home. I don't know if he is still at home since I am in prison.

By the time I was arrested I was not staying with Budala in the same home. Abudallah left my father's home in 2007. Father died in 2008. I remained on good terms with Abudallah after the death of my father. Until I was arrested I had no grudge with Abudallah.

My neighbour is Kiduma Muhammed. I had a misunderstanding with Kiduma over a boundary of land. After my father's death Kiduma made an agreement when my sister was selling part of the land left to us by our late father. There was no other problem with Kiduma. I pray court for leniency.

That's all.

Cross-examination by counsel for State:

I don't know the implications of telling lies to court. I am not telling lies, I made a statement at police after my arrest. I can't recall the date I made the statement. I made the statement at Busia police. I recorded the statement at the office before a person in civilian clothes. I was told to thumb print and I did. I don't recall if I wrote my name or put a thumb print.

This statement has my name on it. On top of 1st page it is also on the side of the statement. I cannot read English. I am the one who wrote my name on the statement. I am not telling lies to court. I am not the one who introduced the buyers to Kiduma. It is Abudallah who came with the child claiming he was suffering from fits.

I was in the car with the child. He was a boy child. He was 9 years of age. I don't know the boys name. I don't know if it's the boy who appeared in court and testified against me. I only saw him once.

I had no grudge with Abudallah. The Police Officer who recorded the statement must have had reasons to tell lies. They forced me to tell them what I they wanted to hear. They never read the statement to me.

I was taken to police in the same car. That's how the police officer knew which car we moved in. The child told them all the names of the people. The child was not in the room where the statement was recorded. It was me and 2 Police Officers in the room where the statement was recorded. I told the prisons I ws tortured but not police.

The agreement concerning the land is relevant to this case as it was the cause of the problem/grudge. I refused to sign the agreement. I blamed Kiduma and also reported the matter to the chairman. At the time of the incident I was not thinking about the land agreement.

At the time of the incident the 5 litre jerrican of water, the tablets etc were with me.

I am not making up my defence.

That's all.

Re-examination:

Before I made the statement I was beaten with a baton. I was forced to mention things in my statement that I did not want to mention. I was forced to state that I was arrested with the child. I made the statement first when I was standing. The 2nd time I was lying down. I was not able to stand as I had been assaulted on the knees and I could not stand. I did not know that I ought to have reported the torture to police.

That's all.

Counsel for accused:

I seek an adjournment to enable us call the witnesses for the accused person.

Court:

Adjourned till 14.05.13. Accused further remanded till then. Witness summons to issue for the witnesses of the accused persons.

Flavia Senoga Anglin

Judge

14.05.13:

Katami Lydia for state present

Mukaaga Johnson for the accused present

Accused present

Both Assessors present

Counsel for state:

The matter is for further defence hearing and we are ready to proceed.

Counsel for accused: We have 4 witnesses.

Court: Defence continues.

DW2: NGOLOBE FESTO, Catholic sworn and states:

I am 72 years of age. Peasant farmer and chairman LC.1 Muwayo. Resident of Muwayo village, Bugiri District.

I know accused before court he is a resident of Muwayo village. He has a home there. He is a witch doctor and a farmer.

We were together with the accused at Muwayo Trading Centre between 10-12pm. He left at midday. He did not tell me where he was going. I did not see him or hear from him till next day when I heard he had been arrested. Upon asking why he had been arrested, we were told that he had been found taking a child from Bulebi Luwero to Nairobi. I never saw the child they were talking about, and I do not know him.

I do not know the parents of the child. They are not in my area of jurisdiction. The parents are in Mutere sub-county.

The accused has 2 homes one at Muwayo and the 2nd one in Luwero, Mutere sub-county. Mutere is where the parents of the child come from.

Accused has been in my village since he was born and he grown up and lived there. The accused has no record of criminal activities in my area. He has never had any problem and we were surprised by the charge against him.

That's all.

Cross-examination by counsel for State:

I never witnessed the accused kidnapping the child.

That's all.

Re-examination: Nil.

DW3: MAKA GEORGE, Christian sworn and states:

I am 45 years of age. Farmer and I am also chairman LC.1 Luwero village Mulesa sub-county Bugiri District.

I know accused before court. He is a resident of my area and my neighbour. We share boundaries.

I first heard about what happened on 24.02.10 that accused had been arrested at Busia. I never saw what happened either as the LC.1 or as neighbour. I was in the village during that period. I never saw any movement of vehicles. I just heard about the incident.

During the period he was arrested yes he was in the village. I had not seen him for 2 days when he was arrested. During the period I have known accused he has had no record of criminal activities. He has been a farmer and traditional healer.

That's all.

Cross-examination: Nil.

Re-examination: Nil.

DW4: MASITULA NAMANYEMBA, Moslem affirmed and states:

I am 43 years of age. Farmer resident of Muwayo village, Bugiri District.

I know the accused. He is my son. In February 2010 the accused had gone to Bugweri to treat people as a traditional healer. After 3 days I was informed that he had been arrested. I went to Busia to see him and the policemen would not allow me to see him. I do not know why he was arrested but I was told he had kidnapped a child with intention of selling him. I never saw the child they were talking about. I was not told to whom he had been selling the child I was chased away.

Accused was returned to Bugiri. I stay in the same home with the accused. When his mother died I am the step mother.

I have never known the accused for any wrong doing in the village.

He was reported by Abudallah Namwiwa to the authorities. He is also called Namwibo. Abudallah came to the village because of my late husband. He came as a patient. After he was healed he requested to stay and he was allowed to do so and he became like a child in the home.

When Muzee died and Abudallah was staying in my late husband's house, the accused told him to get out of the house or pay rent so that the money could help the orphans. He failed to pay and accused evicted him from the house that was the beginning of the grudge. Accused was the one responsible for my husband's estate. Abudallah was not happy for being evicted and he conspired with other brothers to frame the accused and that is why Abudallah reported accused to have kidnapped a kid. Abudallah referred to himself as a society.

Accused was imprisoned because his brothers including Abudallah wanted properties of the deceased. Most of the properties were sold as soon as the accused was jailed. The young children are now helpless. We have no fees.

That's all.

Cross-examination by counsel for state:

People who sold the property include Muhamood Nabona, Sulayi Jafar, Budala Jafi, Bakali Jafari and Mohammed Nabona. These are the only people I saw.

The house from which Abudallah was evicted has 6 rooms. Abudallah was occupying the one of the rooms a front and behind.

I did not attend the meeting where Bawala and others conspired to frame the accused. When accused was arrested I had taken 3 days without seeing him. I never saw accused kidnap the child. I only saw him at police.

That's all.

Reason:

I had not seen the accused for 3 days before he was arrested. He had gone to Bugweri.

That's all.

Counsel for accused:

That is the close of the defence case. The other witnesses' testimony is no different from that of DW4.

Court:

Adjourned till 22.05.13 for submissions and summing up. Accused further remanded till then.

Flavia Senoga Anglin

Judge

22.05.13:

Accused present

Katami Lydia for State present

Mukaaga Johnson for accused absent

Both assessors present

Counsel for State:

Counsel for accused not yet in court. Pray matter be stood over.

Court: Matter stood over.

Flavia Senoga Anglin

Judge

Later: Naita Julius holding brief for Mukaaga Johnson for accused present.

Court: Submissions.

Counsel for State:

The accused was indicted with kidnapping with intent to murder c/s 243 (1) & 242 of the PCA. He was also indicted on the alternative of Aggravated Trafficking in Persons c/s 4 (a) (e) & (i) of the Prevention in Trafficking of Persons Act 2009.

The accused and others still at large committed the alleged offence on 24.02.10 at Luwero Bulebi village, Bugiri District.

The ingredients on first count were clearly stated in the case of **Mukombe Moses Bulo vs. Uganda SC Criminal Appeal 12/95** held that the offence comprises of 2 elements namely the prohibited conduct of kidnapping or taking away by force of fraud and the specific intent to cause the victim to be murdered.

As regards the 2nd element of the offence i.e. the specific intent, it is necessary for prosecution to establish that at the time of kidnapping there was a contemporaneous intent that the victim be murdered or be put in danger of being murdered.

First ingredient:

Taking by force or fraud. PW5 the victim in the case stated that his father Kiduma Mohammed asked him to quickly prepare and go with the people in the white car to his aunt whose name he did not tell the victim for purposes of living with her and studying there. He told court that the accused was in the white car with PW2 –Nuru Mugerwa and in fact PW2 told court that the accused bought books in her presence for PW5 for his studies while at his aunties.

The taking of PW5 was fraudulent because it was based on false representations for alleged study purposes which known to accused person and others still at large was false in fact.

This ingredient was proved beyond reasonable doubt.

Intent that victim be murdered or be put in danger of being murdered: PW5 testified that while in the car he saw a jerrican of water, a black polythene bag among others.

PW4 the Officer at the counter Busia police station stated that upon receiving the accused at the counter, he searched him and found him with a 5 litre jerrican of water, a red seed that looked like a bean and a black substance used as a herb by traditional healers. The accused revealed to him that the water was to be used for cleaning the panga after the murder if it took place. And that the red and black substance when administered to the victim would make him lose his senses.

PW1 told court that he received information in connection with some persons interested in selling a child to Kenya from Abudallah Ndimwibo and PW5 Wanyama John and set a trap set to net the accused persons. His statement was corroborated by PW3.

The selling of a child or the intent that the child be sold exposed PW5 the victim to many dangerous possibilities including murder.

PW2 told court that the purpose for which she was allegedly buying the child was for human sacrifice.

The acts as a whole put PW5 in the danger of being murdered much as the accused was not found with a panga in his possession.

Participation of the accused person:

PW1 stated that he arrested the accused in the process of receiving money in Kenya shillings and dollars from PW2 little knowing that the same was a trap.

His statement was corroborated by PW2 who told court the involvement of the accused from Buwayo Trading Centre in the morning to about 4.00pm when he was arrested. This included the accused person bargaining for the price of PW5, demanding for payment of the money, buying books for PW5 and asking if PW2 appreciated the "business".

The accused intimated that he was willing to sell to PW2 two children instead of one.

PW5 confirmed the presence of the accused in the car on the date in question.

In his defence the accused did not remove himself from the scene of crime.

I therefore submit that the accused was in the car for purposes of executing the sale of PW5.

His defence was full of falsehoods and contradictions. We pray court be pleased to treat it as such.

In the case of **Joseph Magezi vs. Uganda SC Criminal Appeal 08/93** held: “In order for the prosecution case to succeed the circumstantial evidence had to be such that it was incapable of explanation upon any other reasonable hypothesis than that of the guilt of the accused”.

With all the circumstantial evidence in relation to the participation of the accused when considered as a whole it leaves no doubt whatsoever that the accused had a contemporaneous intent that the victim be murdered or be put in danger of being murdered.

We therefore pray that accused be convicted as charged.

Counsel for accused: I seek an adjournment to enable me prepare a reply.

Court: Adjourned till 24.05.13. Accused further remanded till then.

Flavia Senoga Anglin

Judge

22.05.13

24.05.13:

Accused present

Naita Julius holding brief for Mukaaga Johnson for accused present

Katami Lydia for State present

Both Assessors present

Counsel for State: Matter is for defence submissions.

Counsel for the accused:

The defence agrees with the prosecution as regards the burden and standard of proof and the cases cited therein. We further concur with the ingredients as set out by the prosecution and the cases cited.

Our contention is that the prosecution failed to prove all the ingredient of the offence with which accused is indicted.

Kidapping by force or fraud:

The accused person told court that he was at his home/shrine where PW2 and others got him from on the pretext that there was a sick person he was going to treat.

From there he was taken to the place where the victim was.

Evidence of PW5 the victim was told by his father one Kiduma Mohammed that the people in the car i.e. accused and PW2 Nuru Mugerwa were taking him to his aunt for purposes of school.

PW5 said that the accused was in the car as the driver and it is his father who took him to the car where accused and PW2 were.

That the accused bought him from the father. PW5 never saw any money changing hands between accused and the father.

His evidence contradicts that of PW2 who said there were 4 people in the car and accused was a passenger.

PW2 also said that it is the accused who brought the victim to the car.

Such contradictions of 2 witnesses at the scene cannot be relied upon by court to convict the accused. We submit that since accused is not the one who picked the victim from wherever he was but victim was brought by his father to the car where accused was and told him that he was being taken to his Auntie for studies, the accused cannot be said to have taken the victim by force or fraud. If the father of the victim who handed over the victim to accused and PW2. The father never came to testify and his whereabouts are not mentioned. This ingredient was therefore not proved.

Intent to murder the victim or put in danger of being murdered:

Prosecution relied on PW4 Police Officer at Busia police. He said that upon receiving the accused person at the counter, he searched him and found him with a white 5 litre jerrican of water and a black substance used as a herb by traditional healers.

The accused said he was picked from his home and was put in the car where PW2 and Abudallah were.

The accused said he was picked from his home and was put in the care where PW2 and Abudala were. The car where they discussed belonged to PW1's Deputy and not the accused person. That is where the jerrican of water was found. This is corroborated by victim who says he saw a jerrican of water when he entered the car.

PW2 and Abudallah never mentioned the jerrican of water as having been put there by the accused. No panga or any other weapon that could be used to kill was ever found with accused or ever exhibited.

It is also surprising that one would have intent to murder and as the same time sell off the person he intends to murder as prosecution wishes court to believe.

No evidence was led of intent to murder apart from merely saying that accused wanted to sell off the victim.

Since accused in his defence brings it out that this was a family grudge in which he was an adopted child was intended to be eliminated. The circumstances surrounding the case indicates that ploy by the relatives, the reason as to why the father of the victim never testified. Prosecution failed to prove this 2nd ingredient.

Participation of the accused:

The accused in his defence though not removed from the scene of crime told court that he was in the car because he had been invited to go and treat a patient.

Being at the scene of crime does not necessarily mean that accused had the intent to commit the crime.

PW2 said that the accused was arrested while they were counting the money for the alleged purchase no money was ever exhibited. One wonders if the money ever existed.

We submit that given the inconsistencies and gaps in the prosecution case which are not explained, we say that this was an organized plot to have the accused eliminated from the family.

The prosecution has therefore failed to discharge its burden and the accused should be acquitted. We so pray.

Counsel for state:

The accused was not a driver but a passenger in the car. The statement of PW2 and PW5 corroborate the fact.

The accused was not an adopted child. It is clear from his defence.

The whereabouts of the father of PW5 were explained by PW5 himself when he said that his father was in hiding because of this case.

Prosecution proved that accused had a common intention with PW5's father to ensure that PW5 was sold. He should therefore be taken to have known that PW5 could have faced unfavourable circumstances including murder.

We reiterate earlier prayers.

Court: Summing up on 29.05.13. Accused further remanded till then.

Flavia Senoga Anglin

Judge

24.05.13

29.05.13:

Accused present

Ngobi Balidawa holding brief for Mukaaga Johnson for accused present

Katami Lydia for State present

Both Assessors present

Court: Summing up – see notes.

Court:

Adjourned till 06.06.13 for Assessors' opinion. Accused further remanded till then.

Flavia Senoga Anglin

Judge

29.05.13

06.06.13:

Jackline Okui holding brief for Katami Lydia for State present

Julius Naita holding brief for Mukaaga Johnson for accused present

Accused before court

Both Assessors present

Assessors: We have separate opinions.

Ziraba Abdulla:

Following the evidence of witnesses it appears case was made up because PW1 and PW3 and the accused talked of a man called Ndimwibo Abudallah. This would be the first and rightful witness as he is the one who gave information concerning the case. But he was never summoned to confirm his information.

PW1 said they got fake dollars and Kenya money for accused as per PW3. Money given to PW3 to pay accused. Money was never exhibited.

PW1 also said on their way back from Luwero village they stopped at a certain Trading Centre, where accused bought books for the victim on the pretext that he was going for school. Books never exhibited.

Accused's defence picked from work to go and treat a sick person. Took some herbs with him. The herbs were found by PW4 at police at Busia.

The evidence of PW1 and PW2, never mentioned the person who handed over the victim to accused in their presence. Yet victim said it was his father who handed him over when PW1 & PW2 were also present.

Case therefore appears made up since there was no exhibit of books, money I conclude that accused was tricked by some relatives and fell into a trap. Court should find accused not guilty and set him free.

Flavia Senoga Anglin

Judge

Nakibuuka Betty:

1st witness DISO, after receiving report of planned kidnap, plan made through Busia police and PW2 it was agreed to net accused.

At Muwayo accused got in the vehicle and they went to Bugiri with his direction.

- Fake money to PW2 who pretended to be buyer.
- PW3 at 4.00pm informed PW1 the mission was a success. Followed vehicle, PW2 and accused got out and accused was arrested in process of receiving money.
- PW2, agreed to pretend as buyer to save victim from harm or murder.
- Accused fueled the care and bought soda and eggs. PW2 was introduced to accused by Ndimwibo. Accused got out of the vehicle, went and brought the boy to PW2 as the business. PW2 agreed to take child.

*Accused told victim he was going for studies at Auntie's home. Entered the vehicle with resistance but accused convinced him.

Accused bought books for the victim. Asked for money from PW2 and promised to send more children if PW2 wanted.

Accused arrested in process of receiving money.

PW3, informed of person seeking a person to buy a child, preference Kenyan buyer. Accused named as seller.

Plan made to arrest accused and it was done.

PW4, Police Officer who received the accused, items found with accused stated. Water to wash panga after killing the child and herbs.

PW5-father told him he was going to study from his Auntie's place. Handed him to accused and he would follow later. Victim's father disappeared since.

Defence:

Accused confessed he was a witch doctor and that he was asked to treat patient from Nairobi.

Fueled the car and went with people in a white car.

Accepted items PW4 said were found in the car.

The accused's defence carried no weight and court should not believe it. All this witnesses gave similar reasons, resident with shrines.

Children are at risk and need to be protected.

All prosecution witnesses did not know accused and just came in to rescue victim and other children who were at risk.

Their evidence shows accused knew victim's home and he got out of the car to take victim to buyer.

Accused was seller and received money an indicator it was usual business.

The accused should therefore be found guilty and convicted so that he is kept away from the society and children of Uganda.

Flavia Senoga Anglin

Judge

Court: Judgment on notice. Accused further remanded till then.

Flavia Senoga Anglin

Judge

06.06.13

01.10.13:

Katami Lydia for State present

Accused present Balidawa Ngobi holding brief for Mukaaga Johnson for accused present.

Both Assessors present

Counsel for State: Matter is for Judgment.

Court: Judgment for 07.10.13. Accused further remanded till then.

Flavia Senoga Anglin

Judge

07.10.13: Court constituted as before.

Court:

Judgment not ready. Adjourned till 10.10.13. Accused further remanded.

Flavia Senoga Anglin

Judge

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT IGANGA**

CRIMINAL SESSION CASE NO. 166 OF 2011

UGANDA.....PROSECUTOR

VERSUS

MUDEEGA ALI.....ACCUSED

BEFORE: THE HONOURABLE LADY JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

MUDEEGA ALI the accused person before court was indicted for Kidnapping with intent to murder c/s 243 (1) & 242 of the Penal Code Act. In the alternative he was indicted with Aggravated Trafficking in persons c/s 4 (a) (e) and (i) of the Prevention in Trafficking of Persons Act, 2009.

The prosecution contends that the accused person and others still at large on 24.02.10 at Luwero Bulebi village in Bugiri District, unlawfully and fraudulently kidnapped Sadat Maganda from his step mother Aisha Nakabugo with intent to murder the said Sadat Maganda.

In the alternative count it was alleged that on the same date and at the same place, the accused and others at large engaged in organizing and making preparations for selling of Sadat Maganda a boy aged 9 years, to Kenya.

The accused denied being involved in either of the alleged offences.

This court is mindful of the law that the burden of proof in all criminal cases is upon the prosecution to prove the guilt of the accused person beyond all reasonable doubt. The burden never shifts except in some few exceptional cases provided for by all.

Further that, an accused person is presumed innocent until proven guilty or pleads guilty and therefore has no duty to prove his innocence. He just needs to raise a defence that will create doubt in the mind of the court. It's up to the prosecution to adduce evidence to show that despite the defence the offence was committed and it was committed by the accused person. The prosecution called 5 witnesses.

The ingredients the prosecution has to prove in a case of kidnapping if a conviction is to be are the following:

1. There was taking away of a person.
2. The taking away was accompanied by force or fraud.
3. The taking away was against the victim's will.
4. The perpetrators of the offence were motivated by intent to murder the victim, and
5. The accused was one of the perpetrators of the offence.

On the alternative charge of Aggravated Trafficking the prosecution had to prove that:

1. There was transportation, transfer, harbouring or receipt of a person.
2. Such transportation, transfer or receipt was by means of threat, use of or other forms of coercion, of abduction, fraud or deception or
3. Of the abuse of power or a position of vulnerability.
4. Or receiving of payments or benefit to achieve consent of a person having control over another person, for the purposes of exploitation.
5. The accused was one of the perpetrators of the crime – See Section 2 (r) of the Prevention of Trafficking in Persons Act, 2009.

To prove the ingredient of taking away or transportation of a person the prosecution called the evidence of PW1 Captain Tumuhimbise Aaron then Security Officer Busia District who was told of the impending sale of a child. Arrangements were made with the police and informants to find someone to pretend to be a buyer. They got PW2 Nuru Mugerwa to pose as a buyer, while the informants communicated. They set off to Bugiri and picked up the accused person Mudeega with the child aged between 8-9 years. The accused was arrested receiving money.

PW2 confirmed that on 24.02.10 the DISO (PW1) went to her home and asked her to pretend to be a buyer of a child. She was given money that included dollars and Kenya shillings for the purpose. She was driven to Muwayo in the company of police. They picked the accused who was introduced as the intended seller, went to Bugiri with him. Deep in a village they picked up the child, put him in the vehicle, together with the accused. The accused told the child he was being taken to school with his Auntie. The accused bought books and other things that he put in a plastic bag and they drove back to Muwayo. There the accused was arrested as he was about to receive the money.

This evidence was confirmed by PW3 Wanyama John who was GISO of Busia District.

PW4 CPL. Wamukula Samuel received the accused and the victim at Busia Police station.

PW5 Sadat Maganda the victim was at the time of the trial 13 years of age. He was found not to understand the nature of an oath but was possessed of sufficient intelligence and understands the duty to speak the truth. He gave unsworn evidence under Section 38 (3) TIA.

He told court that he knew the accused before that date as he used to visit their home. Accused's home is at Bulebi. He recalled that on 24.02.10 while at home at about 4.00pm his father Muhammed Kiduma asked him to wash his feet as his auntie was coming to take him to her home from where he would go to school. He was never told who the Auntie was.

He was then handed over to people in a white car that included the driver and the accused Mudeega and a woman. He sat between the woman and the accused and the car set off without his father.

He was then told that he was being taken to his Auntie but did not say where. At some place the car stopped and the driver got out and then the police came and took him away to Busia police.

The victim insists that his father sold him to the accused and the people who were in the car although he did not see anyone give his father money.

The accused person denied the charges and stated in his defence that he is a traditional doctor and a farmer. That on 16.02.10 one Abudallah Ndimwibo called him telling him he had a visitor from Nairobi who wished to see him but accused was not at home.

On 17.02.10 when he called the said Abudallah, to say he was at home, Abudallah went to his home with 2 other people. It was about 12.30pm. they went to his office at Muwayiro when Abudallah told him that the people he was with had a patient at Bugiri that they wanted him to go and treat. He left with them. At Namalemba, Budala requested him for money for fuel

saying the car had run out of fuel and he only had Kenya money and dollars. He gave them Shs.50,000/- and they returned Shs.30,000/-.

They drove up to Nankoma where Abudallah picked accused's neighbour who hails from Bulesa, Luwero where accused has a 2nd home.

They moved back to Luwero and he asked them to take the child to his home for treatment. Later they brought a child he did not know, whom they told him was suffering from fits. He then boarded the vehicle to return to Muwayiro with them and the child for treatment.

At Muwayiro that they never stopped at his home but went to where he was handed over to Police Officers.

With him he had a 5 litre jerrican of water, a bottle of local medicine, a red tablet called enjano, a black stick known as vunja moji for snake bites, that he says were materials for treating the child.

Upon his arrest, he was taken to Busia and took photographs of him and the child. The only people known to him were Abudalla – an adopted brother and his neighbour Kiduma Muhammed with whom he says he had a dispute over a boundary.

Kidnapping has been defined as taking away or transportation of a person against that persons will usually to hold the person in false, imprisonment or confinement without legal authority. This may be done for ransom or in furtherance of another crime.

- The evidence in the present case shows that PW5 the victim was taken away from his home for purposes of being sold to Kenya. This ingredient was proved as required.
- Whether the taking away was by force or fraud.

The undisputed evidence is to the effect that the victim was taken away on the pretext that he was being taken to school at his Auntie's home. Since this was deception and not the real reason for his being taken away, court finds that there was deception in taking away the victim.

- Whether the taking away was without the consent of the victim.

Decided cases have established that in all cases of kidnap, ***“It is the absence of consent of that child that is material. This is the case regardless of the age of the child. A young child below 14 years will not have the understanding or intelligence to consent”*** – R vs. D [1984] AC 778 at 866 HL.

The victim in this case was about 9 years of age at the time of the offence. PW2 who was with the accused when they picked the child indicates that, he did not consent but was brought to the vehicle and told to go with the people there. This confirms victim’s evidence that his father told him to go with the occupants of the vehicle. While it is apparent that the victim did not consent. It’s apparent that this father consented or was part of the plot to take away the child in which case his father’s consent may support the defence of lawful excuse.

For those reasons, court finds that the ingredient was not proved to the required standard.

As to whether the perpetrators were motivated by intent to murder the victim. Court finds that no evidence was adduced by the prosecution to this effect. What is on record is that the perpetrators of the offence were more interested in making money by **selling** the child to Kenya. Hence the pretence of PW2 as a buyer of Somali origin from Kenya and the trappers of the accused having Kenyan money and dollars. None of the items said to have been found with the accused person upon his arrest were proven to be capable of causing death. All items described were more of materials used in treatment.

And under Section 43 (2) of the Penal Code Act, the intent to murder or to put in danger of being murdered can only be presumed to be established ***“where a person so kidnapped or detained is thereafter not seen or heard of within a period of 6 months or more”***.

The victim in the presence case was recovered that very day by Police Officers.

Court finds for those reasons that the intent to murder him or cause him to be murdered were not proved.

The last ingredient is whether the accused person was one of the perpetrators of the crime.

PW1 stated he was informed on 23.02.10 by GISO Busitema about a plot by someone who wanted to sell someone to Kenya and was looking for a market. The person was named as the accused person, a traditional doctor resident of Muwayo Trading Centre, in Bugiri District. After meeting with the informer Ndimwibo, the matter was reported to Busia police and it was agreed to arrest the accused person.

That is how PW2 was contacted to act as the buyer. Kenya money and dollars some of which was fake was put together. A vehicle was borrowed from the In-charge of CMI, Busia, a Toyota Corona white in colour. A Safari Com Telephone card was bought for purposes of communication with accused. Ouma and Ndimwibo were communicating. Upon convincing him that money was available PW2, PW3 Ouma CID Department Busia and Ndimwibo, went with the Corona while PW1 and CMI Asiimwe followed them. Arriving at Muwayo at 11.00am, Ndimwibo went and picked the accused and he got into the white Corona. They moved towards Bugiri. PW1 remained in Muwayo and kept in touch by phone.

The car with accused and the buyer returned to Muwayo about 4.00pm. PW1 and his colleagues followed them. At the border of Busia and Bugiri the car where accused was stopped. Accused was arrested in the process of receiving money. The victim Sadat Maganda was in the car. Both accused and the boy were handed over to O/C station and O/C CID Busia.

The accused did not know the purpose for which the child was being brought. Evidence confirmed by PW3 GISO of Busitema Wanyama John.

PW2 confirmed dressing up as a woman from the Coasts and receiving Kenya money and dollars from police. She left for Muwayo with O/C CID Ouma and Ndimwibo. They picked accused and went on to Bugiri.

Accused was introduced by Ndimwibo as the seller. They picked the child and accused asked for money and was assured it was available. The child was put in the vehicle and assured he was being taken to school while staying with his Auntie.

On the way to Muwayo accused again asked for the money. He also mentioned having two other children a boy and a girl for sale. He was again assured he would be paid.

At Muwayo, while counting the money, was arrested by PW1 and his colleague and PW3 – the Police Officer. The accused never got the money and was not informed why the child was being bought.

PW4 confirmed receiving accused at Busia police with the materials already described in this Judgment. He also received the victim.

PW5 the victim knew the accused before. Confirming that on the date in question his father Muhammed Kiduma handed him over to the accused, a woman and 2 other men who included a driver of the vehicle. The car was white. He was told he was being taken to his Auntie for school. The victim was certain that this father sold him to Mudeega the accused person and the 2 men in the car.

The accused while admitting being with PW2 and the accused, claimed that he was asked to treat the child and was not selling him. That he had been told the child was suffering from fits hence the jerrican of water, the herbs, sticks and seed to treat him with. He denied knowing the victim before that date and neither did he know PW2 or the other people involved. He only knew Ndimwibo who he says had been adopted by his father and the father of the victim Kiduma Mohammed with whom he had a dispute over a land boundary.

Court is aware that the accused could not be convicted on the evidence of PW5 alone unless it was corroborated by some other material evidence in support thereof implicating him – **Uganda vs. Sulaiman Karoli HCT Criminal case No. 56/2002.**

Considering all the circumstances of this case, court finds that there was sufficient corroboration in the evidence of the other prosecution witnesses. They were informed of accused wanting to sell a child, made the arrangements described herein and indeed accused appeared and took them to Bugiri where they picked the child after promising him that they could pay him in Kenya money and dollars.

The prosecution witnesses were not shaken in cross examination. The whole saga took place during broad day light and the accused admits that he travelled with them and the child was picked.

While he claims he was told they were picking the child for treatment, this was not brought out to the prosecution witnesses in cross examination.

Decided cases have established that, any information to impeach the credibility of a witness should be brought out in cross examination otherwise it does not carry weight with the court.

PW5 the victim's assertion that he was sold by his father Muhammed Kiduma to the accused is supported by the evidence that accused demanded for money from PW2 and also offered to sell two more children to her if she wanted. The accused admitted only knowing the father of the victim and Ndimwibo in the whole saga.

With all that evidence I find that the defence of the accused person was disproved and that he was the perpetrator of the offence.

Although some of the ingredients of the offence of kidnapping like lack of consent and intention to murder were not proved, I find that the available evidence proves the alternative charge of Aggravated trafficking in persons.

As earlier pointed out trafficking in persons occurs when there is transportation or receipt of persons by means of deception or abuse of position of vulnerability. The child in the present case was received and transported by the accused person on the pretext that he was being taken to his Auntie where he would go to school.

The victim was a young boy of about 9 years and therefore vulnerable. The evidence of the prosecution was that the father of the victim was paid and gave consent to the victim being taken. The accused was also arrested in the process of receiving the money he had demanded for although he never received it.

The offence was aggravated since the victim of the trafficking was a child – Section 4 (a) Prevention of Trafficking in Persons Act. The accused was assisting in organizing and helping other persons to commit the offence.

For all those reasons, the accused is hereby acquitted of the offence of Kidnapping with intent to murder. And find him guilty on the alternative count of Aggravated Trafficking in Persons Act c/s 4 (a) (e) and (i) of the Prevention of Trafficking in Persons Act and he is convicted of the same.

The accused organized, and made preparations for bringing the victim from his parents home and selling him to people he believed were to take him to Kenya, where any unlawful act could have happened to him.

Flavia Senoga Anglin

Judge

10.10.13

10.10.13:

Accused before court

Katami Lydia for State

Ngobi Balidawa holding brief for Mukaaga Johnson for the accused present

Both Assessors in court

Counsel for State:

Matter is for Judgment.

Court: Judgment delivered in court.

Accused acquitted of Kidnapping with intent to murder but found guilty on the alternative charge of Aggravated Trafficking c/s 4 (a) (e) & (i) of the Prevention of Trafficking in Persons Act and is convicted of the same.

Flavia Senoga Anglin

Judge

10.10.13

Counsel for State:

The offence for which the accused had been convicted carries a maximum sentence of imprisonment for life. It is our prayer that such a sentence be imposed on the convict because there is need of deterrence of such offences within this jurisdiction and the country at large.

The sentence if given by court will send a message to other members of the community that children ought to be protected rather than be used as items of trade or for financial benefits.

Cases of this nature are many in this country and the same need to be checked. It is for that reasons that I pray for the heavy punishment.

Counsel for the accused:

I have 6 factors in mitigation.

The convict is a first offender with no past criminal record.

The common practice and principle of Criminal Law demands that he be given a short sentence to avoid mixing with hard core criminals where he will learn even more vicious ways of committing other crimes. He also deserves leniency as a first offender.

The other factor is the period spent on remand. He has been on remand for 3 years and 8 months. He was arrested on 07.02.10. For all that period he has been a prisoner with his freedom curtailed for that period. Court should consider this when giving sentence.

The convict is a family man with 18 children. He is a widower having lost his 3 wives.

Court should take this into account and give him a shorter sentence to enable him go home and care for the children.

The age of the offender: He is of advanced age i.e.59 years. The sentence passed should be commensurate to his age.

The convict is remorseful throughout the trial he has exhibited conduct of a repentant person.

The sentence should be one that will help to rehabilitate the convict.

The circumstances under which the offence was committed: The evidence shows it's the father of the victim who handed over the same to the convict. The father was never brought to book and no explanation was given by the prosecution.

Court should therefore exercise leniency for those reasons.

The prayer by prosecution to sentence accused to imprisonment for life is high handed and unreasonable in the circumstances.

Court should exercise its discretion and caution the convict since no life was lost in the process.
We so pray.

Accused:

I pray court to give me a lenient sentence to enable me return home and educate my children whose mothers have passed away.

Court: **sentence**

The convict is sentenced to imprisonment for 7 years.

Reasons:

Though a first offender who seems repentant, the offence was motivated by greed for money without a thought for the welfare of the child who was the victim.

It was committed against a vulnerable member of society i.e. a child who was then aged about 9 years.

Children and other vulnerable members of society are not safe with people like the convict freely moving about in society. The convict may be of further danger to the community.

That the child was handed over by the father is no lawful excuse because the evidence indicates that the child was sold by the father and bought by the offender to be further sold out of the country.

The accused as a family man with children of his own ought to have known better and exercised restraint before accepting to be part of such abominable actions. The offence is greatly frowned upon and causes apprehension in the public.

But since no physical injury was occasioned to the victim and he was rescued before being taken across the border, court will exercise leniency.

The sentence would have been 10 years but court has also taken into account that accused has been on remand for 3 years.

Therefore 7 years will suffice to serve the ends of justice.

Right of Appeal against conviction and sentence explained to the convict.

Flavia Senoga Anglin

Judge

10.10.13

Accused: I will appeal against the conviction and sentence.

Court: The record to be prepared and availed to the convict.

Flavia Senoga Anglin

Judge

10.10.13

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT IGANGA
CRIMINAL SESSION CASE NO. 166 OF 2011**

UGANDA.....PROSECUTOR

VERSUS

MUDEEGA ALI.....ACCUSED

BEFORE: THE HONOURABLE LADY JUSTICE FLAVIA SENOGA ANGLIN

SUMMING UP NOTES

ACCUSED: MUDEGA ALI

INDICTMENT: Kidnap/Detaining with intent to Murder C/S 243 (1)
& 242 Penal Code Act.

It is alleged by the prosecution that the accused and others still at large on 24.02.10 at Luwero Bulebi village in Bugiri District unlawfully and fraudulently kidnapped Sadat Maganda from his step mother Aisha Nakabugo with intent to murder the said Sadat Maganda.

Alternative Count: Aggravated Trafficking in persons c/s 4 (a) & (e) & (i) of the Trafficking in Persons Act 2009.

- That on the same date and in the same place the accused and others engaged in organizing and making preparations for the selling of Sadat Maganda a boy aged 9 years to Kenya. Accused denies being involved in the offences.
- Bear in mind the presumption of innocence of an accused person until otherwise proven.
- Burden of proof of on the prosecution to prove guilt of the accused.
- Standard of proof is beyond reasonable doubt.
- Accused has no duty to prove his innocence. He just has to raise a defence that will create reasonable doubt in the mind of the court.

Ingredients to be proved in Kidnap:

1. Kidnapping or taking away of a human being by force or fraud.
2. Intent that the person kidnapped should be murdered or be put in danger of being murdered.

To prove first ingredient of taking away by force or fraud

- Prosecution relied on PW5 the victim who told court that his father Kidma Mohamed told him to dress quickly and leave with the people in the white car to go to his Aunt and live there while going to school. Accused was in the car and PW2 who said the accused bought books for PW5.

Prosecution asserts that the taking of PW5 was fraudulently as it was based on false information that he was going for purposes of going to school and that the accused knew that this was not true.

- The accused's defence in this ingredient was that he was at home in his shrine when PW2 and others picked him to purportedly go with them and treat a sick person. He got in the car and they went to where the victim was picked from.

That PW5 went willingly as his father and not accused told him that he was going to be taken to his Aunt for school.

That PW5's father took him to the car where accused was with other people. While PW5 said accused bought him from his father – he does not say if he saw money being exchanged. PW2 said on the other hand that it's the accused who brought PW5 to the car – thereby contradicting evidence of PW5.

- That in the circumstances accused cannot be said to have taken victim by force or fraud as it was victim's father who handed him over.
- Prosecution says intent to murder victim or put him in danger of being murdered was proved when PW5 says he saw in the car a jerrican of water and a black polythene bags and other things.

PW4 – officer who received accused at Busia Police station confirms finding the jerrican of water in addition to a red seed that looked like a bean and a black substance used as a herb by traditional healers. The officer stated that accused told him the water was for cleansing the panga after the murder. While the red bean and black herb were to make victim lose his senses.

- No panga was ever found with accused. PW1 got information of people planning to sell a child to Kenya from one Abdalla Ndimwibo and PW5 and he set a trap to net the accused persons. PW3 confirmed the evidence.

The intended sale or the sale according to the prosecution exposed the victim to the possibility of being murdered or harmed in any other way.

- PW2 says she told accused she was buying a child for human sacrifice.
- Participation of accused: PW1 says he nabbed accused in the process of receiving money in Kenya shillings and US dollars from PW2.

This is confirmed by PW2 who was with accused from the time he was picked from Buwayo Trading Centre in the morning to 4.00pm when he was arrested. She said accused bargained for payment and asked if PW2 appreciated the business and that he was willing to sell 2 more children to PW2.

Accused in defence says he was in the car because he was invited to treat a patient. And that being in the car when victim was handed over does not mean that he had intent to commit a crime.

- No money should to have been given to it and was ever exhibited.

In these circumstances, do you find that the prosecution proved all the necessary ingredients of the offence?

Accused talked of a family grudge with Ndimwibo to get him away from the family property – could this have been a set up to get rid of the accused?

The inconsistencies referred to in the prosecution case – would affect that case if they are grave but if minor – they are ignored.

Did accused have a common intention with the father of PW5 to sell PW5 and have him murdered? The whereabouts of PW5's father are not known.

If you consider all the surrounding circumstances including the defence of accused and you find prosecution has proved all necessary ingredients to the required standard, advise to convict.

If you are in doubt – it should be resolved in favour of the accused person and he should be acquitted.

Flavia Senoga Anglin

Judge

29.05.13

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