

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

CRIMINAL SESSION CASE NO. 065 OF 2011

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UGANDA.....PROSECUTOR

VERSUS

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MPALA STEPHEN.....ACCUSED

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

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JUDGMENT

The Accused is charged with Aggravated Defilement, contrary to Section 129 (3) and (4) (c) of the Penal Code Act.

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It is alleged that between the months of February and October 2011 in Budondo village, Luuka sub-county, the Accused performed a sexual act on Kyate Brenda a girl under the age of 18 years. The Accused denied the charges and thereby requiring the prosecution to prove the charges beyond reasonable doubt as required by the decisions in the cases of **Woolmington Vrs. DPP and Miller Vrs. The Minister of Pensions [1947]2 ALL E.R 372.**

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The prosecution is required to prove the following ingredients:

- The victim was below 18 years.
- The Accused person was in authority.
- A sexual act was performed on the victim.
- It was committed by the Accused.

Regarding Ingredient No.1, PW1 the mother of the victim testified that the victim was born in March 1997.

5 The medical evidence of Dr. Bamudaziza and the Medical Report PF.3 indicate that at the time of the offence the victim was 14 years of age.

10 It was established that the Accused is a first cousin of the victim, their parents being brother and sister- according to the evidence of PW3 and PW1. The Accused was therefore not a person in authority.

15 Regarding sexual intercourse, the Medical examination For- PEx.3 that was tendered in Court and filled by Dr. Bamudaziza after examining the victim, established the following:

- The victim had a healed ruptured hymen.
- The victim was 3 months pregnant.

20 This is corroborated by the evidence of PW1 to whom the victim revealed that she was pregnant after the arrest of the Accused.

25 On Ingredient No.4 - the participation of the Accused, PW2 the victim gave evidence narrating the several times the Accused had sexual intercourse with her. The Accused used to stay in their home.

30 PW1 the mother also testified that the Accused used to stay with them in their home as a relative of the victim's father who is PW2 in the case.

PW1 further testified that one Sunday in October 2011, both the Accused and the victim disappeared. PW1 reported to the authorities. The Accused was arrested in Bukade village.

5 On arrest, it is the Accused person who led them to one Bilal's home where the victim was being kept.

That evidence is corroborated by PW5 Detective Corporal Tabuziswa who participated in the arrest of the Accused.

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It is the Accused who led them to the home of Bilal where the victim was found.

PW4 recorded a charge and caution statement made by the
15 Accused and it was admitted as PEx.4. Therein he stated that the victim was his lover and they had been having a relationship for some time.

The Accused's defence was a total denial of any knowledge of
20 the victim, or her parents or ever having stayed in their home or having any relationship with any of them.

He further stated that he had been staying with his Aunt all the time.

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I find that the evidence adduced by the prosecution is overwhelming in proving that the Accused had a sexual relationship with the victim who was below the age of 18.

30 His denials are so naked that they cannot be believed by a primary school child. They are a pack of lies.

I find that the charges against the accused have been proved beyond reasonable doubt that the accused defiled the victim.

The Assessors were of the same view based on the evidence available.

5 I find the Accused guilty as charged of the offence of Aggravated Defilement and convict him accordingly.

10 **Godfrey Namundi**
Judge
13/11/2013

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13/11/2013:

Accused in court

Prosecutor: Kitimbo

Defence Counsel: Kabonesa

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Court: Judgment read in open Court.

Prosecutor: There is no previous record. This is a rampant offence in this region. A deterrent sentence is called for.

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Kabonesa: The Convict is a first offender who has been on remand for 2 years and above. He has responsibility for his own children and those of his own late brother. He is 27 years old. He is a young adult who is still strong enough to contribute to this country. He has room to reform. A lenient sentence is called for.

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5 Court: The Convict is a young man aged 27. The offence is however rampant and should be discouraged. The Convict does not show any remorse. I find that a deterrent sentence is called for. I sentence him to serve 12 years imprisonment.

10 **Godfrey Namundi**
Judge
13/11/2013

15 Court: Right of appeal explained.

20 **Godfrey Namundi**
Judge
13/11/2013