

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KUMI
CRIMINAL SESSION CASE 63 OF 2012
UGANDA V EMUTENG EDISON

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person is charged with defilement c/s 129 (3) and (a) of the penal code. It is alleged that on 2nd January 2012, at Kocheka village, the accused performed a sexual act with Adong Lillian a girl under the age of 14 years.

Prosecution was led by Ms Alleluya while accused person was represented by Mr. Ewatu on state brief. Assessors were Oluca Cuthbert and Oruka James.

The prosecution had a duty to prove that the accused person performed a sexual act with a girl under 14 years and that he was a person in authority.

The sexual act was proved by Pexh. 1 that was admitted by consent. She was found to be 15 years old and there were signs of penetration.

The prosecution case was based on the evidence of PW1 Adong Florence and her mother PW2 Alungat Joyce both of whom were in the house on 3.1.12 at night when Adong woke up to find someone on top of her and performing sexual actions. She pushed him away, he ran, cleared his throat and opened the door of the room and that is when she identified him as the accused who was a husband her mother. Her evidence is corroborated by her PW2 her mother who was in her bedroom and she heard her daughter cry out and she observed that her husband the accused was not in the bed. She got up to light the todoba and that is when the accused returned to the bed. Adong then spoke from her bed that accused person had defiled her. PW2 proceeded to examine the victim and found her private parts were wet.

I believed the testimonies of the two witnesses and found that accused person was placed at the scene of crime and that he defiled the victim.

Counsel for the accused suggested that the accused was framed by PW2 because of domestic disputes . Although there seems to have been some domestic misunderstandings, the accused and PW2 continued to live as husband and wife, a fact that suggests they had resolved their differences.

I am in agreement with the assessors that the state has proved beyond reasonable doubt the offence of defilement c/s 129 (1).

There is insufficient evidence to support aggravated defilement because it was not proved beyond reasonable doubt that the accused person was in a position of authority over the victim.

DATED AT SOROTI THIS 19th DAY OF DECEMBER 2013.

HON. LADY JUSTICE H. WOLAYO