

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CRIMINAL SESSION CASE NO. 59 OF 2011
UGANDA V EPUKU DENNIS

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person in this case is charged with aggravated defilement c/s 123 of the penal code. It is alleged that the accused person on 6th march 2011 at Telamet village, Soroti district performed a sexual act with Amwogo Agnes, a girl aged 13 years.

Prosecution was led by Mr. Jonathan Okello State Attorney while Mr. Ewatu represented the accused on state brief. Assessors were Mr. Ocole and Ms Amoding.

Prosecution had a duty to prove that commission of the offence beyond reasonable doubt.

Ingredients of defilement

Ingredients of the offence are that the child is below 14 years, that a sexual act took place and that it was the accused who carried out that sexual act.

PW1 Dr. Bamwoyo Tukei examined the victim on 7th March 2011 whom he found to be of apparent age of 12 years. He also found no evidence of penetration and he found that the hymen had been ruptured long ago. The examination took place a day after the alleged defilement. PW2 Amwogo Agnes testified that on 6th march 2011, she returned from the well to find the accused at her home. The accused asked of drinking water and as she served him, he grabbed her and pulled her legs apart. It was at this point that her mother arrived and entered the house. That no sexual act took place.

The evidence of PW2 combined with medical evidence shows that no sexual act took place. Both counsel in their oral submissions were in agreement that the

victim was aged about 12 years old and that no sexual act took place between the accused person and the victim.

However, PW3 Asio Stella, mother of the victim found the accused on 6th March 2011 at about 1 p.m on top of her daughter and in cross examination, she said he had removed his shorts. Her evidence corroborates the evidence of PW1 Abwogo that accused pulled her legs apart. Although there was no defilement, there is evidence of attempted defilement.

I am in agreement with the two assessors that prosecution has proved beyond reasonable doubt that accused person attempted to defile Abwogo, a girl aged 12 years old. Accused person is accordingly convicted of attempted defilement c/s 129(5) of the penal code.

DATED AT SOROTI THIS 01st DAY OF NOVEMBER 2013.

HON. LADY JUSTICE H. WOLAYO