

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CR-SC- 16-2012**

**UGANDA.....PROSECUTOR  
VERSUS  
WANJA MOSES.....ACCUSED**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

Accused is indicted of aggravated defilement c/s 129 (3), (4) of the Penal Code Act. It is alleged that **Wanja Moses** on the 10<sup>th</sup> day of December 2010 at Buyaga Trading Centre in Bulambuli District unlawfully performed a sexual act with **Masawi Maureen**, aged 13 years.

Accused denied the charge.

Prosecution had evidence to prove the case. The burden is beyond reasonable doubt.

The ingredients in this offence for proof are:

1. That there was sexual intercourse.
2. That the girl was below 14 years.
3. That the sexual assault was committed by the accused.

The resolution is as follows:

## **1. Whether there was sexual intercourse.**

Evidence through PW.1 (the victim) gave evidence that she is currently 16 years, and was born in 1997.

PE.1 (medical examination report) indicates that the girl was aged 14 years at time of examination. A finding was made during the trial that this girl was aged 13 years by time of commission of the offence. The ingredient was therefore proved. The victim testified, that they had sex with the accused on several occasions; beginning with 2010. She said that on that day, 10<sup>th</sup> December 2010, they had sex in her uncle's home. She got pregnant in the process, and even dropped out of school.

PW.2 confirmed that PW.1 was his grandchild born in 1977. He also confirmed that PW.1 got pregnant and revealed that accused was responsible for the pregnancy.

**PW.3 Dt. CPL Okyamasi Nicodemus** received the first information report and carried out inquiries in the case. He stated that he confirmed that accused played sex with complainant and made her pregnant.

**PW.4 Dr. Rubanza** informed court that he examined the victim and found her a young girl of tender years of 14 years. Her hymen was ruptured long ago and she was about 20 weeks pregnant.

From the above evidence it is clear that sexual intercourse took place. It has also been proved that the victim was a girl below 14 years. This ingredient has also been proved.

The last ingredient to prove is whether accused participated in the offence. Evidence already reviewed above through PW.1, PW.2, PW.3 and PW.4 is consistent and positively identifies the accused as the culprit. There is no doubt that accused played sex with the victim a young girl below 14 years and the sexual intercourse resulted into the pregnancy of the victim.

The evidence on record proves that the accused participated in the sexual assault of the victim. This ingredient is also proved.

In the final analysis, the evidence on record is consistent and points at the guilt of the accused.

The assessors jointly advised me to convict the accused. I agree with their opinion. I find that the accused is guilty of the charge. His defence of alibi was destroyed by the evidence of the prosecution. His defence is therefore rejected.

Accused is found guilty of the charge and is convicted thereof.

**Henry I. Kawesa**

**JUDGE**

**22.01.2014**

22.01.2014

Accused present.

Resident State Attorney **Justice Chekwech.**

**Jude** for accused.

Resident State Attorney for Judgment.

**Court:** Judgment delivered as above.

**Henry I. Kawesa**

**JUDGE**

**22.01.2014**

**Resident State Attorney:**

Accused is a first offender. Maximum penalty is death. Accused has been 1 year 7 months on remand. Young girls are sexually abused. I pray for deterrent sentence that will rehabilitate the convict and deter others. I so pray.

**Henry I. Kawesa**

**JUDGE**

**22.01.2014**

It is true the offence carries maximum of death. We pray for leniency. He is a first offender. The time of offence both were teenagers, convict was by then. Has been 1 year and 7 months on remand. Accused be given a lenient sentence. Let court be lenient to him.

**Henry I. Kawesa**

**JUDGE**

**22.01.2014**

**Sentence**

The offence is rampant. It carries a maximum of death. Mitigations have been given. The accused/convict was a teenager, but his act led to the ruin of her life and she ended up in total mess of her life. The accused shall be sentenced to a custodial penalty to deter others and help him rehabilitate. Given the 1 year and 7 months on remand, he shall serve a custodial sentence of 3 years. I so order.

**Henry I. Kawesa**

**JUDGE**

**22.01.2014**