

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
HCT-06-CR-SC-0161 OF 2012

UGANDA.....PROSECUTOR

VERSUS

KAYINGA GODFREY.....ACCUSED

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.

RULING

The accused stands charged with aggravated defilement. It was alleged that he performed sexual intercourse with his daughter **PROSSY NAKAWUKI** a girl aged 13 years.

Pw1 (**Ssenko Deogratus**) went and arrested the accused after one **NAKABUGO** the accused's sister informed them that he had defiled his daughter **NAKAWUKI PROSSY**. The victim when asked by Pw1 repeated the allegation, saying that the accused had defiled her many times. Pw2 (**Ssenyange Abdul**) found the area chairmen and the accused's brothers discussing the issue and he advised them to report it the police which they did.

The court has to determine whether a prima facie case was made out to warrant the accused to make a defense. A submission of no case to answer will be upheld where a major ingredient of the offence has not been proved.

The following ingredients must be proved beyond reasonable doubt;

- That the victim was aged of 13 years,
- She was the accused's daughter,

- That there was unlawful carnal knowledge of her,
- That the accused is the one who committed that offence.

THE AGE OF THE VICTIM.

There is no evidence as to the age of the victim. Pw1 only said that she looked young. There is therefore no evidence to prove the first ingredient.

WHETHER THERE WAS UNLAWFUL CARNAL KNOWLEDGE OF HER.

Pw1 said that the victim told him that the accused defiled her many times. That is all we have on record. This is not sufficient to prove the fact of defilement. This ingredient was also not proved.

WHETHER THE ACCUSED IS THE ONE WHO COMMITTED THAT OFFENCE.

Again the only evidence in this regard is Pw1's that the victim told him that the accused defiled her. There is again no sufficient proof of this allegation. On the whole I don't find sufficient evidence to support a decision to require the accused to make his defense. He is accordingly acquitted, and should be discharged forthwith.

Margaret Tibulya.

Judge.

19th May 2016