

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT ENTEBBE
HCT-00-CR-SC-0955-2016

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

KISEMBO RONALD :::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

RULING:

(Under S.73(1)T.I.A)

The Accused person, Kisembo Ronald is indicted with Aggravated Defilement Contrary to Section 129(3), (4)(a) of the Penal Code Act. It is alleged that on the 18th October 2015 at Naluvule village in Wakiso District performed a sexual intercourse with Babirye Masitula, a girl aged 5 years.

The Accused person pleaded ***not guilty***. The prosecution called a total of five (5) witnesses and closed the case. Section 73(1) of Trial on Indictments Act requires that the trial Judge considers evidence on record and determine whether the Accused person has a case to answer.

In this case, Masitula Kalyankolo (PW1) the Complainant's evidence is that the alleged victim is her grandchild and on 18th October 2015 she returned home at 8:00 p.m and observed that the girl was not walking well. The child told her that she had fallen down but later changed the story that the Accused had defiled her. She complained and he was arrested.

PW2, Tumuhimbise (D/C) the Investigating Officer found nothing relevant to this case.

PW3, Babirye (victim), all she said is that he slept on her after which she went back to play and she did not feel anything.

Despite all efforts, the child who testified not on oath due to tender age, was unable to describe anything that was done to her to amount to a sexual act.

PW5, Oringo Micheal, a Clinical Officer who examined the girl found no penetration, hymen of the girl was intact. He observed inflammation in area above the child's vagina which could have been as a result of any superficial trauma or abrasion.

Section 129(7) defines **“a sexual act” as Penetration of the Vagina, mouth or anus, however, slight, of any person by a sexual organ”**.

In a case of Aggravated defilement, for there to be a case to answer, the prosecution evidence must establish the three essential elements of the offence;

- (a) The age of the victim as being below 14 years.
- (b) That a sexual act was done to the child.
- (c) That the Accused committed the offence.

From the evidence summarised above, there is no evidence that establishes that a sexual act was done to or with the alleged victim of defilement in this indictment. It is not enough for the child to say **“he slept on me”**. The fact that she says that she left him in a room and went back to play, feeling nothing and she told no body renders the story not believable.

In view of the above, I find the prosecution evidence manifestly unreliable and no reasonable court can convict on it if the Accused person did not offer any defence. There is no case to answer and the Accused person is hereby acquitted and set free.

Dated **30th April 2018.**

J. W. Kwesiga

Judge

30/4/2018

In the presence of:-

- Miss Asiiku Nelly - SSA for state
- Mr. Ivan Sekyanda - for Accused
- Ms. Boogere Gorret - Court Clerk