

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

**CRIMINAL SESSION CASE NO. 262 OF 2014**

**UGANDA..... PROSECUTOR**

**VERSUS**

**NABANJI TOM.....ACCUSED**

**RULING**

**BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

**Introduction and brief facts**

The accused NABANJI TOM was on an unspecified date indicted with the offence of aggravated defilement contrary to sections 129 (3) and (4) (a) of the Penal Code Act. Cap. 120 LOU.

It was stated in the indictment that on 31/1/2014, at Kyebando Zone, Mayuge Town Council in Mayuge District he performed a sexual act with SABAWO MARIAM a girl aged 12 years.

The accused denied the offence and a plea of not guilty was entered on 9/1/19. He was represented by Mudhumbusi Daniel, while Abbey Lugada represented the State.

The prosecution case is that Mariam Sabawo the victim then aged 12 years, was resident with her parents in Kwibiri Mayuge in Imanyiro Sub County. During January 2014, Sabawo's mother left her with other siblings in their house. At around midnight, Sabawo heard someone calling her name from outside. Since the voice seemed like that of her father who was also away that night, she lit a hurricane lamp and then opened the door. She recognized the accused as the person calling her from the moonlight and the T/shirt he was wearing. That the accused informed Sabawo that her father had asked him to give her some money. When she approached him to receive the money, the accused grabbed and overpowered her. He lay on her and had sexual

intercourse with her in the doorway of her house. She raised an alarm calling out to her younger brother who was inside the house, whereupon the accused jumped up from her and run away.

The following day, Sabayo informed her mother of the defilement, and the matter was reported to police. Sabayo was eventually medically examined at the Mayuge Health Centre III, and the defilement confirmed. The accused was thereby arrested and charged with defilement.

The prosecution presented three witnesses to prove their case at the close of which, they stated that enough had been presented to have the accused present his defence. Ms Adikini counsel for the accused offered no submissions on whether the accused had a case to answer. This therefore is my ruling on the same, and my decision under section 73(1) of the TIA on whether the accused ought to be put on his defence, to this charge.

It is now a well-established principle of our criminal law that on a charge of aggravated defilement, at whatever point the prosecution choose to close their case, the burden lays upon them to adduce evidence to prove the following elements beyond reasonable doubt:-

- i. The victim is below 14 years.
- ii. That the victim experienced unlawful carnal knowledge (sexual intercourse).
- iii. It is the accused person who had sexual intercourse with the victim or, that the accused person participated in the commission of the offence.

By law it is expected of the prosecution that, at the close of their case, they have made out a *prima facie* case, one on the face of it, is convincing enough to require that the accused person be put on his defence. See for example **Rananlal T. Bhati Vrs R (1957) EA** followed in **Uganda Vrs Kivumbi &Ors Crim. Case No. 20/2011.**

Therefore in order for the court to dismiss the charge at the close of the prosecution case, I must be satisfied that: -

- a) There has been no evidence to prove an essential element of the alleged offence, or

- b) The evidence adduced by the prosecution has been so discredited as a result of cross examination or, is so manifestly unreliable, that no reasonable tribunal could safely convict on it.

See **“A Guide to Criminal Procedure in Uganda” (supra) at page 120.**

Sabawo the victim, was the principle witness for the prosecution. It was an agreed fact that she was aged 12 years which would make her a child in law. She claimed that the accused was her neighbor in the village and she had known him for a long time. That on the night she was defiled, someone called her from outside her house and she recognized the voice as if that of her father. She was for that reason prompted to open the door and it was then that she recognized the accused. She was able to identify the accused using the light of a hurricane lamp that she lit inside the house and also from the moonlight outside as well as the clothes he wore. That she again identified him as he had sex with her and that when she raised an alarm, she mentioned his name.

The next day Sabawo informed her mother who had returned, that it was the accused who had had sex with her. She repeated her ordeal at police and even recorded a statement.

I note that there appeared to be some discrepancy over when the offence took place and also the date and health service facility in which Sabawo was actually examined. However, her recollection of the defilement was consistent and even without supporting evidence would be sufficient to sustain a prima facie case. Her identification and description of the accused is also sufficient to place him at the crime scene which would necessitate that he presents a defence to the serious offence for which he is charged.

I would conclude therefore that the accused has a case to answer to the charge of aggravated defilement. I do order that he presents his defence using any one of the three options open to him at law.

I so order.

**EVA K. LUSWATA**

**JUDGE**

**26/03/2019**