

1 THE REPUBLIC OF UGANDA,
2 IN THE HIGH COURT OF UGANDA,
3 HOLDEN AT KAMPALA,
4 CRIMINAL DIVISION.
5 HCT-00-CR-JSC-0197-2023

6 UGANDA=====PROSECUTOR
7 VERSUS
8 M.V (Juvenile Offender) =====ACCUSED.
9

10 BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JHC

11 RULING

12 1. Introduction

13 M.V a juvenile offender was indicted for Rape contrary to sections 123 and 124 of
14 the Penal Code Act laws of Uganda where it was alleged that on the 9th day of
15 August 2022, he had unlawful carnal knowledge of a lady M .I without her consent.

16 When this case came up for plea taking during a juvenile session held at Naguru
17 Remand Home on 14th June 2023, Court found out that the juvenile offender was
18 not at the remand home.

19 The state attorney Ms. Tabaro Caroline informed court that the juvenile offender
20 was believed to be incarcerated at Luzira Prison.

21 A production warrant was issued to Luzira prison to have him produced before
22 court on the 21st of June 2023 for plea taking.

23 On the 21st day of June 2023, the juvenile was accordingly arraigned before this
24 court for plea taking.

25 Before he could take plea, Counsel Zimbe Zephaniah who held brief for Counsel
26 Winifred Adukule with instructions to proceed brought it to the attention of this
27 court that the person before court was a juvenile aged 17 years. He based his
28 submission on the birth certificate issued from NIIRA which was on file which
29 indicated that M.V was born on the 30th day of March 2006 at Mengo Hospital,
30 Rubaga Division to Ddungu Remigio and Nalukenge Grace.

31 This implied that in August 2022 when the juvenile was arrested, he was only 16
32 years old and yet he was remanded to Luzira Upper Prison which is a remand prison
33 for adults.



34 Counsel submitted further that his remand in an adult prison was contrary to
35 **section 89(8) of the Children Act CAP 59** which provides in mandatory words that
36 **"No child shall be detained with an adult person.** He submitted that his remand
37 in an adult prison amounts to torture. He prayed to this court to prevent any further
38 violation of the child's rights and declare the trial a nullity.

39 The state attorney did not object to the prayer and submitted that in view of M. V's
40 physical appearance and the birth certificate on file, he was indeed a juvenile.

41 **2. The law Applicable.**

42 Children's rights are enshrined in the 1989 United Nations Convention on the Rights
43 of a child (UNCRC) which is the most ratified human rights treaty in the world.

44 Uganda ratified it in 1990 committing itself to full realization of children's rights as
45 enshrined in the Convention on the rights of a child and its attendant protocols
46 including rights of a child in conflict with the law.

47 In 1995, the Amended constitution provided for rights of children and specifically
48 about rights of a child in conflict with the law under **Article 34 (6)** as follows:

49 **"A child offender who is kept in lawful custody or detention shall be kept**
50 **separately from adult offenders".**

51 **The Children Act, Cap 59 of 1997 with its amendment in 2016** actualized the
52 constitutional provisions on the rights of children in conflict with the law under
53 **section 89(8) supra and section 91(6)** which provides that; **"No child shall be**
54 **remanded in custody in an adult prison".**

55 The legislators went ahead to amend section 88 of the parent Act which only
56 provided for the minimum age of criminal responsibility of twelve by inserting more
57 provisions aimed at enhancing the protection of children in conflict with the law as
58 follows.

59 **Section 19 .Amendment of section 88 of the principal Act.**

60 **Section 88 of the principal Act is amended by inserting the following new**
61 **subsections-**

62 **2) In determining criminal responsibility or an order for a child offender**
63 **,the police, prosecutor or a person presiding over the matter shall consider**
64 **the age of the person at the time the offence was allegedly committed;**

65 3) Subject to subsection (2), court shall determine the age based on full
66 assessment of all available information, giving due consideration to official
67 documentation including a birth certificate, School records, health records,
68 statements certifying age from the parent or child or medical evidence.

69 4) Specialized protection for children under this Act shall apply to all
70 children below the age of 18 years.

71 5) A person shall be presumed to be a child if he or she claims or appears
72 to be younger than 18 years old pending a conclusive determination of age
73 by court."

74 To buttress the need for protection of juvenile offenders, the lawmakers amended
75 **section 91(5) (a)** of the parent Children Act by substituting for "six months" the
76 words "three months". That is remand in custody shall not exceed 3 months in the
77 case of an offence punishable by death and 45 days for any other offence.

78 *It is therefore trite law that key stake holders in the criminal juvenile justice*
79 *system to wit the police, the prosecutor (the state Attorney), and the judicial*
80 *officer or any other person presiding over the juvenile offenders case must take*
81 *the issue of age seriously when dealing with a person who says is a child or who*
82 *appears to be a child.(Section 88(2) of the Children Act supra).*

83 *In case the police have ignored or neglected the child offender and indicated he is*
84 *an adult on the charge sheet, the prosecutor has the statutory obligation under*
85 *section 88(2) of the children Act as amended to assess the age of the person they*
86 *are prosecuting.*

87 *The presiding Magistrate who sits on the seat of justice has powers under section*
88 *88(2) of the Children Act to investigate the issue of age of any offender who*
89 *appears to be young and or claims to be below 18 years. The magistrate has every*
90 *right to request for documents that can help him or her determine the age.*

91 *Section 88(5) of the Children Act actually makes the presumption that the person*
92 *who claims or appears young is a child mandatory pending conclusive evidence*
93 *of age by court.*

94 *The implication of this law is that such a person should not be remanded in an*
95 *adult prison pending determination of age but should be treated as a child*
96 *offender by releasing him on court bond. However, if the circumstances of the*
97 *case demand that he should be remanded, then he should be remanded in a*
98 *children's facility pending determination of age by court.*

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3. Proceedings at the lower Court.

100 Perusal of the lower record of proceedings where the juvenile offender first
101 appeared in court presents a very unfortunate and embarrassing situation.

102 The attitude from the court official *who was a chief Magistrate expected to be*
103 *conversant with the Law and supervisor of the family and children Court was very*
104 *absurd*. PF53, the charge sheet indicated that M.V was 19 years old.

105 On 17th August 2022, the accused was before court in the absence of the state
106 Attorney. It was only the court clerk and the Chief Magistrate in court.

107 The charges were read and explained to him and was told not to plead since it was
108 a capital offence.

109 She did not bother to inform him of his right to apply for bail in the High court.

110 It was adjourned to 29th of August 2022 and he was remanded till then.

111 On 29/8/2022, he appeared before a grade 2 magistrate in the absence of the state
112 Attorney again. A one Phiona court clerk appeared for the state. It was adjourned
113 to 15th September 2022.

114 I wonder how an accused can appear before court without a prosecutor.
115 Everything was wrong from the beginning moreover in a court presided over by a
116 Chief Magistrate.

117 On 15th September 2022, the state Attorney whose names are not mentioned
118 appeared .The accused informed court that:

119 **"I am 16 years old and I am in detention for adults yet I am a juvenile. I**
120 **don't have my birth certificate but my mother has. I am a born of 30/3/**
121 **2006. "**

122 The learned Ag, Chief Magistrate made a direction that;

123 **"Prison authorities are directed to conduct medical examination on the**
124 **accused, preferably an X-ray examination to determine his true age, further**
125 **mention on 10/10/2022 and accused remanded until then."**

126 This time the poor suspect was remanded for 25 days by the Ag. Chief Magistrate
127 instead of 14 days.

128 On 10/10/2022, he appeared and informed the learned Ag Chief Magistrate that
129 she made an order to have him examined but to date he had not been examined.

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130 He went on to inform court that, "I have my birth certificate from Mengo Hospital
131 where I was born. My mother is in court to confirm the same"

132 The state prayed for copies of the same to verify from Mengo Hospital.

133 The learned Chief Magistrate ruled that; "The state is allowed an adjournment to
134 verify the document presented by the accused. Accused's mother to get letter
135 from Mengo Hospital confirming they issued the document. She adjourned it to
136 3/11/2022.

137 On 3/11/2022, the accused informed her worship the Chief Magistrate that my
138 parents brought document to confirm I am not 18 years.

139 With all the indifference, the Ag Chief Magistrate ruled that "Court has not
140 received any document to that effect. There was an order for prisons to examine
141 the accused. Await the report. Remanded till 12/12/2022."

142 From the above excerpts, it's very apparent that the learned Ag Chief Magistrate
143 did not show any semblance of justice to the juvenile offender. His mother was in
144 court with a birth certificate, but was ignored by court. The judicial officer only
145 listened to the state.

146 She issued instructions to prisons to have the offender examined but she never
147 bothered to inquire from prisons as to why they have not examined him.

148 The mere fact that she ordered for medical examination by X-ray , shows that she
149 was also in doubt as to whether he was an adult or not which doubt should have
150 been resolved in favor of the accused who kept on informing court that he was
151 below 18 years.

152 Instead of applying section 88(5) of the Children Act as amended, where he should
153 have been presumed to be a child and remanded in a children's remand home
154 pending determination of age, she presumed him to be an adult by remanding him
155 in an adult prison with adults in total breach of the law.

156 She allowed the State Attorney to investigate the birth certificate, but never asked
157 her if at all she had sent any police officer to verify at the next mention of the case.
158 In her confusion, she again asked the mother to bring a letter from Mengo Hospital.
159 Who was to investigate? The mother she doubted or the prosecution that was to
160 verify? A birth certificate is one of the documents courts of law can rely on to
161 determine age of a suspected juvenile or anyone who claims to be a juvenile.

162 There was total bias on the side of court and recklessness on the side of the
163 prosecution.

164 When the registrar of the criminal Division wrote a letter dated 28th September
165 2022 after the accused applied for bail, which was received on 7/10/2022, she
166 refused to send the file and continued mentioning the case until the juvenile
167 offender was committed on 30/3/2023.

168 The juvenile offender was continuously remanded in an adult prison until 21st June
169 2023 when he appeared before this court for trial, spending 10 months and some
170 days in adult prison mixed with adults.

171 When the juvenile offender appeared before this court, and his counsel submitted
172 about his age, a birth certificate was discovered on the court file. Court decided to
173 examine him further using rudimentary means of secondary characteristics of
174 adolescents because he looked to be young.

175 He had not yet developed beards and he was visibly young after spending almost a
176 year in an adult prison.

177 This court concluded that he must have looked much younger than he looks now
178 which should have not escaped judicial notice of the presiding Ag Chief Magistrate.

179 At the sitting at the High Court, the prosecutor and Court were all in agreement
180 that he was a child.

181 **It should be noted that court is an expert of experts and the law allows the judicial
182 officer to inquire into the age of a suspect if he appears to be young.**

183 This court does not understand why the trial Ag Chief magistrate completely
184 ignored the provisions of the Children Act, all the available precedents and
185 guidelines on this issue which could have enabled her determine the juvenile's age
186 promptly and save him from this injustice.

187 **The moment an offender mentions that he is below 18 years of age, it is the
188 responsibility of court to apply natural wisdom ,critically look at the accused's
189 secondary body development characteristics and should court opt to have a
190 second examination to determine age, the accused should be presumed to be a
191 juvenile until the issue of age is resolved.**

192 This is a classic example of so many other cases were the age of the offender is
193 enhanced to cause juvenile offenders to be remanded with adults in an adult prison
194 which is in total violation of their constitutional rights and a breach of the

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195 provisions of the Children Act Cap 59 and its amendment. It also shows failure on
196 the part of court which is an independent and impartial arbiter in protecting the
197 rights of children.

198 The juvenile offender narrated to court with tears rolling down what adult
199 prisoners do to the juvenile offenders who find themselves in adult prisons and that
200 they are very many. They sodomise many of them because they cannot defend
201 themselves.

202 The preamble to the Children Act is that: It is an **Act to reform and consolidate the**
203 **law relating to children: to provide for care, protection, and maintenance of**
204 **children, to provide for local authority support for children: to establish a family**
205 **and Children court; to make provision for children charged with offences and for**
206 **other connected purposes.**

207 Needless to say, the above purpose of the law is to be implemented by all the stake
208 holders involved in the administration of justice regardless of whether the child is
209 the victim or suspect of crime more so the judicial officers who are responsible for
210 ensuring justice and the rule of law.

211 The law further provides for duration of criminal cases for juvenile offenders under
212 **Section 99 of The Children Act** which provides that:

- 213 **1) "Every case shall be handled expeditiously and without unnecessary delay.**
214 **2)**
215 **3) Where, owing to its seriousness, a case is heard by a court superior to the**
216 **family and Children court, the maximum period of remand for a child shall**
217 **be six months, after which the child shall be released on bail.**
218 **4) Where a case to which subsection (3) applies is not completed within 12**
219 **months after the plea has been taken, the child shall be discharged and**
220 **shall not be liable to any further proceeding for the same offence".**

221 Enhancing the age of juvenile offender denies him the legal protection and
222 opportunity to be tried as a juvenile.

223 All the above show that a child offender must be treated within the provisions of
224 the law and the suspect should take plea before High court within three months as
225 the case is expected to have been concluded within a maximum of twelve months.

226 This case shows that M. V's rights were violated right from the time he was arrested
227 by enhancing his age and treating him as an adult, during the remand period and
228 all through the mention of his case, committal proceedings until he appeared



229 before the High Court for trial after 10 months where he still visibly appeared
230 young.

231 It goes without saying that the juvenile suffered untold injustice throughout this
232 process as the police that first arrested him, worked in consonant with the medical
233 officer who examined him if at all he did, to lie about his age.

234 The Ag. Chief Magistrate before whom he appeared and the state attorney all chose
235 to be blind and deaf to his pleas even after his mother labored to avail documentary
236 proof of his age as a child.

237 All stake holders in the criminal justice system are expected to support children
238 who are alleged to be in conflict with law and operate within the law pertaining to
239 children.

240 The prisons officers are not obliged to admit juveniles in the adult prison and where
241 the first stake holders have made errors, Prisons authorities have a duty to inform
242 court that the offender is a juvenile.

243 In this case, the trial magistrate made an order directing the prison officers to carry
244 out further examination on the victim and they ignored the same. They
245 continuously remanded and produced the child to court without any assistance.
246 Even at the hearing date before this court, there was still no examination report on
247 file when the request was made 10 months ago.

248 This was a gross failure on the part of the prisons being the custodians of the
249 prisoners and who are under a direct instruction of the law to not remand juveniles
250 in their prisons.

251 This court has no kind words to the police and the clinical officers who fill in these
252 forms. It has been observed not in one case but several that they merely fill in forms
253 especially in regard to suspected juvenile offenders.

254 The office of the Director of Public Prosecutions should endeavor to put its house
255 in order as many juveniles find their way into adult prisons as a result of their
256 negligence and omissions.

257 This is a case where all officers of court at the magistracy failed the accused and
258 breached all the principles and laws pertaining to juvenile justice which are
259 universally applied.



260 They acted in breach of all laws and principals pertaining to juvenile justice while
261 hiding behind the enhanced age thereby occasioning a grave injustice to the young
262 Suspect.

263 This court in *Uganda Vs AYW HCT-00-CR-JSC-0422-2020*, laid down guidelines that
264 all key stakeholders in juvenile justice should apply in order to reverse the injustice
265 occasioned to juvenile offenders due to the unscrupulous enhancement of their
266 age.

267 Considering all the circumstances of this case,, **Section 11(2) of the Human Rights**
268 **(Enforcement) Act, 2019** on Derogation from non-derogable rights and freedoms
269 is applicable. It provides that;

270 **2.) Whenever, in any criminal proceeding-**

271 **a) it appears to the judge or magistrate presiding over a trial,**

272 **b) it is brought to the attention of the competent court; or**

273 **c) The competent court makes a finding that any of the accused person's non**
274 **derogable rights and freedoms have been infringed upon, the judge or**
275 **magistrate presiding over the trial shall declare the trial a nullity and acquit**
276 **the accused person. Emphasis mine.**

277 In view of the above and having been satisfied that M.V was a juvenile at the time
278 he was suspected to have committed the offence, and is still a juvenile and having
279 been in custody for over 10 months in an adult prison, it is my finding that the
280 child was unlawfully kept in custody in an adult prison and his human rights most
281 importantly as a child who should be protected by the state were grossly violated
282 by all the stakeholders in the administration of justice.

283 I accordingly declare this trial a nullity and acquit him of any criminal liability in this
284 case under *section 11(2) of the Human Rights (Enforcement) Act, 2019*.

285 The state is free to appeal if not satisfied with this ruling.

286 Dated at Kampala this 3rd Day of July 2023.

287
288 HON LADY JUSTICE MARGARET MUTONYI.

289 CRIMINAL DIVISION.