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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(INTERNATIONAL CRIMES DIVISION)

HCT-00-ICD-SC-0020-2022

UGANDA

.....

PROSECUTION

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VERSUS

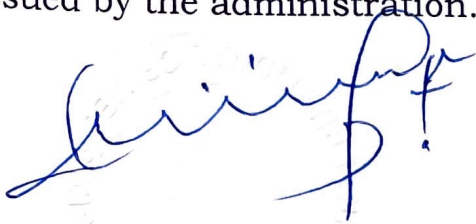
NAMUDDU LYDIA:.....

ACCUSED

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW.

RULING.

Namuddu Lydia (the accused) is indicted with 8 counts. 7 of them relate
15 to Aggravated Trafficking in Children, contrary to section 3(1) (a) and 5(a)
of the *Prevention of Trafficking in Persons Act, 2009*. In count 1 to 7 of the
indictment, the accused is alleged to have trafficked seven children to wit;
Ainebyona Fred, Mutebi Frank, Nsubuga Collin, Nuwenyine John,
Akuguzibwe Hamidah, Naluzze Prossy and Nampiima Rebecca, by means
20 of deception or fraud or threat or an abuse of power or position of
vulnerability of the victims for purposes of debt bondage. In count 8, the
accused is indicted with Operating a Recruitment Agency Without a
Permit, contrary to section 38(1) (a) of the *Employment (Recruitment of the
Ugandan Migrant Workers Abroad) Regulations, 2021*. It is alleged that the
25 accused, between Jan-April 2021, operated a recruitment agency to wit;
Freedom Herbal Products & Services Limited at Mengo without a license
issued by the administration.



At pre-trial, the prosecution was represented by Mr. Kyomuhendo Joseph, Chief State Attorney, while the accused was represented by Mr. Kasadha David, Counsel on State brief.

The standard of proof.

At the pre-trial, Article 61(5) of the Rome Statute of the International Crimes Court (ICC) requires that the prosecution shall support each charge with sufficient evidence to establish *substantial grounds to believe* that the person committed the crime(s) as charged. In Clause (7) (supra) the standard of proof in pre-trial cases is set as follows;

“The pre-trial chamber shall on the basis of the hearing determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged.”

At this stage, the prosecution essentially relies on documentary or the summary of the evidence to meet the standard of proof, and needs not to call witnesses who are expected to testify at trial. Court evaluates the entire evidence as disclosed by the prosecution, and determines whether it is sufficient to establish substantial grounds to believe that the accused committed the crime as indicted before he or she can be called upon to plead to the charges and be put on trial.

The Indictment.

In count 1, the accused is indicted with Aggravated Trafficking in Children, contrary to section 3(1) (a) and 5(a) of the Prevention of Trafficking in Persons Act, 2009. It is alleged that between the month of January and April 2012, at Mengo in the Kampala District, the accused harboured or received Ainebyona Fred a boy aged 17 years, by means of deception or



fraud or threat or an abuse of power or position of vulnerability for purposes of debt bondage.

10 In count 2, the accused is indicted with *Aggravated Trafficking in Children*, contrary to section 3(1) (a) and 5(a) of the *Prevention of Trafficking in Persons Act, 2009*. It is alleged that between the month of January and April 2021, at Mengo in the Kampala District, the accused harboured or received Mutebi Frank, a child, by means of deception or fraud or threat or use of force or abuse of power or position of vulnerability for the purposes of involuntary servitude or forced labor.

15 In count 3, the accused is indicted with *Aggravated Trafficking in Children* contrary to section 3(1) (a) and 5(a) of the *Prevention of Trafficking in Persons Act, 2009*. It is alleged that between the months of January and April 2021, at Mengo in the Kampala District, the accused harboured or received of Nsubuga Collin, a child, by means of deception or fraud or threat or use of force or abuse of power of vulnerability for purposes of
20 involuntary servitude or forced labor.

In count 4, the accused is indicted with *Aggravated Trafficking in Children* contrary to section 3(1) (a) and 5(a) of the *Prevention of Trafficking in Persons Act, 2009*. It is alleged that between the months of January and April 2021, at Mengo in the Kampala District, the accused harboured or
25 received Nuwenyine John, a child, by means of deception or fraud or abuse of power or position of vulnerability for purposes of forced labor.

In count 5 the accused is indicted with *Aggravated Trafficking in Children* contrary to section 3(1) (a) and 5(a) of the *Prevention of Trafficking in Persons Act, 2009*. It is alleged that between the months of January and
30 April 2021, at Mengo in the Kampala District, the accused harboured or received of Akuguzibwe Hamida, a child, by means of deception or fraud



or abuse of power or position of vulnerability for the purposes of financial benefit or forced labor.

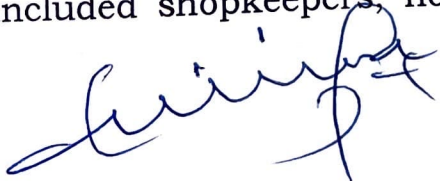
10 In count 6, the accused is indicted with Aggravated Trafficking in Children contrary to section 3(1) (a) and 5(a) of the *Prevention of Trafficking in Persons Act, 2009*. It is alleged that between the months of January and April 2021, at Mengo in the Kampala District, the accused harboured or received Naluzze Prossy, a child, by means of deception or fraud or abuse of power or position of vulnerability for purposes of forced labor.

15 In count 7, the accused is indicted with Aggravated Trafficking in Children contrary to section 3(1) (a) and 5(a) of the *Prevention of Trafficking in Persons Act, 2009*. It is alleged that between the months of January and April 2021, at Mengo in the Kampala District, the accused harboured or received Nampiima Rebecca, a child, by means of deception or fraud or abuse of power or position of vulnerability for purposes of financial benefit or sexual exploitation or forced labor.

20 In count 8, the accused is indicted with Operating a Recruitment Agency contrary to Regulation 38(1) (a) of the *Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations, 2021*. It is alleged that between the months of January and April, 2021, at Mengo in the Kampala District, the accused operated a recruitment agency without a license issued by the
25 administration.

The evidence.

Evidence disclosed by the prosecution is to the effect that the accused, on several occasions, put up job adverts on different radio stations. That these included Radio Simba and NBS Radio, among others. That the advertised
30 jobs included shopkeepers, housemaids, and shamba boys. Telephone



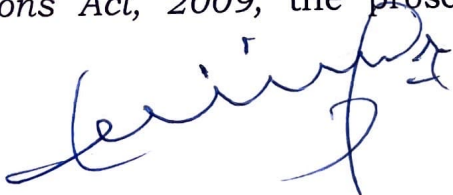
5 numbers would be shared on air for any person interested to contact
Nos.0704237613, 0758249415 and 0772930234. Further, that different
individuals would then contact the telephone numbers shared on radio
from different districts of Uganda, and the contact person would introduce
herself as "Lydia". That sometimes, a contact or branch offices in Jinja
10 would receive calls and refer the callers to the accused person in Mengo
Kampala, where the offices for M/s. Freedom Herbal Products and Services
Limited were located.

In their respective Police statements, the victims commonly stated that
upon calling the accused person, they would be told to come with a fee of
15 UGX 50,000 for boys and UGX 20,000 for girls, passport size photos. Some
of them were asked to submit full photographs and personal National
Identity Cards for those who possessed them, or their parents' National
Identity Cards in case one did not have one. That all this was for file
opening. However, according to the victims' Police statements, payments
20 varied according to the different individuals.

The evidence disclosed by the prosecution also shows that whenever the
victims reached Mengo as directed by the accused and call the phone
numbers shared on the radio stations, someone would pick introducing
herself as "Lydia". That she would then collect them from around Mengo
25 and take them to her offices where boys and girls would sleep in a single
room. That while at the accused's place, the victims were entirely depended
on her for food and that she also kept them hopeful of securing them jobs.

Opinion.

In the respective charges relating to Aggravated Trafficking in Children
30 contrary to section 3(1) (a) and 5(a) of the *Prevention of Trafficking in
Persons Act, 2009*, the prosecution is required to adduce sufficient



evidence to establish that the following essential ingredients if the charges are to be confirmed.

- (i) the accused recruited or received and or harbored the victim;
- (ii) the victim was a child;
- (iii) deception or abuse of power and or abuse of position of vulnerability of the victim;
- (iv) for the purposes of debt bondage; and
- (v) the accused participated.

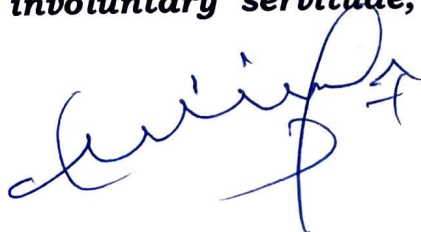
The Law.

Section 3(1) (a) of the Prevention of Trafficking in Persons Act, 2009 provides that;

“(1). A person who;

(a) recruits, transports, transfers, harbours or receives a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

(b) recruits, hires, maintains, confines, transports, transfers, harbours or receives a person or facilitates the aforementioned acts through force or other forms of coercion for the purpose of engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, debt bondage, forced or arranged



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marriage; commits an offence and is liable to imprisonment for fifteen years."

Section 5(a) of the same Act provides that;

"5. Trafficking in children

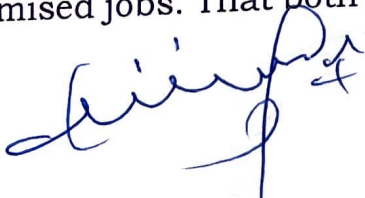
A person who -

10 **(a) does any act referred to under Section 3 in relation to a child;**

(f). ...commits an offence of aggravated trafficking in children and may be liable to suffer death."

15 Regarding the ingredient of recruiting or receiving or harboring, some of the decided cases show that it is enough if the prosecution shows that a victim was received or harbored if his or her presence was tolerated by the accused person with an intention to facilitate the accused's illegal intentions to which if the minor's parents knew of would object due to the risks presented. See: **The State v. Bertus Koch**
20 **(CC 20/2017) (2018) NAHCMD290.**

25 In the instant case, the prosecution alleges that the accused was the Director of M/s. Freedom Herbal Products and Services Limited. They have also disclosed evidence showing that she put up different job adverts on different radio stations wherein the victims would call, and the accused would introduce herself as "Lydia". That she would direct them to Mengo in Kampala, where she would pick them from different locations and take them to her said offices, where they would stay in hope of the accused acquiring them jobs. Further, the victims claimed in their respective Police statements to have never received the
30 promised jobs. That both girls and boys lived in the small single roomed

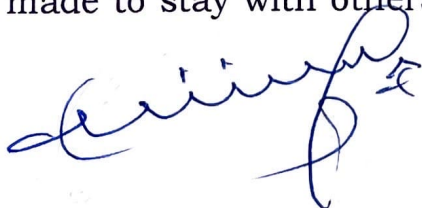


5 - office, and the accused would feed them. Against this background, the prosecution asserts that the victims' evidence establishes that they were received and harbored in the offices of the accused at M/s. Freedom Herbal Products and Services Limited.

10 As regards the ingredient that the victim is a child, section 2(a) of the *Prevention of Trafficking in Persons Act, 2009*, defines a child to mean a person below the age of 18 years. In the instant case, the prosecution's evidence, as contained in Police Form 3A of each of the victims, shows that except for Ainebyona Fred who was at the time 17 years old in 2021 when the offence is alleged to have been committed, the rest had their
15 respective ages way above 18 years. For instance, Mutebi Frank was 25 years old, Nsubuga Collin 27 years old, Nuwenyine John 20 years old, Akuguzibwe Hamida 23 years old, Naluzze Prossy 23 years old and Nampima Rebecca 30 years old. Accordingly, on account of the said
20 respective ages of the six victims alleged victims, the charges in relation to aggravated trafficking in children would not stand as against the accused person.

Deception or abuse of power and or abuse of position of vulnerability of the victim.

25 As regards Ainebyona Fred a child of 17 years, in his police statement he states that his brother called him telling him of jobs in Kampala, and that he told him to come along with UGX 50,000/= and his mother's National Identity Card to get a job on 19/04/2021; which he did. That his brother took him to Mengo to Lydia the accused person who promised him a job in the evening, but never got the same but instead
30 he was made to stay with others in the offices of the accused with no food.



10 This evidence discloses a boy who was desperate to get a job upon which he was called his brother for but in the end never received any. In this way he was ready to fall for anything which seemed hopeful. It shows a boy who had no option but to submit to the information of getting a job from whichever source including his brother. He was hence deceived and vulnerable as he fell for the news to get a job but to no avail and also the fact that he went to reside at the offices of M/s. Freedom Herbal Products and Services Limited while waiting for a job offer or its availability.

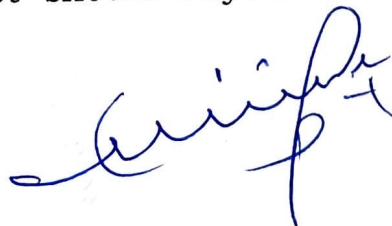
For the purpose of debt bondage.

15 Section 2 (a) of the Prevention of Trafficking in Persons Act, 2009 provides that;

20 ***“debt bondage” means the status or condition arising from a pledge by the debtor of his or her personal services or labor, or those of a person under his or her control as security or payment for a debt, when the length and nature of the services is not clearly defined or when the value of the services as reasonably assessed is not applied towards the liquidation of a debt.”***

25 It would appear that for debt bondage to obtain, one (debtor) has to owe another (creditor) a debt to which the debtor pledges to pay the creditor through their services in form of labor or in whichever way the two agree to suffice or fulfill payment of the debt.

30 In the instant case there is no evidence to suggest that the victim, Ainebyoona, owed a debt or anything whatsoever to the accused. It is also not shown anywhere that the victim pledged his services as

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payment for a debt nor did his parents or brother, who is said to have brought the victim to the accused, owe the accused anything.

It is also worth noting that in the evidence on record, the prosecution has not shown who the owned the phone numbers that the victims used to call to nor was any printouts for such alleged communications adduced in evidence. Similarly, no copies of the alleged adverts were adduced in evidence, yet the prosecution could have easily retrieved them from the radio stations which allegedly ran the adverts. Without these, there is no concrete evidence to seal a belief that the accused person committed the offences she is charged with. It is not certainly shown that she was indeed the very person who was in constant communication with the victims and that she in fact put up those job adverts on the said radio stations.

The evidence that the victims got the telephone numbers from the radio adverts and called a person who introduced herself as "Lydia"; is not sufficient to establish a nexus between the alleged adverts and the accused. Evidence as to the owner of the phone numbers is quite lacking. There is no proof of the alleged communications that the victims claim to have had with the accused person on the phone. Such information is ordinarily available and should have easily been obtained from different telecom service providers, but none was availed.

There is also no evidence disclosed to prove ownership of the company, M/s. Freedom Herbal Products and Services Limited. The prosecution needed to adduce in evidence a certificate of registration or Articles and Memorandum of Association of the said company to prove that the accused was the director thereof. However, none was disclosed on court record. This left the fact of ownership of the company by the accused



unproven. Ultimately, there is no sufficient evidence to establish substantial grounds to believe that the accused person committed the crimes charged against her.

10 In Count 8, the accused is indicted with Operating a Recruitment Agency Without a Permit contrary to Section 38(1) (a) of the *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2021*. The prosecution alleges that the accused was involved in operating M/s. Freedom Herbal Products and Services Limited as a recruitment agency without a permit to recruit workers. Regulation 3 of the *Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations, 2021* defines "a recruitment agency" to mean;

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"A partnership or company duly licensed by the Administration to recruit and deploy Ugandan migrant workers for employment abroad"

20 Regulation Section 38(1) (a) of the *Recruitment Regulations 2021*, provides for offences to include; a person who operates a recruitment agency without a license issued by the ministry. Evidenced disclosed shows that on 03/05/2021, the CID Old Kampala Division wrote to the Permanent Secretary, Ministry of Gender and Labor, seeking verification of the said company if it was a recruitment agency. In reply dated 25 17/05/2021 the ministry wrote back stating that M/s. Freedom Herbal Products and Services Limited was not a licensed recruitment agency and has never been.

While the prosecution indicted the accused in count 8 under the *Employment (Recruitment of Ugandan Migrant Workers) Regulations 2021*, the same were enacted in August 2021 revoking the Regulations of 2005, under Regulation 40.

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5 The accused was said to have committed the offence of operating a recruitment agency without a license/ permit between April- May of the year 2021. Thus charging the accused with the said offence contradicts the principle of legality often referred to as "nullum crimen sine lege" which means "no crime without law". The 1995 Constitution of the Republic of Uganda under Article 28(7) provides that no person may be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence. The same goes on under Article 28(12) to state that except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.

10 This principle is fundamental in criminal law which requires criminal responsibility to be based on pre-existing prohibition of conduct that is understood to have criminal consequences. It therefore has two aspects which are non-retroactivity, and clarity of the law both which seek to ensure that a law is reasonably publicized so as people can know whether their course of action is acceptable or not. See: *"An Introduction to International Criminal Law & Procedure, 4th Edition, Robert Cryer, Darry Robinson & Sergey Vasilier."*

20 Article 15 of the International Covenant on Civil and Political Rights (ICCPR) states that;

"No one shall be held guilty on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed....."

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5 The Interpretation Act, Cap 3 under Section 10 provides (Part III) on repeals as follows;

10 ***“Where any Act repeals wholly or partially any enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into force.”***

15 The effect of a repeal on statutory instrument is said to remain in force until they are revoked or repealed by the statutory instrument made under the repealing Act and until that revocation or repeal is deemed to have been made under the repealing Act, See: Section 12 of the Interpretation Act, Cap 3.

20 Owing to the above principle of legality on retrospectivity of law, the accused could not have committed an offence under Regulations which were none-existent at the time the alleged offence is said to have been committed. In any case, the Employment (Recruitment of Ugandan Migrant Workers) Regulations 2005 were revoked under Regulation 40 of the Employment (Recruitment of Ugandan Migrant Workers) Regulations 2021 which were enacted in August 2021 long after the accused had been charged with the offence under Regulation 38(1)(a) of the 2021 Regulations.

25 In addition to the above, according to the evidence of the prosecution, in relation to M/s. Freedom Herbal Products and Services Limited, not one of the victims mentioned the company as having been recruiting workers abroad. It would follow that the company does not fall under the definition of “a recruitment agency” as envisaged under Regulation 3 of the Recruitment Regulations 2021 (supra).

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The evidence disclosed by the prosecution has not established to the
required standard that the accused person operated a recruitment
agency without a license. In conclusion, the prosecution's evidence has
not established substantial grounds to believe that the accused person
committed any of the offences she is charged with. Therefore, court is
10 reluctant to confirm any of charges against her. All the charges in the
indictment are dismissed. The accused is accordingly discharged.


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BASHAIJA K. ANDREW

JUDGE

16/04/2024.