THE REPBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

HOLDEN AT KAMPALA

CORAM: **HON. G.M. OKELLO, J.A.**
HON. A.E.M. BAHIGEINE, J.A.
HON. J.P. BERKO, J.A.

CRIMINAL APPEAL NO. 126 OF 1999

BETWEEN

OYEKI CHARLES:::::::::::::::::::::::::::::::::::::.:::::APPELLANT

AND

UGANDA ::: RESPONDENT

(Appeal from the decision of the High Court
(C.A. Okello, J.) dated 8/11/99 at
Mpigi in Criminal Session Case No. 115 of 1997)

REASONS FOR JUDGMENT OF THE COURT

This appeal is against both the conviction for rape contrary to sections 117 and 118 of the Penal Code Act and the sentence of 15 years imprisonment imposed on the appellant by the High Court at Mpigi on 8/11/99. We heard the appeal on 3 1/10/2000 and dismissed it reserving our reasons which we now give.

The brief background facts of the case are that on 17/11/97 at Jomba village, in Mpigi District, the complainant Nanyonga Tereza, (PW2) and her daughter, Seporoza Nakayima (PW3) attended an introduction party at a home within the village. The appellant was also at the party. By 9.00 p.m. when Nanyonga and Nakayima left the party for home, the appellant had already left the place. On the way, Nanyonga was walking behind Nakayima when the appellant grabbed her from behind, threw her down and forcibly had sexual intercourse with her. She raised alarm which drew the attention of Nakayima who turned and saw the appellant on top of her mother

having sexual intercourse with her. Nakayima also raised alarm as she ran to her brother Mustafa Katongole where the party was. She returned to the scene with Katongole who pulled the appellant from their mother. The appellant was immediately arrested and eventually indicted for rape.

At the trial, the appellant set a defence of alibi. He stated in his unsworn statement that at the time of the alleged offence, he was at his home where he was arrested from. According to him, the offence was a framed up by the Chairman Local Council I (L.C. 1) of the area who has a grudge against him because he refused to cut timbers for the Chairman. The trial judge rejected that defence and convicted the appellant as charged.

At the hearing, grounds I and 3 were abandoned. Only grounds 2 and 4 were argued in that order. We shall consider them in that order.

On ground 2, Mr. David Kibanda, learned Counsel for the appellant, criticised the trial judge for convicting the appellant when the element of sexual intercourse had not been proved beyond reasonable doubt. He argued that the medical evidence by the doctor (PW2) who examined the victim was not sufficient to corroborate her testimony. According to counsel, that evidence revealed no injuries on the victim to prove forced sexual intercourse. He further criticised the evidence of Katabazi Margaret, (PW5), the police woman, who claimed to have examined the victim and found some kind of penetration as she saw semen in the area around her private part. He submitted that that evidence is worthless to prove sexual intercourse because the police woman is not an expert.

On the other hand, Mr. Vincent Wagona, Senior State Attorney who appeared for the respondent contended that there was sufficient evidence to prove sexual intercourse. He argued that for the ingredient of sexual intercourse, the trial judge did not rely on the medical evidence as the examination was carried out on the victim two weeks after the event when all evidence of sexual intercourse would have been lost. According to him, the trial judge relied on the evidence of the victim and of her daughter Nakayima who witnessed the sexual act. Learned Senior State

Attorney submitted that the trial judge was therefore entitled to believe these witnesses if she found them truthful.

Medical evidence is certainly the best evidence to prove sexual intercourse but it is by no means the only one. Other cogent evidence could also do. In the instant case, the trial judge dealt with that issue in her judgement thus.

“On the ingredient, I have also considered the evidence of Nanyonga (the victim), her account of the offence was straight forward. She maintained the same account of the event and was not shaken in cross-examination. She described to court what was done to her by some man on that path as she returned to her home from the introduction party. She said accused had sexual intercourse with her on a path. Her story is supported almost word for word by the testimony of Seporoza Nakayima (PW3).

Despite lack of medical evidence proving sexual intercourse, I believe the testimony of the two witnesses. I find therefore that some man had sexual intercourse with PW2 on or about the l6tI July 1995.”

We think that the trial judge was justified on the evidence of these two witnesses to find that sexual intercourse had been proved beyond reasonable doubt. Their evidence shows not only that the appellant had sexual intercourse with PW2 but also that he did it forcibly without her consent. He grabbed her from behind, threw her down when his trousers were already removed, and had sexual intercourse with her on the path. It is not part of the element of rape that the victim should have any injuries. What is necessary is proof of penetration and lack of consent. We find no merit in this ground and it fails.

The next is ground 4 which complained about the sentence of 15 years imprisonment as being harsh and excessive. Mr. Kibanda argued that even though the trial judge took into account the fact that the appellant is a first offender and the 4 years he spent on remand, the 15 years was still harsh and excessive in the circumstances.

We find no merit in this ground. The maximum sentence for this offence is death. The circumstances in which the appellant committed the offence justified the sentence. He violated the dignity of the victim on a path, a public place and in the presence of her daughter, Nakayima. That was beastly and deserved that penalty. It was for these reasons that we dismissed the appeal.

Dated at Kampala this 16th day of November 2000.

G.M OKELLO
JUSTICE OF APPEAL

A.E.N. MPAGI-BAHIGEINE
JUSTICE OF APPEAL

J. P. BERKO
JUSTICE OF APPEAL