THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HOLDEN AT TORORO

CRIMINAL SESSION CASE NO. 26/94

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

VERSUS

JOHN OKADAPAO ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::ACCUSED

BEFORE: THE HONOURABLE MR. JUSTICE KATO

RULING

This ruling is in respect of a submission of no case to answer made by Mr. Magirigi on behalf of the accused person. The accused John Okadapao is indicted for defilement contrary to section 123(1) of the Penal Code Act. He pleaded not guilty to the indictment. The case for prosecution has been that on the 5th November, 1991 at Amagoro 'B' village the accused defiled the complainant Joyce Achieng.

At the close of the case for persecution Mr. Magirigi submitted that no case had been made out by prosecution for the accused to be called upon to defend himself. He argued that there was no sufficient evidence to prove that the complainant had actually been defiled as no medical evidence was adduced to establish that fact.

On his part Mr. Khaukha the learned counsel for prosecution maintained that prosecution had adduced enough evidence to the accused to his defence.

The principles upon which this court proceeds to uphold or reject this kind of submission are well known and the authorities are not few on this subject one such authority is the case of Bhatt v R (1957) EA 332. In the present case it must be said with some regret that the first three prosecution witnesses PW1, PW2 and PW3 contradicted themselves so much that one is left in doubt as to whether these witnesses were telling the truth. The contradictions appearing in their evidence cannot be described as minor. The contradictions between the evidence of PW1 and PW2 as to what happened on that day are and they go to the root of the whole case. These contradictions included such matters as to who answered the

alarm which PWI allegedly raised. PW2 and PW1 did not agree on the number and names of the people who answered the alarm e.g. PWI said Nyafwono was the first person to answer her alarm PW2 says Nyafwono did not answer the alarm. PWI says Adikini was one of the people who answered the alarm but PW2 says Adikini did not answer the alarm. PWI says that she was able to see the people who were answering the alarm, but PW2 says that the position in which PW1 was she could not see anybody coming to the scene. PW1 and PW2 say when PW3 came she found the accused still defiling the complainant but PW3 herself says she did not witness the accused defiling the complainant. PWI says she went to Kisoko on 5/11/1991 but PW2 says that PWI did not go anywhere on that day. PWI says she was taken to the hospital on the same day but PW2 says she was taken to the hospital the following day, PW1 also changed said that she was examined the following day. PW1 says the accused did not tear her knickers but he just removed it but PW2 says it was torn.

Although it is not part of the law that medical evidence should be obtained before a conviction can be secured for this kind of offence in the present case such evidence was highly desirable because the evidence of PWI, PW2 and PW3 does not conclusively indicate that there was an act of Defilement. The absence of medical evidence in this case cannot be taken lightly.

Looking at the available evidence generally it cannot be said that any reasonable tribunal would convict the accused on such evidence if the accused decided to say nothing. I find this to be a proper case where a submission of no case to answer should be upheld. I accordingly do uphold the submission and do find the accused not guilty and I do acquit him under section 71(1) of TID. Accused is to be set free unless he is being held in prison for some other lawful purposes.

C. M. KATO
JUDGE
7/7/1994