

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO. HCT-00-CR-SC-0029 OF 2002

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

VERSUS

SIMBWA NOAH ::::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

JUDGMENT:

The accused at the bar stand indicted for defilement an offence contrary to section 123 (1) of the Penal Code Act.

It is alleged that the accused during the month of February 2001 at Lusaze Zone B in Kampala District did have unlawful carnal knowledge of Nansubuga Saddah, a girl under the age of 18. Prosecution called 4 witnesses. PW1 Dr. Nsereko Mukasa is a police surgeon. He examined prosecutrix on 15/3/2001 and found that she was aged about 16 years. She had no injuries on her body and clinical assessment showed that she was 12 weeks pregnant. The second witness was

prosecutrix herself. She testified that accused was a neighbour of her brother-in-law where she was staying during school holidays. On 30/1/2001 she was at the home of her brother. Her elder sister was not at home. Accused took the opportunity to take her to his house where he proceeded to play sex with her on a sofa set. Though she made an alarm it was not answered. When he sister returned home she told her of what had be fallen her. Her sister and her husband reported the matter to the area Lc Chairman. Later she was medically examined. In cross-examination she said she could not actually recall the date on which she was allegedly sexually abused but said the month was February. Namutebi Hensifa is the elder sister of the prosecutrix. She testified that prosecutrix was staying with her during the month of February 2001. Accused was their neighbour. One day in February when she returned home from work prosecutrix told her that accused had sexually abused her. She reported the matter to the area Lc Chairman. Accused disappeared from the place and came back after 2 weeks. When asked about the allegation made by her sister he admitted and wrote a document admitting the offence.

The last witness was the father of the prosecutrix. He testified that his daughter was born in 1986. When he learnt that she had been sexually abused he reported the matter to police. Accused made an unsworn

statement denying the offence. The offence of defilement has three ingredients which prosecution must prove in order to secure a conviction. There are:-

- (1) That prosecution at the time of the commission of the offence was under the age of 18 years.
- (2) That there was penetration, and
- (3) That penetration of the female organ was by the accused in the dock.

The burden of proof rests entirely on prosecutrix throughout the case and never shifts to the accused. It is discharged on proof beyond any reasonable doubt.

Though learned counsel submitted that the age of prosecutrix was not proved, I am satisfied that prosecution proved the 15th ingredient beyond reasonable doubt.

There is evidence of the police surgeon that clinical assessment showed that prosecutrix when examined on 15/8/2001 was found to be 12 weeks pregnant. The question of penetration therefore was put to rest. That notwithstanding simple arithmetic shows that accused was not responsible for the pregnancy. A period of

12 weeks means 3 months. From the 30/1/2001 to 15/3/2001 cannot by any stretch of imagination be 12 weeks. At most this was a period of 7 weeks. I very carefully studied the demeanour of the prosecutrix while in the witness box. She appeared to me to be a stranger to truth. Although her elder sister claimed that the matter was reported to the area Lc Chairman, the evidence of the Chairman was marked more by its absence than its presence. It is claimed that accused made an admission, which was reduced into writing. The writer of the document was not called so the document had no probative value. But if surely prosecutrix was sexually abused, how come that the matter was not reported to police. Why wait for her father to report the matter about 5 weeks later? Although corroboration may not be of essence in law, in a case like his one where the court is doubtful about the veracity of the prosecutrix it becomes a must. It is simply lacking here.

I am in complete agreement with the assessors that prosecution have failed to prove their case to the required degree. I find accused not guilty and acquit him. He is to be set free unless held on other lawful orders.

J.B.A. Katutsi

JUDGE

Judgment delivered in the presence of the accused and counsel.

J.B.A. Katutsi

JUDGE

15/11/2002