

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT RUKUNGIRI

HCT-CR-11-CSC-092/2011

**CRIMINAL CASE RUK. 00-CR-CSC-288/2010
CRB 356 /2010**

UGANDA ::: PROSECUTOR

VERSUS

KAHIGI EZRA AKA MUTETA:::ACCUSED

BEFORE HON. MR. JUSTICE J.W KWESIGA

RULING

The Accused person is charged with the offence of aggravated defilement Contrary to Section 129 (3) (4) (c) of the Penal Code Act. It is alleged that on 21st May, 2010 at Rwakibanga village, in Kanungu District performed a sexual act with Ampurira Patience a girl aged 7 years old. The Accused person pleaded not guilty and the prosecution called six witnesses and closed its case. Under Section 73 of Trial on Indictments Act has the duty to determine whether there is a prima facie case to require the Accused person to defend himself.

PW 1 Komuhangi the mother of the alleged victim told court that at 5:00 p.m she found the Accused defiling the girl on the veranda of the house. That the Accused ran away. She saw sperms in the girl's private parts. Under cross-examination she said she saw blood in the girl's private parts. She told court that the nurse to whom she took the child to check inserted a finger in the private parts. The following day, she took her to hospital after three days.

Dr. Kasande told Court that the girl's private part were bruised but the hymen was intact. The medical report PE 1 was requested for on 21st May, 2010. Examination is stated to have been on 24th May, 2010 yet the appendix is dated 21st May, 2010. The medical report shows that the hymen was ruptured at least 1 day before the examination. The medical report contains un explained inconsistencies, while the PF 3 remarks show that the Report say she had been defiled four (4) days before on the 24th May, 2010, the appendix was filled on 21st May, 2010. Those inconsistencies create doubt whether the examining doctor was referring to the same victim.

PW 4 Ampurire Patience 10 years old gave un sworn evidence. That he defiled her while standing against the wall. That her mother did not find her sleeping on the ground. She said she bled but she did not tell anybody. Nobody checked. She told court she was defiled when the mother was in garden. That the Accused was standing throughout. He removed her knickers and threw them down where the mother picked them. The victim contradicts the mother who stated the following:-

- That the girl was lying on the ground and the Accused was on top of her.
- That he held her, put her to lie down and he proceeded to have sexual intercourse with her and that he jumped off her when she did not see the knickers. These two witness appear to be telling two different stories.

PW 1 also makes the medical evidence more un reliable. She states the offence occurred on 21st May, 2010, reported to Police on 22nd May, 2010. Therefore it was not possible that the medical officer examined the victim on 21st May, 2010 before the case had been reported to the Police.

It is settled that a court may hold that there is no case to answer or that there is no **Prima facie** case made out by the prosecution when:-

- (a) There has been no evidence to prove an essential element of the alleged offence.

(b) When the evidence adduced by the prosecution has been discredited as a result of cross-examination, or is so manifestly un reliable, that no reasonable tribunal could safely convict on it. See: **Bautt Vs R [1957] EA 322.**

Because of the inconsistencies and contradictions highlighted above I find the evidence adduced by the prosecution to be manifestly unreliable and the Accused person can not be convicted on it if he offered no defence. Therefore I find that the Accused person has no case to answer. **He is acquitted.**

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J.W. KWESIGA
JUDGE
14/12/2012