

UGANDA / JUDGMENT

Uganda Vs. Akute Stephen alias Ouma (Crim. Case No. 03 Of 2008) (Crim. Case No. 03 of 2008) [2008] UGHC 146 (9 September 2008)

[2008] UGHC 146

COURT

High Court of Uganda

CASE / FILE NUMBER

Crim. Case No. 03 of 2008

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\par CRIMINAL SESSION CASE NO 0003 OF 2008

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\par }{\b\insrsid10115160\charrsid10562735 ({\b\insrsid10562735\charrsid10562735 BEFORE HON. JUSTICE J. W. KWESIGA}{\b\insrsid10115160\charrsid10562735)

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\pararsid10562735 {\insrsid10115160\charrsid10562735 PRIVATE AKUTE STEPHEN OUMA, herein referred to as '93the Accused'\94

is charged with Rape contrary to sections 123 and 124 of the penal code Act. The particulars of the offence are that on 26}{\super\insrsid10115160\charrsid10562735 th}
{\insrsid10115160\charrsid10562735 July 2007 at Mai-Achiku village}{

\insrsid7950451\charrsid10562735 , Ajugopi}{\insrsid10115160\charrsid10562735 parish, Dzaipi, Adjumani District, the accused person had unlawful carnal knowledge of }
{\b\insrsid10115160\charrsid10562735 ERENA MOLUME}{\insrsid10115160\charrsid10562735
without her consent.

\par

\par The prosecution called 3 witnesses to prove its case while the accused gave his defence on oath but called no witness. }{\insrsid10562735

\par

\par }{\insrsid10115160\charrsid10562735 The law on Rape was well stated by the court of Appeal for East Africa in the case of }{\b\ul\insrsid10115160\charrsid10562735 KIBAZO Vs UGANDA (1965) EA 507}{\insrsid10115160\charrsid10562735 that }

\insrsid5649356\charrsid10562735 in a charge of Rape the onus is on the prose

cution to prove that sexual intercourse took place without the consent of the complainant. The court should address its mind to the question of reasonable doubt on the issue of consent. }
{\insrsid9184162\charrsid10562735 }

\insrsid5649356\charrsid10562735 The fact }{\insrsid9190705\charrsid10562735 that non-consent must be proved to the satisfaction of th

e court and where the court is not satisfied beyond reasonable doubt in the issue of non-consent there cannot be a conviction.}{\insrsid10115160\charrsid10562735

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\par There are three essential elements of the offence that the prosecution must prove beyond reasonable doubt. All the three elements must be proved and failure to prove any of t}
{\insrsid10562735 hem to the required standard }

\insrsid9190705\charrsid10562735 of beyond reasonable doubt, the prosecution case must fail.

\par The essential ingredients are:-

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\insrsid9190705\charrsid10562735 That there was sexual intercourse with the complainant.

\par {\listtext\pard\plain\insrsid14445173\charrsid10562735 \hich\af0\dbch\af0\loch\f0 2.\tab}}
 {\insrsid14445173\charrsid10562735 That the complainant did not consent to the sexual
 intercourse.

\par {\listtext\pard\plain\insrsid14445173\charrsid10562735 \hich\af0\dbch\af0\loch\f0 3.\tab}That
 it was the Ac{\insrsid10562735 cused who did}{\insrsid14445173\charrsid10562735 }
 {\insrsid10562735 participate in the complained}{

\insrsid14445173\charrsid10562735 sexual intercourse.

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\par His Lordship, Chief Justice Lord Campbell ({\b\insrsid10562735 as }
 {\b\insrsid14445173\charrsid10562735 he then was}{\insrsid14445173\charrsid10562735) In }
 {\b\insrsid14445173\charrsid10562735 FLETCHER (1959) 8 cox cc 131}{

\insrsid14445173\charrsid10562735 had this to say on de}{\insrsid10562735 finition of rape. \93....}
 {\insrsid14445173\charrsid10562735 The definition of rape may now be c}{\insrsid10562735
 onsidered Res judicata...}{\insrsid14445173\charrsid10562735

It is carnal knowledge of a woman against her will or without her consent.\94 }{\insrsid10562735

\par

\par }{\insrsid14445173\charrsid10562735 In }{\b\ul\insrsid1789497\charrsid10562735 DPP Vs
 MORGAN }{\ul\insrsid1789497\charrsid10562735 and}{\b\ul\insrsid1789497\charrsid10562735 3
 Others (1976) AC 182.}{\insrsid1789497\charrsid10562735 }

\b\insrsid1789497\charrsid10562735 LORD HAILSHAM ({\b\insrsid9184162\charrsid10562735 as}
 {\b\insrsid1789497\charrsid10562735 }{\b\insrsid10562735 he }
 {\b\insrsid1789497\charrsid10562735 then was)}{\insrsid1789497\charrsid10562735 said \93

Rape consists in having unlawful sexual intercourse with a woman without h}{\insrsid10562735 er
 consent and by force...}{\insrsid1789497\charrsid10562735 It does not }
 {\insrsid9045408\charrsid10562735

mean there has to be a fight or blows have to be inflicted. It means there has to be some violence
 used against the women to overbear her will or that there has to be a threat of violence as a result
 of which her will is over borne.}{

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\par }{\insrsid9045408\charrsid10562735

\par In the instant case PW1 ERENA MOLUMA, the}{\insrsid4093087\charrsid10562735
complainant explained how the accused person forcefully had sexual intercourse with her }
{\insrsid3280275\charrsid10562735 continuous}{\insrsid4093087\charrsid10562735
from eight o\rrquote clock in the evening until five o\rrquote clock the next morning.}
{\insrsid9045408\charrsid10562735

\par }{\insrsid4093087\charrsid10562735

\par The accused declared his intention immediately he met the complainant, he told her}
{\insrsid10562735

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{\i\insrsid4093087\charrsid10562735

you are one of the women who take vaginas to be fucked by Dinkas in Sudan today I will fuck
you\94}{\insrsid10562735 . }{\insrsid4093087\charrsid10562735 }{\insrsid10562735

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\par }{\insrsid10562735\charrsid10562735 When}{\insrsid4093087\charrsid10562735 she pleaded
with the accused not to carry out }{\insrsid10293423\charrsid10562735 his thr

eats he slapped her twice, he held her, tore her blouse and forced her to climb into the lorry
where he raped her. The accused got a gun, cocked it and put it on the victim\rrquote s chest to}
{\insrsid10562735 force her climb the vehicle. }{

\insrsid10293423\charrsid10562735 He slapped her twice and ord}{\insrsid10562735 ered her to
climb the vehicle. }{\insrsid10293423\charrsid10562735 She further described what followed}
{\insrsid14827626 .}{\insrsid10293423\charrsid10562735 }{

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tap0\pararsid14827626 }{\insrsid10293423\charrsid10562735 \93}
{\i\insrsid10293423\charrsid10562735

He removed my underwear, he lay me on the sacks of maize on the vehicle and he started having
sexua}{\i\insrsid14827626 l intercourse with me...}{\i\insrsid10293423\charrsid10562735 he
remained on top of me, repeatedly had sex with me until 5:00 am\94.

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 \pararsid10562735 {\insrsid10293423\charrsid10562735 In cross-examination}\insrsid14827626 n
 she stated

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 \itap0\pararsid14827626 {\insrsid14827626 '93...}\insrsid10293423\charrsid10562735 I did not
 consent, he forced me}\insrsid11691973\charrsid10562735 , he}{

\insrsid10293423\charrsid10562735 threatened to shoot me'94.}\insrsid10293423

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PW3 Private Gabriel Maliamungu confirmed that he was with the accused person, guarding a
 vehicle belonging to UNHCR at Mai-Achiku together with other UPDF }

{\insrsid3280275\charrsid10562735 soldiers}\insrsid10293423\charrsid10562735 and th}{

\insrsid14827626 e accused was their commander. }\insrsid10293423\charrsid10562735 When the
 complainant arrived at the scene the accused said, }\insrsid15009715\charrsid10562735

\par }\pard \qj \li720\ri0\sl360\smult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin720\i
 tap0\pararsid10562735 {\insrsid15009715\charrsid10562735 '93There}
 {\insrsid10293423\charrsid10562735 are the women }\insrsid15009715\charrsid10562735

who go to Sudan to sell sex to Sudanese'94 He slapped her and or}\insrsid14827626 dered her to
 climb the vehicle.}\insrsid15009715\charrsid10562735 I told him to let the woman go, he picke

d his gun and cocked it. He pulled her into the vehicle, we got scared, }

{\insrsid11741573\charrsid10562735 and we}\insrsid15009715\charrsid10562735 left him and went
 to our guard positions.'94}\insrsid10293423\charrsid10562735

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\par The above evidence of PW3 corroborates the victim's evidence on fundamental
 material elements of the offence. It was the accused that assaulted the victim and pulled her into
 the vehicle, the }\insrsid10945956\charrsid10562735 scene of crime}{

\insrsid11741573\charrsid10562735 . It is the accused that slapped the victim. }\insrsid14827626

\par

\par }\insrsid11741573\charrsid10562735 In his defence, the accused admitted that he met the
 victim at the }\insrsid555492\charrsid10562735 alleged}\insrsid11741573\charrsid10562735 scene
 of the crime. He denied having sexual intercourse

se with her and that he only had a quarrel with her over the money he alleges he owed her. He alleges that the victim was at one time his lover which the victim denied.

Although she had known that Akute had married a girl from her village she did not know him until he was identified as Akute in the morning

following the rape when he was arrested.

According to the evidence of PW3 Maliamungu it is the accused that forcefully took the victim into the vehicle on the material night. It is the accused who

openly accused the victim to be one of the women who were selling sex to Sudanese. This is confirmed by PW1 and PW3's evidence. He declared he was also going to have sex with her before he slapped her, threatened violence with the gun which scared off the other soldiers including PW3 leaving the accused alone with the victim.

The above evidence proves that if the victim was subjected to sexual intercourse at the scene it was by the accused person and the circumstantial evidence rules out of any possibility that it was committed by any other person other than the accused.

As regards weather or not there was sexual intercourse, I am satisfied that PW1 the victim's evidence is sufficient to prove sexual intercourse.

She elaborately testified as to the force the accused used to procure sexual intercourse. Intercourse.

I did observe this witness through out her testimony and I found her truthful. There is no doubt that the victim who was of 38 years old and a mother to a number

\insrsid5380881\charrsid10562735 of children }\insrsid11809926\charrsid10562735 had had sex before and therefore she knew what she was talking about when she said the accused had sexual intercourse with her several times through out}{

\insrsid1329319\charrsid10562735 the night without her consent. }
 {\insrsid11809926\charrsid10562735 }\insrsid14827626

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\par }\insrsid11809926\charrsid10562735 It was not absolutely necessary for the prosecution to adduce medical evidence although it would have }\insrsid1329319\charrsid10562735 been desirable if consent had been alleged in defence which wo}\insrsid14827626

uld help court to infer violence as evidence of force f}\insrsid1329319\charrsid10562735 rom the evidence of PW1 and PW3 which the court has believed. }\insrsid4206878\charrsid10562735 }
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\par }\insrsid4206878\charrsid10562735 As regard penetration as proof of sexual intercourse the evidence of PW1, the victim has been found truthful, detailed and cogent. In the case of }
 {\b\ul\insrsid4206878\charrsid10562735

KATUMBA JAMES Vs UGANDA Criminal Appeal 58 of 1997 (Court of Appeal)}

{\b\ul\insrsid14827626 ,}\insrsid11679134\charrsid10562735 the victim had been medically examined but the medical doctor did not testify on issue of penetration}\insrsid14827626 . T}{

\insrsid11679134\charrsid10562735 he court of Appe}\insrsid14827626 al held, inter alia,

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 {\i\insrsid11679134\charrsid10562735

There can be no doubt that there was penetration, notwithstanding that no medical evidence was led on the point. The complainant was an old woman of 40 year}\i\insrsid14827626 s. She had 9 children..}\i\insrsid11679134\charrsid10562735

. she must have known what she was talking about.\'94}\insrsid11679134\charrsid10562735 }
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\par The above authority is both convinci}\insrsid14827626 ng and binding on this court. }
 {\insrsid11679134\charrsid10562735 The evidence of PW1, the victim is cogent in proof of the fact that there was sexual intercourse without her consent.

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\par PW3 Private Maliamungu corroborates the evidence of the accused person's Mensrea, the intention to rape the victim. The victim testified that immediately before she was raped the accused assaulted her and declared tha{\insrsid14827626

t he was going to '93fuck her'94. {\insrsid3280275\charrsid10562735 PW3}
{\insrsid11679134\charrsid10562735 testified {\insrsid3369524\charrsid10562735 that he slapped
and forced her {\insrsid11679134\charrsid10562735 i}{

\insrsid3369524\charrsid10562735 nto}{\insrsid11679134\charrsid10562735 the lo}
{\insrsid14827626 rry carrying maize. {\insrsid7683476\charrsid10562735 That before he did that
he claimed this is one of the women who go to Sudan}{\insrsid14827626

to sell sex. {\insrsid7683476\charrsid10562735 PW3 pleaded with the accused to let the woman go
away but the accused become annoyed, cocked his gun, scare}{\insrsid10910759 d}
{\insrsid7683476\charrsid10562735 off PW3 and others, slapped the victi}{

\insrsid10910759 m and forced her into vehicle.

\par

\par {\insrsid7683476\charrsid10562735 I have evaluated the testimony of PW1 the victim
together with the above {\insrsid13904511\charrsid10562735 circumstantial}
{\insrsid7683476\charrsid10562735

evidence I have found that the accused was properly identified, his use of force against the victim
is overwhelmingly proved and the fact that he

accomplished the sexual intercourse he declared as he assaulted the victim by slapping and
threatening to use{\insrsid13904511\charrsid10562735 a gun amounted to obtaining sexual
intercourse with the victim with brutal force. This was brutal rape.}{

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\par Both Assessors are of the opinion that the prosecution proved all the essential ingredients of
the offence on this case beyond reasonable doubt and they advised me to convict the accused
person.}{\insrsid13904511

\par {\insrsid10910759\charrsid10562735

\par {\insrsid13904511\charrsid10562735 I do agree with the Assessors and I find the accused
person guilty of Rape contrary to sections 123 {\insrsid10910759 and 124 of the Penal code Act. }
{\insrsid13904511\charrsid10562735 I accordingly convict him.

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\pararsid10562735 {\insrsid10910759 Signed}{\insrsid13904511

\par }{\insrsid10910759 Judge}{\insrsid10910759\charrsid10562735

\par }{\insrsid13904511\charrsid10562735 9/9/2008

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\pararsid10562735 {\b\ul\insrsid13904511\charrsid10562735 STATE:

\par }{\insrsid13904511\charrsid10562735 The state has no previous criminal record. Accused is
34 years old. He has spent 1 year 26 days on remand. Rape is a serious offence. Assault on }
{\insrsid3280275\charrsid10562735 integrity}{

\insrsid13904511\charrsid10562735 of woman. }{\insrsid3280275\charrsid10562735 Victim\rqoute
s}{\insrsid13904511\charrsid10562735 oldest child }{\insrsid3280275\charrsid10562735 is }
{\insrsid13904511\charrsid10562735 20 years. }

\insrsid3280275\charrsid10562735 This embarrassed the children. }
{\insrsid13904511\charrsid10562735 }{\insrsid10910759\charrsid10562735 He was}
{\insrsid13904511\charrsid10562735 Army officer, duty to protect her. We pray for strong
sentence.

\par

\par }{\b\ul\insrsid13904511\charrsid10562735 DEFENCE:

\par }{\insrsid13904511\charrsid10562735 The Accused is a first, }
{\insrsid3280275\charrsid10562735 repentant}{\insrsid13904511\charrsid10562735 young man, 34
years}{\insrsid10910759 , bread winner of his family, lost his}{\insrsid11883871\charrsid10562735
Job due to this con}{\insrsid10910759 viction. Lost his pension. }
{\insrsid11883871\charrsid10562735 Pray for mercy.}{\insrsid13904511\charrsid10562735

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\par }{\b\ul\insrsid11883871\charrsid10562735 SENTENCE

\par }{\insrsid11883871\charrsid10562735 Rape as a capital offence carries a maximum sentence
of death. I have considered the fact that the accused person is a first offender and he has spent on
remand a period of 1 year 26 days.}{\insrsid10910759 }

\insrsid11883871\charrsid10562735 I have considered the manner in w}{\insrsid10910759 hich he
committed the offence.}{\insrsid11883871\charrsid10562735

This was brutal rape. The accused, a soldier, who is charged with the responsibility of protecting the people and the property of Ugandans and for which purpose he was armed, abused this authority and duty and

used the gun to commit rape. He assaulted the victim
, he threatened to use a gun

a matter that makes it rape committed in extreme brutal manner. The accused deserves a punishment that will teach him a lesson and send a message to others to learn from this case.

In the circumstances I do hereby sentence the accused person to (7) seven years imprisonment.

Signed

JUSTICE J. W KWESIGA

9/9/2008

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