

UGANDA / JUDGMENT

Uganda v andama (Criminal Revision Cause No. 8 of 2021) [2022] UGHCCRD 73 (10 March 2022)

[2022] UGHCCRD 73

COURT

HC: Criminal Division (Uganda)

BEFORE

Asiimwe, J

CASE / FILE NUMBER

Criminal Revision Cause No. 8 of 2021

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION) CRIMINAL REVISION CAUSE NO. 0008 OF 2021 (ARISING
OUT OF LUWERO COURT CASE NO. AA/24 OF 2021)**

UGANDA APPLICANT**VERSUS****ANDAMA IBRA RESPONDENT****BEFORE HON JUSTICE TADEO ASIIMWE****RULLING**

This Application was brought by way reference by the chiefmagistrate of Luwero arising from a reservation of a question oflaw under section 206 p ifthe Magistrate Court'^s Act.

The back ground ofthis reference is that on the 2nd day ofmarch 2021 Mr Andama Ibra was charged with aggravated trafficking in persons contrary to section 3(1) and s.5 (a) ofthe prevention ofTrafficking in persons Act, 2009.

Prosecution made an oral application to court for reservation of a question of law contending that section ³ and ⁵ stated above provide for different penalties and questioned whether a charge sheet with two different penalties for the same accused would not be defective.

As a matter of law, this court could not determine and resolve the questions here in without hearing from the office of the DRP. The learner!

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state attorney made written submissions arguing that section 3 here in referred to above is a defining section and that section 5 cannot stand alone in isolation of section 3 as it creates an aggravating factor to the circumstances under section 3.

RESSOLUTION

This court has inherent powers to examine lower court record and satisfy its self as to the legality and correctness of the proceedings in order to curtail delays, to ensure expeditious trial and to ensure that technicalities are not used to defeat substantive justice.

The question before this court relates to sections 3 and 5 of the Prevention of trafficking in persons Act and I find it relevant to quote them verbatim.

Section 3 Offence of trafficking in persons.

\$A\$ person who;

a) recruits, transports, transfers, harbours or receives a person.

by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;*

commits an offence and is liable to imprisonment for fifteen years.

Section 5 Trafficking in children

A person who—

does any act referred to under Section 3 in relation to a child;

commits an offence of aggravated trafficking in children and may be liable to suffer death.

From the reading of the above sections, section 3 deals with trafficking in general while section 5 provides for trafficking in children. However, section 3 is the defining section and section 5 introduces an element of a victim of circumstances under section 3 being a child.

Therefore, section 3 is a mother section to section 5 and section 5 cannot be cited in isolation of the mother section least would remain hanging.

The law above is quite clear and does not create any defect in the charge sheet. To have a proper charge sheet, both sections must be cited while charging an accused of aggravated trafficking in children since section 3³ is a defining section while section 5 creates a penalty. Instead failure to combine section 3&5 would create a defect in the charge sheet for lack of the section defining the offence under section 3.

The penalty created under section 3 purely applies to circumstances not involving a child while the penalty created under section 5 is applicable where victims are children. The sections create two different offences and are triable by different courts. The purpose of citing section 3 in an offence created under section 5 is clearly for defining the offence and not creating a separate penalty. Therefore, I find the charge sheet here in does not provide two penalties since cases of aggravated trafficking involving children are triable by the high court and the penalty expressly stated in law.

I therefore find the charge sheet in this matter to proceed to its logical conclusion. and matter shall be referred to the lower courts for further management.

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Order'

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The deputy registrar should return the original file to the lower courts for further management.

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TADE ASIIMWE vX

JUDGE 10/03/2022

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Prepared on 13 October 2026 · Esheria