

UGANDA / JUDGMENT

Uganda Vs. Maganda Fred (HCT 03-CR-SC -no -0328 of 2010) [2010] UGHC 137 (9 September 2010)

[2010] UGHC 137

COURT

High Court of Uganda

CASE / FILE NUMBER

HCT 03-CR-SC -no -0328 of 2010

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\par MAGANDA FRED'85'85'85'85'85'85'85'85'85'85.. ACCUSED}{\rtlch\fcs1 \af0 \ltrch\fcs0
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ight\rin0\lin0\itap0\pararsid7692368 }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid7692368 The accused was
indicted on a charge of rape C/S 123 and

124 of the Penal Code Act as amended. The particulars as alleged by the prosecution were that
the accused Maganda Fred on the 30}{\rtlch\fcs1 \af0 \ltrch\fcs0

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day of November 2009 at Gwase Butaidi Buseranda Zone in Kamuli District had unlawful carnal
knowledge of Namiyonba Justine without her consent.

\par

\par The prosecution had to prove beyond reasonable doubt the following ingredients in order to
bring the guilt of the accused person home in a rape charge as indicated;

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resulting into }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 penetration}{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid7692368 was without consent of the victim

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accused who committed the offence }{\rtlch\fcs1 \af0 \ltrch\fcs0
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}{\rtlch\fcs1 \af0 \ltrch\fcs0 \b\i\insrsid7692368\charrsid2908185 see Katumba James v. Uganda
SCCR Appeal No.45/1999}{\rtlch\fcs1 \af0 \ltrch\fcs0 \b\insrsid7692368\charrsid2908185)

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\par The prosecution brought evidence}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4594042 of}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid7692368 thr}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid5656264 ee witnesses in
addition to the agreed evidence of the arre

sting officer and that contained in the medical PF3 and its appendix.}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid7692368

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\par PW2 the victim stated categorically that she was raped by the accused who had come to visit them. That the accused claimed to have herbs for blessings while at school and when they were out of school. That on the fateful night the accused woke her up }{

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he had told her father and mother }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4594042 that}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid5656264

the herbs were going to be free. That she woke up and they went outside. That the accused told her to lie down facing upwards and he told her to close her eyes. That he }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 started}{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid5656264 smearing the herbs and opened her skirt and she tried to resist it. That he told her not to fear. That he }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 forcefully}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid5656264

pushed her down and he slept on her and had sexual intercourse with her. That she made alarms calling her mother and father saying that the visitor had raped her.

The medical evidence contained in PF3 and its appendix established that the victim who was aged 19 years had penetrative sex. That her hymen had ruptured.

The first ingredient was proved. I was satisfied that there were no signs of VD. The victim had told court that she had never had sex before.

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As for the second ingredient, there was still evidence of PW2 the victim making alarms calling her mother that the accused who was a visitor had raped her. She narrated her story to her father which caused the father to go and report to the LC.

If there was consent, she could not have raised the alarm. The accused ran and he hid himself but was later arrested before the LCI chairman could write a letter referring them to police.

This evidence shows that there could not have been consent by the accused. So I was satisfied that this ingredient was proved.

On the third ingredient again PW2 evidence was clear. The accused had come to visit them at her fathers home on the 29/11/09.

he talked to them including her father, PW1 and the mother advertising the herbs of blessings which he said that it was free of charge. He even told them that it would be administered at night though the whole procedure was not explained by him to the victim and the other children and the father and mother.

When he visited the victim, he administered the herbs of blessings which he said that it was free of charge. He even told them that it would be administered at night though the whole procedure was not explained by him to the victim and the other children and the father and mother.

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\super\insrsid9862816\charrsid9862816 th}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid9862816 /11/09 but he came back. PW2 stated that when he came to wake her up, she asked him if she could light the candle and the accused answered in }{\rtch\fcs1 \af0

\ltrch\fcs0 \insrsid4594042 affirmative){\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid9862816 . This evidence was not shaken in cross examination. This meant that there could not have been any mistaken identity. When PW2 raised the alarm and PW1 woke up }{

\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid3818169 he found that the accused was not in the house. That it\quote s the villagers who answered the alarm who got him hiding in the coffee garden and was arrested. He was taken back to PW1\quote

s home where the LCI chairman and PW1 found him and he was taken to Gwase Police. I was satisfied that this ingredient was proved.}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid282499

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\par The accused in his defence denied being a }{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 brother}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid3818169 in law of PW1 though h}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid853621 e agreed to having visited him o}{

\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid3818169 n the material dates. He denied having raped PW2 but he conceded to having slept with }{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid2908185 PW1 in}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid3818169

his house. He stated that he

was being framed. He denied that he was not a traditional doctor. He had made a statement at police which was not a confession and his particulars he had stated that he was a traditional doctor which he was denying. He said that the statement was not read

to him though he signed it. The s}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid7755993 tatement was tendered as EXD1. T}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid3818169

he evidence adduced was that the accused was claiming to be a traditional doctor and he never challenged it. PW2 told court that w}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid853621 hen the accused came to visit }{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid3818169

their home}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid1776182 he found her and a }{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 sister}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid1776182 to }{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 her mother}{\rtch\fcs1

\af0 \ltrch\fcs0 \insrsid1776182 who was suffering from traditional }{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 sickness}{\rtch\fcs1 \af0 \ltrch\fcs0 \insrsid1776182

and the accused said he was going back home to bring the herbs. That he took the patient back to where she was married on 01/02/09. That evidence was pointing to one fact that he claimed to be doctor or healer of some kind.

That he left the patient there and he came back that very day 02/09. All that evidence was pointing to one fact that he claimed to be doctor or healer of some kind.

That evidence was pointing to one fact that he claimed to be doctor or healer of some kind.

His defence was a mere concoction of lies which could not be believed. He didn't bother to explain why he was found hiding himself in the coffee garden. So I found no merit in defence which could cast doubt on the prosecution case. The principal State Attorney Mulindwa Badru submitted that the prosecution had proved its case beyond reasonable doubt and prayed that the accused should be found guilty and convicted accordingly. The defence conceded to the proof of ingredient one and three but contested the proof of ingredient two. He submitted that the victim consented on a number of events which culminated in the actual act of sexual intercourse. That the alarms raised were an action of embarrassment but not to show that there was no consent.

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As I have already stated the evidence was overwhelming that there was no consent, the accused tricked the victim and her parents into the act. The victim and the parents believed so by trick so that could not have been consent. There was nothing the victim could be embarrassed.

There was nothing the victim could be embarrassed.

That was her first time to encounter sexual intercourse. This being a sexual offence, the victim is in most cases her only witness in the material particular. All other evidence like the medical evidence is corroborative.

As it was stated in the case of George

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\b\i\insrsid15470566\charrsid2908185 girwa v. Uganda[1975] HCB page 361}\rtlch\fcs1 \af0
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. Its time that a court is not prevented from }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827
convicting}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid15470566 a person of sexual offence on the evidence
of the complainant (prosecut}\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid853621 ion}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid15470566) alone if she }\rtlch\fcs1 \af0
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believed by the court to be a truthful witness. But the practise is such a case consistently and
rightly has been that the }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 complaints}\rtlch\fcs1 \af0
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evidence he corroborated. Its generally considered unsafe to base a conviction only}\rtlch\fcs1
\af0 \ltrch\fcs0 \insrsid13253827 on the evidence of a complainant (prosecut}\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid853621 ion}\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13253827) in sexual offences.}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1776182

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2908185

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827 In the instant case there is ample corroboration
of PW2}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid853621 testimony that she was penetrative}\rtlch\fcs1
\af0 \ltrch\fcs0 \insrsid12082327 sexual}\rtlch\fcs1

\af0 \ltrch\fcs0 \insrsid13253827 intercourse by the medical evidence which sho

wed that the PW2 had a recent rapture of her hymen. It was between 1-2 days. She had told court
that she had never had sex before. The conduct of the accused also corroborated PW2\quote }
\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid7755993 s. T}\rtlch\fcs1

\af0 \ltrch\fcs0 \insrsid13253827 he testimony also of PW1 who said that when he woke up
because of the alarm he observed that the accused was not in the house and he saw someone
run }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid7755993 away. H}\rtlch\fcs1

\af0 \ltrch\fcs0 \insrsid13253827 is conduct was not innocent. His flat denial could not stand and
or shake the prosecutors evidence. He appeared an }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid11495210
artful}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827

liar and there was no sense of truth in what he was saying.

\par

\par The assessors in their joint opinion advised me }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid7755993 to
find the accused guilty and }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13253827

sentence him accordingly. I agreed with them because of the reasons already given in this judgement. The prosecution proved its case beyond reasonable doubt and therefore found him guilty of the offence of rape. He is convicted accordingly.

\par

\par Faith Mwendha

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\lsdpriority73 \lsdlocked0 Colorful Grid;\lsdpriority60 \lsdlocked0 Light Shading Accent 1;\lsdpriority61 \lsdlocked0 Light List Accent 1;\lsdpriority62 \lsdlocked0 Light Grid Accent 1;\lsdpriority63 \lsdlocked0 Medium Shading 1 Accent 1;

\lsdpriority64 \lsdlocked0 Medium Shading 2 Accent 1;\lsdpriority65 \lsdlocked0 Medium List 1 Accent 1;\lsdsemihidden1 \lsdpriority99 \lsdlocked0 Revision;\lsdqformat1 \lsdpriority34 \lsdlocked0 List Paragraph;

\lsdqformat1 \lsdpriority29 \lsdlocked0 Quote;\lsdqformat1 \lsdpriority30 \lsdlocked0 Intense Quote;\lsdpriority66 \lsdlocked0 Medium List 2 Accent 1;\lsdpriority67 \lsdlocked0 Medium Grid 1 Accent 1;\lsdpriority68 \lsdlocked0 Medium Grid 2 Accent 1;

\lsdpriority69 \lsdlocked0 Medium Grid 3 Accent 1;\lsdpriority70 \lsdlocked0 Dark List Accent 1;\lsdpriority71 \lsdlocked0 Colorful Shading Accent 1;\lsdpriority72 \lsdlocked0 Colorful List Accent 1;\lsdpriority73 \lsdlocked0 Colorful Grid Accent 1;

\lsdpriority60 \lsdlocked0 Light Shading Accent 2;\lsdpriority61 \lsdlocked0 Light List Accent 2;\lsdpriority62 \lsdlocked0 Light Grid Accent 2;\lsdpriority63 \lsdlocked0 Medium Shading 1 Accent 2;\lsdpriority64 \lsdlocked0 Medium Shading 2 Accent 2;

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\lsdpriority61 \lsdlocked0 Light List Accent 3;\lsdpriority62 \lsdlocked0 Light Grid Accent 3;\lsdpriority63 \lsdlocked0 Medium Shading 1 Accent 3;\lsdpriority64 \lsdlocked0 Medium Shading 2 Accent 3;\lsdpriority65 \lsdlocked0 Medium List 1 Accent 3;

\lsdpriority66 \lsdlocked0 Medium List 2 Accent 3;\lsdpriority67 \lsdlocked0 Medium Grid 1 Accent 3;\lsdpriority68 \lsdlocked0 Medium Grid 2 Accent 3;\lsdpriority69 \lsdlocked0 Medium Grid 3 Accent 3;\lsdpriority70 \lsdlocked0 Dark List Accent 3;

\lsdpriority71 \lsdlocked0 Colorful Shading Accent 3;\lsdpriority72 \lsdlocked0 Colorful List Accent 3;\lsdpriority73 \lsdlocked0 Colorful Grid Accent 3;\lsdpriority60 \lsdlocked0 Light Shading Accent 4;\lsdpriority61 \lsdlocked0 Light List Accent 4;

\lsdpriority62 \lsdlocked0 Light Grid Accent 4;\lsdpriority63 \lsdlocked0 Medium Shading 1 Accent 4;\lsdpriority64 \lsdlocked0 Medium Shading 2 Accent 4;\lsdpriority65 \lsdlocked0 Medium List 1 Accent 4;\lsdpriority66 \lsdlocked0 Medium List 2 Accent 4;

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