

UGANDA / JUDGMENT

Uganda v Mfitumukiza Jamiru
(Criminal Session No. 0230 of 2022)
[2025] UGHC 344 (9 January 2025)
[2025] UGHC 344

COURT
High Court of Uganda

BEFORE
Emokor, J

CASE / FILE NUMBER
Criminal Session No. 0230 of 2022

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT
KISORO CRIMINAL SESSION NO. 0230 OF 2022 (Arising from KIS No. oo12 of 2022)
(Arising from CRB No. 294 of 2022) 10
UGANDA :::PROSECUTOR VERSUS
MFITUMUKIZA JAMIRU:::ACCUSED**

15 BEFORE: HON. JUSTICE SAMUEL EMOKOR

JUDGMENT

Mfitumukiza Jamiru who for the rest of my Judgment I shall refer to as the Accused is indicted for one count of **Aggravated Trafficking in Children** Contrary to **Section 3(1)(a) and 5(a)** of the **Prevention of Trafficking in 20 Persons Act**. The particulars giving rise to the indictment are that Mfitumukiza Jamiru between the 7th and 14th day of May, 2022 at Nyiragakoro village in Kisoro District, transferred or confined Tumukunde Lilian a girl aged sixteen (16) years by means of deception for the purpose of sexual exploitation or child marriage.

The Accused on the 2nd Count is charged with the offence of **Defilement** Contrary 25 to **Section 129(1)** of the **Penal Code Act**. The particulars giving rise to the indictment are that Mfitumukiza Jamiru between the 7th and 14th day of May, 2022 at Nyiragakoro village in Kisoro District performed a sexual act with Tumukunde Lilian a girl aged sixteen (16) years.

The Accused pleaded not guilty to both Counts.

5 Representation.

Mr. Ainomugisha Christopher (Senior State Attorney) appeared for the prosecution while Mr. Bakanyebonera Felix on state brief represented the Accused. The Assessors for this trial were Mr. Rwangyeyo Joseph and Mr. Tumushime Emmanuel.

- 10 During the preliminary hearing pursuant to **Section 67 of the Trial on Indictment Act** uncontested evidence in Police Form 24A in respect of the medical examination of the Accused was admitted as Exhibit P1. The detail of which was that the Accused was found to be an adult male of 19 years, HIV negative with a normal mental status.
- 15 **The burden and standard of proof.**

This being a criminal case it is one whose proof lies squarely on the Prosecution and does not shift to the Accused. It is also proof beyond reasonable doubt. Any doubts must be resolved in favour of the Accused unless fully explained and the Accused must only be convicted on the strength of the Prosecution case and not

20 on the weakness of the defence case.

See **Ssekitoleko versus Uganda (1961) EA 531.**

On the first Count of Aggravated Trafficking in Children the Prosecution must prove:

- 1) **That the Victim is a child.**
- 25 2) **That the Accused transferred or confined the Victim.**
- 3) **That the Accused used means of deception.**
- 5 4) **For purposes of sexually exploiting the Victim.**
- 5) **That the Accused participated in the commission of trafficking the Victim.**
- a) Age
- 10 **Section 2(a) of the Prevention of Trafficking in Persons Act 2009** defines a child as a person below the age of 18 years.

The most reliable way of proving the age of a child is by production of a birth certificate followed by the testimony of witnesses and medical evidence where available.

15 It has however been held that other ways of proving the age of a child can be equally conducive such as the Courts own observation and common sense assessment of the age of the child.

See **Uganda versus Kagoro Geoffrey H. Cr. Session No. 0141 of 2002.**

It is the evidence of Tumukunde Lilian (PW1) the Victim in this case that she was

20 born on the 20/08/2005 that in fact in May 2022 she was still 16 years old and that in 2022 she was 17 years old.

This evidence is corroborated by that of the mother Uwimana Jolly (PW2) who testified that Tumukunde Lilian (PW1) was born on the 20/08/2005. She tendered to this Court a birth certificate to this effect issued by Kisoro District

25 Local Government on 28/10/2020 and the same was received as Exhibit P2.

The Accused on the other hand in his defence stated that Tumukunde Lilian (Pw1) told him that she was 18 years when he met her and maintains that this is her 5 age. The defence to buttress their argument tendered to this Court as Exhibit D1 a birth notification record by NIRA signed by the Sub County Chief indicating that Tumukunde Lilian (PW1) was born on 20/08/2005 and therefore making her 18 years in 2022.

It must be noted that Exhibit D1 was put to the Victim Tumukunde during cross-10 examination by the defence and she owned the same stating that she obtained it from the Sub County and handed it over to the Accused when she visited him in Prison. In re-examination by the Prosecution Tumukunde however acknowledged that she was the one who had given wrong information to NIRA concerning her date of birth. On Exhibit D1 and the correct date of her birth is 20/08/2005. That 15 she did this because she is in love with the Accused. She acknowledged that the

information in Exhibit D1 did not come from her parents.

It would appear from the above that Exhibit D1 contains false information and cannot be relied upon.

The issue of the Victim Tumukunde Lilian is (PW1) age was settled in my view by 20 the medical examination conducted by Ndagijimana Julius (PW5) a senior clinical officer who on the 16/05/2022 examined the Victim Tumukunde Lilian (PW1) and upon counting her teeth found them to be 29 as opposed to 32 teeth for adults and placed her age at the time at 16 years disagreeing with the Victim who had told him that she was 17 years. This medical report was received as Exhibit P4.

25 The findings in Exhibit P4 corroborate the evidence on record by the mother of Tumukunde Lilian that she was born on 20/08/2005 as contained in Exhibit P2

5 and therefore at the time of commission of the offence in May 2022 the Victim was 16 years.

The arguments and evidence of the defence in Exhibit D1 is therefore rejected.

It is my finding that the Prosecution has proved beyond reasonable doubt that at the time of commission of the offence Tumukunde Lilian (PW1) was a child below

10 the age of 18 years old.

b) Transfer and confinement of the Victim.

It is the evidence of the Victim Tumukunde Lilian (PW1) that sometime in 2022 at around 8:00PM she was at home alone her parents having gone for a burial 15 when that the Accused gave her a call and asked her to go with him. That he asked her on phone to marry him and she accepted. That the Accused came to their home picked her up and she packed her things into a bag and they left by foot to Nyakabande where the Accused was renting.

According to the Victim they arrived there at 9:00PM had dinner, sex and slept.

20 They later the next day left for Kisoro Town where they rented a room for two days until they were late discovered by her parents. Her evidence is corroborated by that of her mother Uwimana Jolly (PW2) who testified that on the 07/05/2022 she had gone for a vigil at Kigezi village at around 7:30PM leaving Tumukunde Lilian (PW1) at home and when she returned the next morning she did not find 25 her at home.

It is her evidence that it was on the 14/05/2022 that they discovered that the Accused was living with her daughter (PW1) in Mutawaza's house in Nyiragahoro village and that they notified the Police leading to the arrest of the Accused.

5 The Accused in his sworn defence states that the Victim Tumukunde Lilian (PW1) called him by phone and told him that talking on phone is useless and that he should marry her and take her away. That she told him that she was at home and that he should come with a bag to pack her clothes. The Accused states that he took the bag at around 8:00PM and Tumukunde Lilian(PW1) packed her clothes 10 and they walked away to go and start their life together.

The Accused corroborates the evidence of the Prosecution that he transferred the Victim Pumukunde Lilian (PW1) when he picked her from her home and walked away with her and the same is not in contention.

I find that the Prosecution has proved the 2nd ingredient beyond reasonable doubt.

15 c) Use of deception.

It is the evidence of Tumukunde Lilian (PW1) that the Accused called her on phone and asked her to marry him and she accepted.

It is on the basis of this alleged marriage arrangement that she left her parents' home and went to live with the Accused.

20 The Accused in his defence corroborates the Victim's testimony stating that on the 07/05/2022 he went to her home to pick her for marriage and indeed walked away with her for this purpose.

The provisions of **Article 31** of the **1995 Constitution** as amended are clear. The age for marriage is a minimum of 18 years. The Accused in this case was just

25 being deceptive when he made marriage proposals to the Victim who was below the threshold of 18 years.

- The Prosecution has therefore proved the 3rd 5 ingredient beyond reasonable doubt.

- **d) Sexual exploitation.**

Sexual exploitation is defined under **Section 2(a)** of the **Prevention of Trafficking in Persons Act 2009** as the use of a person in "Prostitution, sex tourism, pornography, the production of pornographic materials, or the use of a person for sexual intercourse or other lascivious conduct".

It is the evidence of Tumukunde Lilian (PW1) that when the Accused picked her from her parents' home they walked to Nyakabande where he was renting, had dinner, slept in the same bed and had sex. That they later left for Kisoro town the next day where they rented a room for two days and had sexual intercourse there

15 also for two nights.

The Accused in this defence corroborates the evidence of the Victim admitting that he engaged in sexual intercourse with her when he took away from her home. Further corroborative medical evidence can be attained in Exhibit P4 that shows that the Victim was examined on 16/05/2022 and found to have no hymen.

20 The possible cause was listed as having penetrative sex.

It is my finding that the Prosecution has proved beyond reasonable doubt the 4th ingredient.

e) **Participation.**

It is the evidence of the Victim that the Accused picked her from her home and 25 they spent the next couple of days moving between his residence in Nyakabande 5 and Kisoro town and engaging in sexual marathons. The Accused has admitted the same.

I therefore find that participation of the Accused in the trafficking of the Victim has been proved beyond reasonable doubt.

After considering the evidence adduced by the Prosecution and the defence 10 together and in full agreement with the assessors it is my finding that the Prosecution has proved beyond reasonable doubt the offence on Count 1 of Aggravated Trafficking in Children Contrary to **Section 3(1)(a)** and **5(a)** of **PTIPA** and I accordingly find the Accused guilty of the same and convict him.

On the 2nd Count of Defilement Contrary to **Section 129(1)** of the **Penal Code Act 15** the Prosecution must prove

- (a) That the Victim was below 18 years at the time of commission of the offence.
- (b) That there was a sexual act performed on the Victim.
- (c) That it was the Accused who performed the sexual act.

- 20

- 1) Age.

The age of the Victim as presented by her in May 2022 was that she was 16 years going on 17 in August of 2022. She gave her date of birth as being 20/08/2005. This was corroborated by her mother Uwimana Jolly (PW2) who also stated the

25 Victim's birth date as 20/08/2005 and tendered to this Court her birth certificate that was issued on 28/10/2020 by Kisoro District Local Government indicating the Victim date of birth as 20/08/2005. It was received as Exhibit P2. Corroborative medical evidence in Exhibit P4 which was the medical examination

- 5 of the Victim basing on her dentition proved her age as 16 years. The attempts by the defence to falsely the age of the Victim by producing Exhibit D1 is rejected. I therefore find that the Prosecution has proved the first ingredient beyond reasonable doubt.

- 2) Sexual act and participation of the Accused.

- 10 The evidence of the Victim Tumukunde Lilian (PW1) that the Accused picked her from her parents' home for marriage and that they spent the next couple of days engaging in sexual intercourse was not denied by the Accused who in his sworn defence admitted to engaging in sexual intercourse with the Victim. Exhibit P4 corroborates the sexual intercourse.

- The 2nd and 3rd 15 ingredients are therefore not in contention and I find them to have been proved beyond reasonable doubt.

After considering the evidence adduced by the Prosecution and defence together and in full agreement with the assessors it is my finding that the Prosecution has proved the 2nd Count of Defilement Contrary to **Section 129(1) of the Penal Code**

20 Act beyond reasonable doubt and I find the Accused guilty and convict him of the same.

Before me,

..... **Samuel Emokor** 25 Judge

09/01/2025.

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