

UGANDA / JUDGMENT

Uganda v Serugave Mohammed
(HCT-05-CR-SC-0057-2001)
(HCT-05-CR-SC-0057-2001)
[2002] UGHC 91 (21 August 2002)
[2002] UGHC 91

COURT

High Court of Uganda

CASE / FILE NUMBER

HCT-05-CR-SC-0057-2001

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{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 THE REPUBLIC OF UGANDA \line IN
THE H}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661

IGH COURT OF UGANDA AT MBARARA

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \b\insrsid4005661\charrsid4005661 HCT-05-CR-SC-0057-2001

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\insrsid8614394\charrsid4005661 U}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 GANDA

'85
PROSECUTION \line -VS-

\par SERUGAVE MOHAMMED '85..
'85... ACCUSED

\par }\pard \ltrpar\s15\ql \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalp
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\insrsid8614394\charrsid4005661 BEFORE: }{\rtlch\fcs1 \af0

\ltrch\fcs0 \ul\insrsid4005661 THE HON. JUSTICE P. K. MUGAMBA

\par }\pard \ltrpar\s15\qc \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalp
ha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid4005661 {\rtlch\fcs1 \af0 \ltrch\fcs0
\b\ul\insrsid8614394\charrsid4005661 JUDGMENT}{\rtlch\fcs1 \af0

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Serugave Mohammed alias Musinguzi, the accused, is indicted for defilement contrary to section
123 (1) of the Penal Code Act. The prosecution }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid4005661\charrsid4005661 called}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid8614394\charrsid4005661 four witnesses in support of its case. The}\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid4005661 se were Kiiza Topista Amoti (PW)\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid8614394\charrsid4005661 1), Mwendwa Grace (PW2), Detective}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid8614394\charrsid4005661

Gumisiriza Karinkiza (PW3) and Nsereko Siraji (PW4). Medical evidence was admitted under S.64
TID as exhibit P1. Also admitted was the extra judicial statement of the accused person in }
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Runyankore/Rukiga as exhibit PII}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 and
its English translatio}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 n as exhibit PIII}\rtlch\fcs1 \af0
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. Accused gave a statement on oath in his defence where he denied r}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid4005661 esponsibility for the offence.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 Briefly the prosecution case is
that during June 1999 accused had sexual intercourse with the complainant (PW 1), then aged
about 16 years,

as a result of which PW 1 conceived. On learning of her pregnancy accused took PW1, then a
schoolgirl, to Katooma in Kashari to live with his mother. In March 2000 PW1 delivered a child
which died in August 2000. Meanwhile PW2 who was maternal aunt to PW1

reported the matter to authorities. Acc}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 used was
arrested and charged.

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ustright\rin0\lin0\itap0\ipgp1\pararsid4005661 }\rtlch\fcs1 \af0 \ltrch\fcs0
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The prosecution has a duty to prove all the ingredients of the offence }\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid4005661\charrsid4005661 beyond}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid8614394\charrsid4005661 reasonable \line

doubt. Any doubt in the prosecution case must be reso}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661
lved in favour of the accused.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 See }\rtlch\fcs1 \ai\af0
\ltrch\fcs0 \i\ul\insrsid8614394\charrsid4005661 Uganda }\rtlch\fcs1 \af0 \ltrch\fcs0
\ul\insrsid8614394\charrsid4005661 - }\rtlch\fcs1 \ai\af0 \ltrch\fcs0

\i\ul\insrsid4005661 vs- Kahitira [1988-1990]}\rtlch\fcs1 \ai\af0 \ltrch\fcs0
\i\ul\insrsid8614394\charrsid4005661 HCB. 30. }\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\insrsid4005661

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 The three ingredients t}
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 he prosecution must prove are:

\par } \pard \ltrpar\s15\qj \li576\ri0\sl360\smult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin576\itap0\ipgp1\pararsid4005661 {\rtlch\fcs1 \af0 \ltrch\fcs0
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a. that the complainant was a girl under the age of 18 years at th}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid4005661 e time of the alleged offence;

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 b. that the complainant had
sexual intercourse at the time in question; and }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 c. that it was the accu}
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 sed who committed the offence.

\par } \pard \ltrpar\s15\qj \li0\ri0\sb100\sa240\sbauto1\sl360\smult1\widctlpar\wrapdefault\aspalp
ha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid4005661 {\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid8614394\charrsid4005661

I proceed to relate the above ingredie}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 nts to the
evidence on record.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 Concerning the first ingredie
nt, there was no birth certificate produced by the prosecution. However courts have allowed
evidence in proof of age from persons acquainted with the complainant. PW2 is aunt to the
complainant. She told court that the complainant was born in June 1983. M

edical evidence which was admitted in evidence as exhibit P1 shows that in October 2000 the
complainant was 16 years old. I am satisfied that the prosecution has proved beyond reasonable
doubt that in 1999 the complain}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid4005661 ant was below 18 years of age.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 The com

plainant testified that she had sexual intercourse, that she conceived and also delivered a child, I
have warned myself like I did the assessors about the danger of convicting on the evidence of a
single witness. This can be done however if court is satis

fied}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 that the witness is truthful.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 See }{\rtlch\fcs1 \ai\af0
\ltrch\fcs0 \i\ul\insrsid4005661 C}{\rtlch\fcs1 \ai\af0 \ltrch\fcs0
\i\ul\insrsid8614394\charrsid4005661 hila & Another }{\rtlch\fcs1 \af0 \ltrch\fcs0

\ul\insrsid8614394\charrsid4005661 - }\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\ul\insrsid4005661 vs- R [1967]}\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\ul\insrsid8614394\charrsid4005661 EA 722. }\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\insrsid4005661

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 However I find corroboration of this evidence in the extra judicial statement of the accused, exhibits P11 and Pill where accused admits to having had sexual intercourse with t

he complainant and where he admits that a child was born to the union. I am satisfied that the prosecution has proved this ingre}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 dient beyond reasonable doubt.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 Regarding the final ingredient, PW1 in her testimony told court that it was accused who had sexu

al intercourse with her. The aunt to PW1, who was PW2, also told court that she had learnt that PW1 was living with accused. In his extra judicial statement already referred to accused admits to having cohabited with PW1 and to have had sexual intercourse

with her. Although in his defence accused denies knowledge of the offence alleged against him I find the prosecution evidence overwhelming against him. The prosecution has proved this ingredien}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661

t too beyond reasonable doubt.

\par }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 The two assessors in their join t opinion advise me to find accused guilty of the offence and convict him. For the reasons I have given in the course of this judgment I agree with that opinion. I find the accused guilty and convict him accordingly. }\rtlch\fcs1 \af0 \ltrch\fcs0

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\par Judge \line 21 August 2002

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\ltrch\fcs0 \insrsid8614394\charrsid4005661 August 2002 \line Mr. Murumba State Attorney \line Mr. Dhabangi holding brief for Mr. Tibamanya for accused person. \line Accused in}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 court}\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid8614394\charrsid4005661 \line Ms Tushemereirwe court clerk/interpreter \line }
{\rtlch\fcs1 \af0 \ltrch\fcs0 \ul\insrsid8614394\charrsid4005661 Court: }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid4005661 \line Judgment read in open court.

\par }\pard \ltrpar\s15\qc \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\ad
justright\rin0\lin0\itap0\ipgp1\pararsid4005661 {\rtlch\fcs1 \af0 \ltrch\fcs0
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\par Judge \line

\par }\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adj
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\ul\insrsid8614394\charrsid4005661 \line State Attorney: }{\rtlch\fcs1 \af0 \ltrch\fcs0
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\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 The convict is a first offender.
He has been on remand since October 2000. The offence \line carries a maximum sentence of
death}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661

. I pray for a stiff sentence.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \ul\insrsid4005661

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \ul\insrsid8614394\charrsid4005661 Mr. Dhabangi: }{\rtlch\fcs1
\af0 \ltrch\fcs0 \insrsid4005661

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 The convict wis}{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid4005661 hes to make his own allocutus.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \ul\insrsid4005661

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \ul\insrsid8614394\charrsid4005661 Convict: }{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid4005661

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid8614394\charrsid4005661 I pray for court to consider the
period I have spe}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661 nt on remand. That is all.

\par }\pard \ltrpar\s15\qj \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalp
ha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid4005661 {\rtlch\fcs1 \af0 \ltrch\fcs0
\b\ul\insrsid8614394\charrsid4005661 Sentence: }{\rtlch\fcs1

\af0 \ltrch\fcs0 \b\insrsid8614394\charrsid4005661 \line }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid8614394\charrsid4005661

When you took a schoolgirl from the care of her parents and led her down the garden path you were destroying her future for ever while you gratified your selfish desires. You neglected her besides defiling her. Such

activity should be discouraged and you should be put away for some time to protect society and to give you chance to reflect on what you did, This offence carries an ultimate penalty of death but I sentence you to 10 years\

imprisonment taking the period you have spent on reman} {\rtlch\fcs1 \af0 \ltrch\fcs0
 \insrsid4005661 d into account in the process.

\par } \pard \ltrpar \s15 \qc \li0 \ri0 \sl360 \smult1 \widctlpar \wrapdefault \aspalpha \aspnum \faauto \ad
justright \rin0 \lin0 \itap0 \ipgp1 \pararsid4005661 {\rtlch\fcs1 \af0 \ltrch\fcs0
 \insrsid4005661 \charrsid8544671 P. K. Mugamba} {\rtlch\fcs1 \af0 \ltrch\fcs0
 \insrsid4005661 \charrsid4005661 } {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid4005661

\par Judge \line

\par } \pard \ltrpar \s15 \ql \li0 \ri0 \sl360 \smult1 \widctlpar \wrapdefault \aspalpha \aspnum \faauto \ad
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 \ul \insrsid8614394 \charrsid4005661 Court: } {\rtlch\fcs1 \af0 \ltrch\fcs0
 \insrsid8614394 \charrsid4005661 \line Right of Appeal explained. \line

\par } \pard \ltrpar \s15 \qc \li0 \ri0 \sl360 \smult1 \widctlpar \wrapdefault \aspalpha \aspnum \faauto \ad
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\par Judge \line

\par } \pard \plain \ltrpar \qj \li0 \ri0 \sl360 \smult1 \widctlpar \wrapdefault \aspalpha \aspnum \faauto \a
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\lsdunhideused0 \lsdpriority62 \lsdlocked0 Light Grid Accent 5;\lsdsemihidden0 \lsdunhideused0
\lsdpriority63 \lsdlocked0 Medium Shading 1 Accent 5;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority64 \lsdlocked0 Medium Shading 2 Accent 5;
\lsdsemihidden0 \lsdunhideused0 \lsdpriority65 \lsdlocked0 Medium List 1 Accent 5;
\lsdsemihidden0 \lsdunhideused0 \lsdpriority66 \lsdlocked0 Medium List 2 Accent 5;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority67 \lsdlocked0 Medium Grid 1 Accent 5;
\lsdsemihidden0 \lsdunhideused0 \lsdpriority68 \lsdlocked0 Medium Grid 2 Accent 5;
\lsdsemihidden0 \lsdunhideused0 \lsdpriority69 \lsdlocked0 Medium Grid 3 Accent 5;

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