

Hon. Justice
J.W.M. Tsekoms
J.S.C.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CRIMINAL SESSION CASE NO. 246 OF 1993

UGANDAPROSECUTOR

VERSUS

STANLEY KEDI alias MUREFU ACCUSED

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU

J U D G M E N T:

In the main count, the accused is indicted for defilement, contrary to section 123 (1) of the Penal Code Act.

Particulars of offence are that Stanley Kedi alias Murefu on the 9th day of September, 1991 at Apapai village in the Soroti District had unlawful sexual intercourse with Iperu Anna Grace a girl under eighteen years.

In the alternative count, the accused is charged with rape, contrary to sections 117 and 118 of the Penal Code Act.

It is alleged that Stanley Kedi alias Murefu on or about the 9th day of September, 1991 at Apapai village in the Soroti District had unlawful carnal knowledge of Iperu Anna Grace without her consent.

In her testimony, the victim (PW1) said on the day of the incident, she was only twelve years old. She was born on 23.7.79 and she came to know her birth day through her late father. She was a pupil of P4 at Apapai Primary School at the time.

On 9.9.91 at around 5 p.m. the accused whom she had not known before, found her at the village well. She was washing clothes together with a friend one Atim. Her brother Enyangu - PW7 was bathing around the well. The accused was dressed in N.R.A. plain green uniforms and was armed with a hand grenade and a wire.

For reasons best known to the accused, the victim saw him assault PW2 with a wire and bringing him naked to where she was washing her clothes in the company of Atim. She heard PW2 pleading that the accused should not drive him naked to her as a sister, but the accused did not heed.

On reaching where PW1 was with Atim, the accused ordered them to lie down. He also assaulted her and Atim severely with the wire. He then ordered PW1 and Atim to go with him to a mabati house some 200 metres away from the well. He ordered PW2 also not to leave the well.

In that unoccupied mabati house, the accused continued assaulting PW1 and Atim. He also twisted her nose while ordering her to undress herself. When she refused the accused threatened to throw the grenade at her. For fear of her life, she stood raising her hands up and it was at that time that the accused personally removed her dress.

He ordered her to lie on her back and once he peeped to see her vagina before he removed his trousers and inserted his penis into her vagina.

According to her, the penis could not enter the vagina because it was too big and stiffly erected. However, the accused mercilessly started having sexual intercourse with her. She was crying in the course of sexual intercourse due to much pain she felt. At the same time blood was oozing from her vagina as a result of severe tear therein.

In order to save herself from further damage, she tricked the accused by deceiving him that she wanted to pee and when she was allowed she squatted and much blood was pouring down instead of the urine. On seeing that the accused ordered her to put on her dress which she readily did.

The accused defiled the victim after releasing Atim. He did so because Adengu the father of Atim was also a soldier working with him at Bugondo detach. However, after defiling PW1, the accused abandoned her at the main road and he went his way back to Bugondo detach. PW1 then got a chance of also going back to her home.

According to her, she walked with much pain and her dress was soaked in blood. On reaching home, she narrated the story to her mother PW3. Immediately her mother made her lie on her back with legs wide apart and she examined her private parts.

Evidence of PW3 is that when she examined the private parts of PW1, she found her vagina was badly torn and was full of blood. Her dress was highly blood stained. So she went to report the matter to the area R.C. official one Geresemu Opolot - PW4. She did not find him at home but left a message with the wife.

The following morning, 10.9.91, PW4 arrived and interrogated both PW1 and PW2. The victim (PW1) narrated the story as stated above. PW2 also confirmed that on 9.9.91 at around 5 p.m. the accused found them at the well. The accused was armed with a grenade and a wire. He found the witness bathing and he ordered him to lie down naked. He kicked PW2 on the buttocks and also on the neck until he fell down. The accused then started caning him with the wire.

After that warm up, the accused escorted PW2 naked to where his sister PW1 and Atim were. From there he also assaulted PW1 and Atim. The witness saw the accused later take PW1 and Atim to a nearby mabati house. He was ordered not to leave the well until the accused returned. Later Atim returned leaving the accused and PW1 inside the mabati house. At that time PW2 and Atim had the chance of running away. He escaped and reported the matter to his mother-PW3.

In his capacity as R.C.1 Chairman of the area, after interrogating PW1 and PW2, he decided to take the matter to Bugondo detach. He saw blood flowing down the legs of PW1 and she could not walk properly.

As PW2 had known the accused before, the names Stanley Kedi alias Murefu were reported to the military detach at Bugondo and the accused was arrested accordingly. Later the matter was reported to the Police.

In his defence, the accused totally denied defiling or raping the victim in this case. He said on 9.9.91 at around 8 a.m. he was arrested for having fired a gun in the barracks which bullet narrowly missed his boss. On the same day at around 11 a.m. he was brought from detention before the Commanding Officer on yet another allegation that he had defiled or raped a girl. He denies this allegation and says that on 9.9.91 he did not go to Apapai village as alleged.

According to the testimony of the victim, she says she was born on 23.7.79 and she was supported by her mother, PW3 who confirmed her age. At the time of the alleged offence, she was only 12 years old. At the trial she was 15 years old. It appears the defence does not dispute her age. In the circumstances, PW1 was a girl under the age of 18 years when the alleged defilement took place.

As to whether PW1 was actually defiled, her testimony requires corroboration: Silag Sevume Vs. Uganda (1977) HCE 55. In the present case, PW1 said she was defiled in the mabati house in broad day light. PW2 who knew her defiler before saw him take her together with Atim in the mabati house.

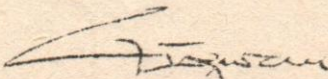
Later after the act, PW1 returned home and complained that she was defiled. Her story is consistent with the evidence of PW2 who saw her dress soaked with blood and she was walking with difficulty. Her complaint is also consistent with the testimony of the R.C. official, PW4 who also saw blood still flowing her legs and the dress was blood stained and she could hardly walk. However, her story was corroborated by the evidence of her mother, PW3 who testified that she made the complainant lie on her back and she examined her vagina. She found as a fact that PW1's vagina was badly torn and a lot of blood was oozing and the dress was highly soaked in blood. In that regard evidence of PW3 corroborates PW1 in that she was defiled on 9.9.91. Despite the fact that PW1 was treated in Serere dispensary, the prosecution did not call for medical evidence which would have been more vital in the case.

In case I am wrong to hold that the evidence of PW3 who examined the victim does not corroborate the story narrated by her, all the same I have warned the assessors and myself of the danger of acting on the uncorroborated testimony of the complainant and having done that I am satisfied that her evidence is truthful:

Chila and Another Vs. R (1967) EA 722. Refer also to John Kayibanda Vs. Uganda (1976) HCB 24.

Evidence of PW1 and PW2 points a finger at the accused as the person who committed the crime. The incident happened in the mabati house in broad day light. He was dressed in plain green N.R.A. uniforms and he was known to PW2 before. He took considerable time with the complainant and as a result she was able to identify the accused easily at Bugondo military detach in the presence of PW2, PW3 and PW4. In the circumstances, mistaken identity could not arise. Defence of an alibi cannot hold water in the instant case. Evidence of PW2 who knew the accused before put him at the scene of crime and since he took considerable time with the victim and moreover during day time, PW1 ably identified the accused.

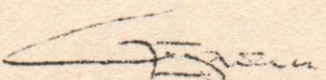
In conclusion, the accused is guilty and is hereof convicted of defilement, contrary to section 123 (1) of the Penal Code Act.


STEVEN GEORGE ENGWAU

JUDGE

3.10.94.

6.10.94: Accused before the court.
Mr. Oyoit for accused on State brief.
Ms Nandawula for the State.
Mr. Opio Emmy interpreter in Ateso.
Judgment delivered in open court.

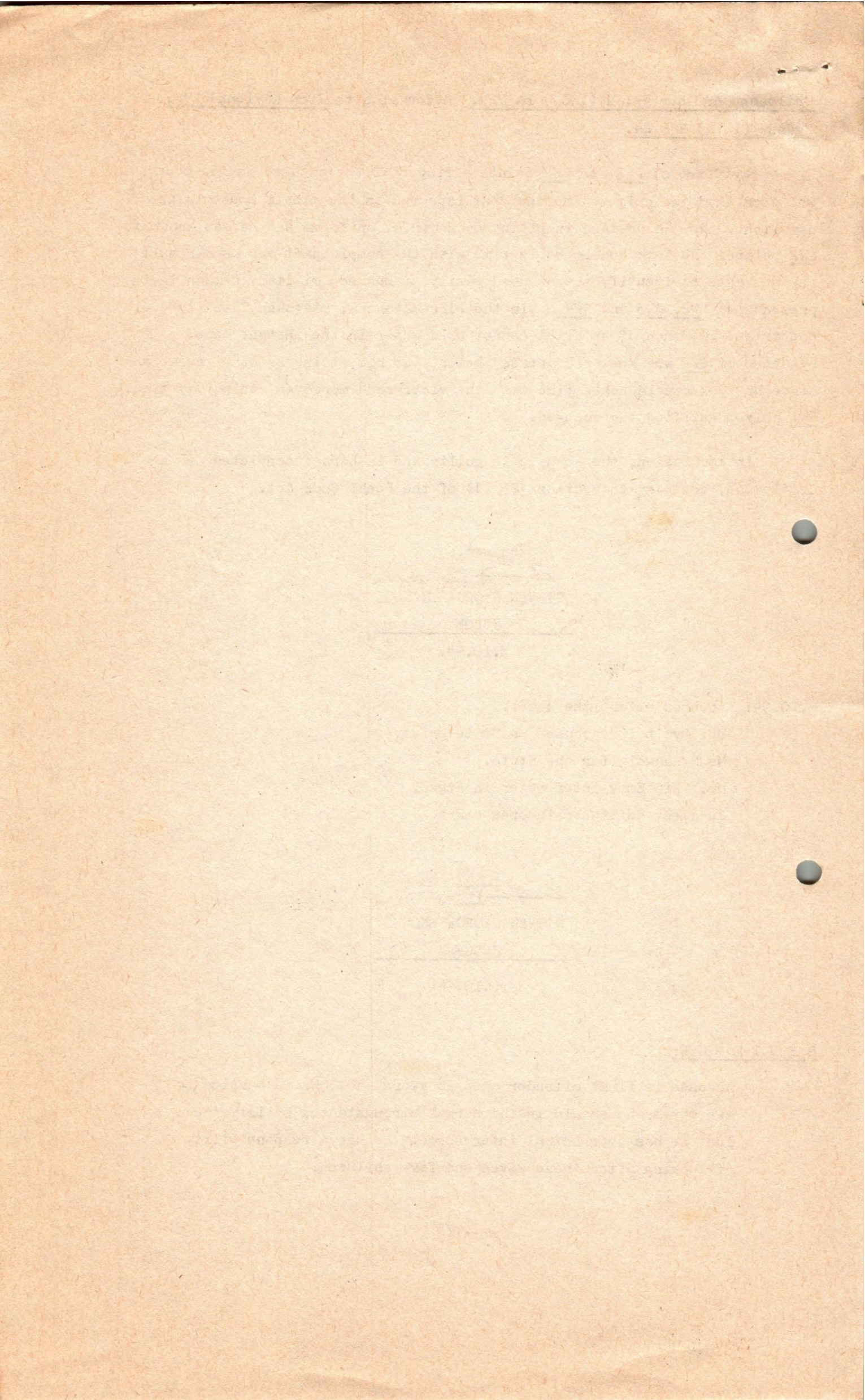

STEVEN GEORGE ENGWAU

JUDGE

6.10.94.

SENTENCE:

Accused is first offender aged 28 years old. He is married to two wives who should in the normal circumstances satisfy the lust he has over sexual intercourse. He has a responsibility of looking after those wives and five children.



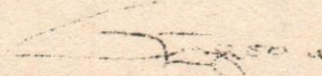
The manner in which this offence was committed was the most brutal one can describe. Despite his big penis which failed to penetrate the victim's vagina, the accused forced his way and thereby tearing her vagina badly and she almost failed to walk.

The accused was an adult at the time he committed this offence. He therefore took advantage of a young girl of 12 years who was not armed but he threatened her with a grenade.

With AIDS at the corner the weaker sex in the like of the victim in the present case, must be protected by court.

In the premises, I hereby impose the long hands of the law with a deterrent sentence to sex maniac in the likes of the accused and those who might be tempted to follow his bad example.

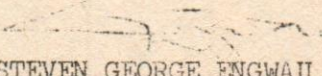
Accordingly, the accused is sentenced to six years' imprisonment with four strokes of the cane.


STEVEN GEORGE ENGWAU

JUDGE

6.10.94.

R/A against conviction and sentence explained.


STEVEN GEORGE ENGWAU

JUDGE

6.10.94.