

Uganda v. Ocilaje s/o Eragu  
Ayumo w/o Olong

High Court (Allen, J.): December 23<sup>rd</sup>, 1976

(Crim. Rev. No. 182 of 1976)

Criminal Law – Elopement – 1<sup>st</sup> accused convicted of elopement c/s 121A(1) of Penal Code – He admitted a previous conviction of similar offence – He was ordered to pay compensation of Shs.3,000/= to the aggrieved husband – whether order of compensation in sum of Shs.3,000/= was proper.

Criminal Law – Elopement – 2<sup>nd</sup> accused convicted of agreeing to elope c/s 121A(3) Penal Code – The Word “elope” in subsection 3 not defined – whether the subsection creates any offence.

Criminal Procedure – Charges – charge sheet submitted by police but not signed by Police Officer – whether charge sheet proper.

Criminal Procedure – Charges – 1<sup>st</sup> accused charged with elopment c/s 121A(1) of Penal Code – Particulars stated he eloped with Ayumo, a married woman not being his wife” – whether words “not being his wife” were unnecessary and amounted to an irregularity – whether the irregularity occasioned miscarriage of justice.

The two accused were convicted on their own pleas. The first accused was convicted of elopement with a married woman c/s 121A(1) of the Penal Code Act and fined Shs.200/- or 6 weeks imprisonment and was ordered to pay compensation of Shs.3,000/- to the aggrieved husband because the accused admitted that he had a previous conviction of a similar offence. The second accused was convicted of agreeing to elope c/s 121A(3) of the Penal Code and, after admitting a previous similar conviction, she was fined Shs.100/- or 4 weeks imprisonment. Both fines were paid.

The charge sheet was submitted by the police but it was unsigned. The particulars of offence with regard to the first accused stated that he “eloped with Ayumo, a married woman not being his wife.”

Held: 1. The maximum compensation to be paid under s.121A(1) of the Penal Code, upon subsequent conviction is Shs.1,200/- and therefore the magistrate wrongly ordered the accused to pay Shs.3,000/-.

2. Before taking the plea in any criminal case the magistrate is expected to read the charge sheet to make sure that it is properly prepared and reveals an offence or offences.

3. A charge sheet submitted by the police is neither proper nor complete if it is unsigned by a police officer.

4. The words "not being his wife" in the particulars were not only superfluous but also meaningless as one cannot elope with one's wife, and as the expression is not used in the section there was no need for the police to include it. However that irregularity occasioned no miscarriage of justice and therefore the 1<sup>st</sup> accused was properly convicted.

5. S.121A(2) of the Penal Code makes an offence for a married woman to elope with married man and it is thus not an offence by a woman under this subsection for a married woman to elope with an unmarried man.

6. Subsection 3 of s.121A of the Penal Code makes no reference to the marital status or sex of the parties in the agreement and therefore the subsection is meaningless. In any case the word "elope" in the context of section 121A(3) of the Penal Code is not defined as provided by article 15(8) of the constitution that "no person shall be convicted of a criminal offence unless that offence is defined and the penalty thereof prescribed in a written law." Therefore in the instant case the 2<sup>nd</sup> accused pleaded guilty to a non-existent offence and her plea was a nullity.

Order to pay compensation of Shs.3,000/- set aside and an order to pay compensation of Shs.900/- substituted therefor, amount in excess to be refunded to 1<sup>st</sup> accused forthwith.

Conviction of 2<sup>nd</sup> accused under s.121A(3) quashed and sentence set aside – the fine of Shs.100/= to be refunded to her forthwith.

Legislation Considered:

Penal Code Act 1970 (Reprint) s.121A(1), (2), (3).

Cases Cited:

1. Uganda v. Solomon & Anor., [1971] E.A. 46
2. Uganda v. Erusania Namudoko & Anor. Criminal Revision No.659 of 1971.

(E.K.B.)