

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(INTERNATIONAL CRIMES DIVISION AT KOLOLO)

HCT- 00- ICD-CR -SC- NO. 003 OF 2014

UGANDA:..... PROSECUTOR

VERSUS

UMUTONI ANNET :..... ACCUSED

(BEFORE: THE HON. MR. JUSTICE E.K.MUHANGUZI, J.)

JUDGEMENT

BRIEF BACKGROUND

Umutooni Annet (“the accused”) was charged on two counts of aggravated child trafficking and Human Trafficking contrary to sections 3(1) (a), 4 (a) and 5 (a) of the Prevention of Trafficking in Persons Act No.7 of 2009 (hereinafter called “the Act”).

On 10/9/2014 the accused was arraigned on an indictment containing two counts. After court read out and explained to her each count she pleaded not guilty to each of them. Court accordingly entered a plea of not guilty for her in respect of each count. Thereafter court interviewed Mr. Peter Clever Kiggundu and Ms. Juliet Kasendwa and proposed them to the accused who through her lawyer, stated that she had no objection to the two serving as assessors. Court accordingly appointed and administered to them the relevant oath.

The prosecution led by Ms. Joan Kagezi for the D.P.P, called a total of eight witnesses while the defence called two witnesses comprising of the accused and one other witness. Mr. Tumwesigye Louis represented the accused during the trial.

THE EVIDENCE

The first prosecution witness, Dr. Ndiwalana Bernard (PW.1), a pathologist working as a surgeon with the Police testified that a police officer named Kainza Beatrice No. 20949, a

corporal, brought Umubyeyi Phiona to him on 22/12/2011 for medical examination. That he examined her in a case ref. GEF/279/2011 and filled and signed a police form PF3A on which he noted his findings and conclusions. She was a female student from Kicukiro, Kigali Rwanda. From history and secondary characteristics and the dental formular, he concluded that she was 16 years old. She had a tear on her posterior aspect of the hymen more than 5 days old. The cause was a blunt penetrating object. He took off blood samples for HIV test and urine for pregnancy test and sent them to the laboratory. The results which were returned showed / were negative for both HIV and pregnancy. He concluded that the victim was depressed and had been sexually assaulted as her genitals had been penetrated. He handed over the PF3A to the investigating officer. The PF3A was admitted in evidence as prosecution exhibit P.1.

The witness also received and examined Mahirwe Angella, who was also brought to him by the police woman corporal Kainza Beatrice, on 22/12/2011 with a police form PF3A bearing ref no. GF/27/2011. On examining her he found she was a female aged 14 years and on her genital area she had a tear on the left posterior aspect of the hymen and a whitish discharge and a mild swelling o the labia. There was tenderness and hyperemia (tenderness due to inflammation) on the genital area. He concluded that this was due to penetration by a blunt object. He took off a vaginal swab for culture and sensitivity and a gram stain to establish if there was any infection which he suspected. He also took off blood for HIV test and urine for pregnancy test. The results were negative for both HIV test and pregnancy. He filled the findings onto the PF3A which he signed and stamped on the 22/12/2011. The PF3A in respect of Mahirwe Angella was admitted in evidence as prosecution exhibit P.2.

Further, that he quickly examined and diagnosed the patient. He established that Mahirwe Angella had sexually transmitted infection. He prescribed antibiotics, pessaries and pain killers to treat the infection. He sent her to the pharmacy at the police clinic where drugs were

given free of charge. She was given the antibiotics, the pain killers but not the pessaries. The handwritten doctor's prescription was admitted in evidence as prosecution exhibit P.3.

In cross examination by defence counsel the witness said though he indicated in his examination in chief that Umubyeyi Phiona was 16 years old it was possible she could be above 16 years of age. She had well developed secondary characteristics and breasts are one of such characteristics. She had well kempt hair, no fresh wounds, no old scars. She looked depressed. i.e not happy, not comfortable. There was no relationship between her depression and difficulty in expressing herself due to language barrier.

He took blood samples for HIV and urine for pregnancy tests. He talked to the victim in the presence of an interpreter whose name he did not recall but the victim could express herself. It was not part of his duties to find out if the victim had an ID of Rwanda. He stated that she had no injuries on her neck, back and abdomen. He referred her to a counselor because of the problems she narrated to him. He did not find out the transport means she used from Rwanda to Bweyogerere, or even how long she had been in Uganda prior to the medical examination but she told him she had been forcefully having sexual intercourse with one Job for one week.

In re-examination this witness stated that anybody aged below 18 years cannot have a complete dental formular. Umubyeyi had an incomplete dental formular, so she could not have been 18 years in this case.

Kemirembe Dorothy (PW.2), stated that her sister, Miriam Furah, a resident of Rwanda telephoned her in November, 2011 that someone visited her but went with some children. That Miriam wanted this witness' assistance as she lived in Uganda and the children had been brought to Uganda. Miriam gave her a telephone number which the witness used to call a person whom she did not know and who did not know her. She did not want to tell her the

reason but agreed to meet her. Miriam came to Uganda and together with the witness they went to Interpol who took both of them to Kireka police.

The witness while at police at Kireka telephoned the accused and agreed to meet at shell Kireka. The witness then, in the company of police personnel, went and met the accused at shell Kireka adjacent to a supermarket. That the accused first denied being Annet and promised to take them to Annet. However, police arrested her and they all went to Kireka police station with accused whom Miriam recognized and identified as Annet, the accused.

Finally that of the two children whom the accused was said to have been interested in, the witness knew only Umubyeyi Phiona who is a niece to the witness. That the accused had demanded from the witness UGX. 80,000= on telephone in order to show the witness those children and in order for the accused not to make a loss.

In cross examination by defence counsel PW.2 stated that she was born in Uganda but her mother returned to Rwanda and the witness goes there to visit her at times. That she knows Rwandan residents are given “endangamuntu” as an identification document. That her telephone number is 0773 187613 but could not recall Miriam’s telephone number off hand or the number of the accused which she called her on. That the number she used to call the accused is the same one she still uses.

Further the witness stated that in the year 2011 Umubyeyi Phiona had not got “endangamuntu” and even now, she believed, Phiona had not yet got one. That she saw Phiona after the arrest of the accused and she looked good.

That she had a personal mobile phone whose number the witness did not know.

She also saw Mahirwe Angella after the arrest of the accused and she did not have a mobile phone. She could not tell how Mahirwe looked as she did not know her before. She did not remember the phone number on which she called the accused.

Furaha Miriam, PW.3, testified that she knew the accused, Umutoni Annet, as the one who in 2011 in October, met her at Kimisagara at a home cell fellowship. That she was with a baby and she offered her accommodation at the residence of the witness at Kahanga for one week. That after one week she left in the absence of the witness who did not know where she went. The witness had given her three days notice to leave but the accused stole her children, her daughter Phiona Umubyeyi and her neighbor's daughter Mahirwe Angie. That she was first alerted about Phiona's absence from home and when she checked in the house and did not see her. That she shouted and when neighbors' came Mahirwe's mother came and said even her kid had been taken. She reported to police who tried in vain to trace the children. Interpol at Kakiri in Kigali referred her to Interpol in Uganda who sent her to Kireka police. That before coming to Uganda she got a phone number from her son Mutangana, who had the phone number of the accused. That she gave that phone number to her sister Kemirembe to try and trace the accused who had taken the children.

That at Kireka she remained at the police station while Kemirembe went with police personnel to look for the accused, whom the police arrested and the witness saw her after her arrest. The following day while still at the police station she saw police go with the accused and return later with the two girls and the accused. That her own daughter looked well but the other one looked emaciated and had lost hair as it was breaking off. That Phiona told her she had been used as a housemaid and she had been sleeping with a certain man while Angie said she was taken to a certain man who had slept with her and infected her. That Phiona was 16 years old.

In cross examination by defence counsel this witness stated that she was a born again Christian, a business woman selling things in the market and did not go to school. That Phiona was born in December 1992. That her birth was registered because all children are

registered in Rwanda. She thought that she got her registration to police at Kireka. That she did register her birth at the time she was born but simply obtained travel documents for travelling to Uganda. That she did not deliver her in a maternity but at home. That she delivered her in 1992. That by then there was no immunization but subsequently it was introduced.

That she was baptized in a Pentecostal church but no baptism certificate was issued and that the witness was not present at the baptism. That she was about 10 years old in the year she could not remember. That termly reports are issued in Rwanda.

That Phiona did not have “endangamuntu” but the witness has one herself and she showed it to court. She did not know Phiona’s telephone number in 2011. That her own number is the same she uses even now and is 078816573. That she has never telephoned the accused, and the accused has never called her either on her telephone even once. That during her visit to the home of the witness, the witness is the one who accommodated and fed the accused. That she did not allow the accused to take Phiona to tour Uganda. That she could not turn around and start looking for her in Uganda. That when the accused left the home of the witness Phiona was at home till about four days later that Phiona disappeared. She did not know how Phiona left.

Further that during Phiona’s disappearance the witness did not talk to her on phone or to the accused. That after Kemirembe confirmed that Phiona was in Uganda then is the time when the witness became aware of Phiona’s being in Uganda. She denied being used by the Rwandan government to frame the accused. That she is not aware that the husband of the accused was a state operative of Rwanda. That she heard from the accused that her husband

was working at some sort of depot and nothing about his being a state security operative. That she was not hiding Phiona's documents of birth or age or baptism.

In re-examination she clarified that after Phiona's disappearance a boy called.... telephoned the accused while trying to look for Phiona and another boy also called Furaha had said Phiona had bid him farewell on her way to Uganda. That the husband of the accused was a muzungu.

Mukamugarura Olive, PW.4 testified that she saw the accused when she came to this court earlier this year. That of her three sons and three daughters Mahirwe Angella is her first born, produced on 01/8/98. She is studying and living with her.

That in October 2011 Angella was a pupil at Nkataza Mubahizi Primary School but the witness could not find her until P.W.3 came to Uganda. That was after her own sister, Mujamaria Andet confirmed she was not at home and the witness went to PW.3 who told her that her own daughter, Phiona was also missing at home. Both the witness and P.W.3 reported their missing daughters to Gahanga Police Station and to local authorities of their residential area. That was in October 2011. She did not see her daughter till 2012 when PW.3 brought her back to Rwanda.

In cross examination by defence counsel, the witness said that PW3.is the immediate neighbor. That she did not see the accused at PW.3's home in Kigali. She did not know how her daughter left her home. Her husband is called Kabeera Theonest. He was not present when Angella left their home. Angella was a pupil in primary five at the time she left home. It was holiday time and the next term was due to start in October.

Mahirwe Angella (PW.5) stated that she was aged 16 years and studies tailoring in Mukademy at Nyanza near Kicukiro, Rwanda. She resides at Gahanga in Rwanda with her parents (PW.4) her mother and her father. That she knew the accused since she met her when

the accused came to visit PW.3 at Gahanga in 2011. That the home of PW.3 and hers are just next to each other.

That while living with her parents in 2011 she left her home on 04/11/2014 to go to Uganda with the accused so that the accused gives her a job. She left with the accused who left her at Rwentobo. From home they travelled by car to Remera and by bus to Nyagatare where they used motorcycles through jungles up to a swamp where they left the motorcycles and crossed the swampy river on foot up to Uganda. They then travelled by motorcycles to Rwentobo where the accused left her with her baby at the home of the motor cyclist who had transported them. That the accused told her she would return and collect her. That baby was about five months old. That the journey from Gahanga to Rwentobo took them about seven or eight hours. She spent about three days at the home of the motorcyclist and two days at the home of the motorcyclist's father.

That she did not tell anybody at home at the time she left that she was leaving home. The accused had told them she was going to give them jobs of working in a supermarket. She had discussed with Phiona Umubyeyi how they would come. That after spending two or three days at the motorcyclist's home the accused came back with Phiona with whom the accused took both of them to Kampala. She took Phiona to a place the witness did not know but took the witness to the home of the accused.

That she did not work anywhere else but was washing, cleaning and other home related work. The accused left the baby with Phiona while the witness stayed with the accused and her three children at the home of the accused.

That at the home of the motor cyclist the motor cyclist used to come and sleep with the witness at night and have sex with her, while at the home of the accused she was treated well though she was not paid for the household chores. She reached the home of the accused sometime in November 2011 on a date she did not remember. That around January 2012 the

accused came with police to her home and took the witness to Kireka police station where she found Phiona, Phiona's mother and Phiona's Aunt. From there she was taken to the doctor for medical examination after police had collected her clothes from the home of the accused. Police also went to Rwentobo to arrest the motor cyclist. She was treated after medical examination.

In cross examination by defence counsel she said at the time she left her home it was holiday time. At that time her father had not talked to the accused in her presence about the accused bringing her to Uganda. She never went with her to Phiona's mother's home.

She was not meant to spend her holidays in Uganda. She knew she had come to Uganda to work and not to be returned to Rwanda.

That by the time police found her at the home of the accused she had spent there three to four weeks during which time she stayed with the accused eating the same food.

The accused never bought her a single cloth or anything else ever since they left Rwanda. During the time she spent with the accused she used to eat, sleep and wait for another day. She was not mistreated. There was a phone at the home but she had no personal phone.

During that time she telephoned her Aunt Mukandoli to tell her where she was in Uganda, without any details. That she left her home in Gahanga alone without being escorted by anybody. She met the accused at Inyanza as they had agreed. That the accused had told her she would be working in a supermarket but instead she made her do house chores. She had taken her to Rwentobo though she did not see what happened to the witness while there. At the home of the accused, there was a fence and the witness could not communicate to neighbors due to language barrier. The accused told her she would work in a supermarket and return home after earning some money. She was just speculating or approximating on the time she spent at the home of the accused as time had long passed. That a supermarket is a place where people pick different things.

In re-examination the witness said from Garanga to Inyanza the accused had given her money for taxi as they had agreed to meet.

Umubyeyi Phiona (PW.6) testified that she was aged 18 years, having been born on 20/12/96, works in a hair salon at Nyamirambo in Rwanda and resides at Gahanga, Kicukiro, Kigali, Rwanda. That she knew the accused since she came to their home in November, 2011 and she stayed there for one week with a baby aged about seven months.

That the accused left after one week and she saw the accused a few days later at Kimironko where she had told the witness to meet her. That when the accused left their home she said she had taken Mahirwe (PW.5) to Uganda and that she would return and take PW.6 also to Uganda to give both girls jobs to work in a supermarket, promising to pay each of them UGX. 100,000= to begin with and some more subsequently. That after Kimironko, after one night, the next day they both travelled by motor cycles to Rwentobo, where PW.5 had been left with the baby of the accused. From Rwentobo the two girls travelled with the accused and her baby to Kampala to a home of a lady called Scovia. This witness spent one week at Scovia's home with the baby of the accused whom the witness took care of.

That she would sleep with the baby as the accused had left the baby with her. The accused used to call at Scovia's home from where she returned and collected the witness and took her to the home of the accused to continue looking after the baby. Nothing happened at the home of the accused where the witness stayed with the children of the accused and PW.5 also. That after spending one week at the home of the accused she was taken away by the accused to another home of Job and Jennifer having left the baby with PW.5. At that home she did house work and the accused introduced her to Job as the accused's younger sister. That while at that home Job forced the witness into sexual intercourse daily for a week. She did not understand the language Job spoke but she saw police uniform in the bedroom and a pistol on the bed

and believed Job was a policeman. After one week Job left that home and another two days later the accused came and collected her from that home. During that time of one week at Jennifer's home where Job also was she was not paid at all.

After the accused picking her from there she took her to Diana's home to do housework to be paid UGX. 40,000 which she was also not paid for the two weeks she spent there.

From Diana's home the police came with the accused in December 2012 or 2011 (she was not sure of the year). They took her to the police station where she met her mother (PW.3) and her Aunt (PW.2). She was taken with Angella (PW.3) to a doctor for medical examination. Police did not take her elsewhere.

In cross examination by defence counsel she stated that her mother told her when she was born and from then she kept knowing her age. That in 2011 she did not have endangamuntu of Rwanda and up to date she does not have it. That to cross the border her mother is the one who talked on her behalf to allow her to cross the border. She denied producing any ID to the accused or to the police at Kireka. That she did not possess any documents to show when she was born. That she left her home four days after the departure of the accused. At that time she had a phone whose number she did not remember and she did not have that phone anymore. At the time she left home she had been promoted to secondary two level and that was holiday time. There was no agreement as to how long she was to stay in Uganda but she had agreed to come and work in a supermarket in unspecified capacity.

She was supposed to be paid monthly. She completed more than one month in Uganda in various homes by the time police got to her. All the work she did was neither voluntary nor paid for. That at Job's place she was not treated well.

That she told both the accused and the police about Job. At Annet's place she used to take care of the baby. The accused did not buy her any clothes or suitcase. That though she had a phone she did not telephone anybody in Rwanda because the accused had taken away her sim

card. From her home at Gahanga to Kimironko she travelled by car. That she complained to the accused about what happened to her at Job's place. She felt hurt because the job she had been promised is not what she did eventually. That she left her at Job's place and went to her home.

In re-examination she stated that when she complained to the accused that Job had forced her into sex the accused did nothing. That the next time the witness saw Job was when she saw him at the police station. That the accused is the one who initiated the idea of coming to work in Uganda. To travel from her home to Kimironko the accused left the witness with Rwandan Franks 1,000= for transport at the time she left their home on the agreement that she would return and take the witness to Uganda.

The last prosecution witness, No. 29874 D/SGT Mugume Nathan is 47 years old police officer attached to CIID Headquarters, resident at Kawempe, Nabweru, Wakiso District. He testified that in 2011 he was attached at RRU Kireka that was mandated to fight crime but was also in investigations tracking phone networks. On 19/12/2011 he was instructed by the commandant of RRU to follow up a case that was originating from Rwanda. He was given telephone No. 0715045277 to track. He called one of the complainants who came to RRU and brought that number. She is called Kemirembe (PW.2).

He guided her on what to talk to the person on that number which PW.2 did and agreed to meet with that other person at Bweyogere. Then he went with PW.2 and a police woman called Biira to Bweyogere on motorcycles where they directed the person of that number where to meet. On arrival they surrounded her and ordered her to go with them to RRU offices. He identified that person as the accused standing in court. At RRU the I.O interrogated her and she agreed she was Annet Umutonyi in the presence of one of the mothers of the victims. That on the 20/12/2011 the accused led them to a residence in Mbuya where they found a girl aged 14 years whom they brought to RRU offices. On the same day

the accused led them to her residence at Bweyogerere where they found another girl whom they brought to RRU offices at Kireka.

In cross examination he stated that she did not talk to the mothers of the two girls or the girls themselves. That the girls did not look well fed.

No.20949 D/W/CPL. Kainza Beatrice (PW.8) aged 44 years attached to police CIID at CID Kireka, resident at Kira Road Police station, testified that on 20/11/2011 she was allocated file no. E/419/2011 to investigate.

That already one suspect was arrested and in custody. She identified that person as the accused in court. That she got the accused from the cells and in the company of PW.7 went with the accused to a home in Mbuya at the home of a woman called Diana Batamuliza where the accused had said one of the girls was.

At that home they found one girl who identified herself as Umubyeyi Phiona (PW.6) who appeared to have been working as a housemaid. The owner of that home was present. They took PW.6 to the police station at Kireka RRU offices and from recording the statement the witness learnt that PW.6 had been taken to Diana's home to help look after a baby and do some house work.

That later the accused took the police to her home at Bweyogerere where another girl called Mahirwe Angella was found and taken to Kireka RRU offices. At the home of the suspect, Angella (PW.7) said she was doing house work. That in the course of her investigations this witness learnt that both girls crossed to Uganda through short cuts and Rwentobo in Uganda, crossing swamps rather than passing through official border posts and being cleared. It appeared they were illegally brought into Uganda. She interviewed both girls and accompanied them to a doctor for medical examination to establish possibility of sexual abuse. Phiona (PW.6) said she had been sexually abused at Bweyogerere by a man called Job

in 2011 while Angella (PW.5) said she had been sexually abused at Rwentobo by a motor cyclist in whose custody the accused had placed her. She established that both girls had been lured by the accused from Rwanda to Uganda to be given jobs in a supermarket. They were brought into Uganda illegally and not through official border posts, for clearance. Both girls had been brought into Uganda between November and December 2011 and made to move from home to home several times in the course of which both were defiled. Further that Job is a police officer at the rank of ASP whose other name is Mutegeki. He is a brother to the accused. When this witness interviewed Jennifer, at whose house PW.6 was sexually abused, Jennifer agreed that Job was coming to that house during the same period and that Job and the accused were friends.

In cross examination by defence counsel the witness said Biira, sergent Mugume and herself all participated in handling this case at various stages and capacities.

She did not know if constable Biira took an ID from the accused. She established that both girls left their homes (PW.6 left alone but PW.5 did not leave alone).

In response to the assessors questions she clarified that she was aware that, apart from the human trafficking case, defilement cases were opened up against both Job and the motor cyclist in Ntugamo.

Following court's ruling that a prima facie case had been made out against the accused the defence adduced evidence of two witnesses in defence of the accused. The first one was Umutoni Annet (DW.1) the accused, who testified that she was aged 30 years, a student of Cavendish University and resident of Bweyogerere in Kira Town council. She stated that around 25/10/2011 she was in Kigali, Rwanda at Remera just next to the stadium within Kigali, with her aunt called Uwizeye Mary. She received a telephone call while she was in Uganda from a broker asking if she was selling her plot of land at Kicukiro , Niboye in

Kigali. She told the latter she was not selling the land but the caller told her of an offer of 15,000, 000 Rwandese Franks for the plot. The witness called her husband Akishure Alex and told him about the offer and he advised her to proceed and sell. Her husband was at that time in South Korea.

Following her husband's advice she went to Kigali, to Nyarubungo cell where she met Miriam Furah (PW.3) at a home cell prayer fellowship. By that time the witness had spoken to the broker on phone. She took a cab which drove her straight to the Ministry of defence headquarters which was not her intended destination. There she was led to the office of Lt. col. Burabye whom she did not know before but she used to hear about. He told her "You know why you are here. I want you to help and find Akishure Alex, you cannot sell that land until you produce him and get permission to develop but not to sell the land. Her husband Akishure Alex had been in the Rwandan army and he deserted. She stayed in the army headquarters for four hours being questioned after which she met the broker at the behind gate with soldiers. He said she should be patriotic and know that the land belonged to her and Alex since their marriage on 26/3/2005.

After meeting the broker she went to the cell meeting where she met PW.3 where she talked to and mentioned to PW.3 her plans of selling her plot. That she then left for Uganda.

The second time that month she returned to the same place and met PW.3, with whom they had exchanged contacts. She (PW.3) took the witness to her home where she stayed for three days fasting and praying over the issue of the plot of land.

While at that home she met both PW.5 and PW.6 whom she interacted with and bought food for. During that time she exchanged telephone contacts with the two girls, even with the mother. Her own no. was 0715045277 and PW.3's no was 0784203836. That PW.3 told her she wanted to visit Uganda and the witness told PW.3 that she was welcome.

That PW.6 was on holiday and that both PW.6 and PW.5 said they would call and come to visit during holidays. Then she left PW.3's home and returned to her own home in Uganda at Bweyogerere. That in November she went back to Rwanda the third time. That PW.6 and PW.5 kept calling her that they were ready to come to Kigali from where she would travel with them to Uganda. That PW.3 also used her phone 0784203836 and called her on phone 0715045277 about four times. That all were saying that they would come on holiday to Uganda. That after all those calls she met PW.6 and PW.5 in Kigali town, a distance of like from Kampala to Mbalala on Jinja Road, from their home which the witness had visited before. That she came with the two girls through Kigali town up to Buziba border in Nyagatare district, entering Uganda at Rwamatunguru in Ntungamo district. That PW.5 had an "endangamuntu" an equivalent of an LCI letter (Uganda).

That she came straight with both girls to Kampala to her residence at Bweyogerere where she was hosting a church cell E2B3, a prayer group of Watoto Church. That the girls were eating, sleeping and playing there. That she bought them clothes and they stayed at her home for between two and three weeks. That after that some lady called her telling her that her children were at the house of the witness and she wanted to see them, that she was PW.3's sister. That she used phone no. 0773 187617 to call her. She did not come that week but the following week she called PW.5 and the witness went to pick that lady from Kireka. That in Kireka she had not seen the lady but instead some lady came to her and arrested her at shell petrol station at Kireka.

From that she was taken to Kireka SIU where she found PW.3 and another man from Rwanda GII and the lady who had been communicating on phone with the witness. She was detained in the cells for that night but the following day she was taken to her house where both PW.6 and PW.5 were picked from. That she took the police woman there after which they went with the two girls to the police station where she was detained for 11 days.

That on 24/11/2011 police asked her for her passport and the travel documents for the two girls in order to grant her bond. They took her back to her house and she gave the police her passport and the travel documents of the two girls.

That PW.6 told her she was already 19 years and that PW.5 told her she was aged 16 or 17 years. That for the eleven days she was in police detention she was not allowed to make an explanation. That she was asked only about the whereabouts of her husband. She denied all the allegations in the indictment. That both girls came to her visit during holidays.

That even PW.3 had called her and promised to come and visit but that when she came the witness met her at the police station.

The witness produced a print out of her mobile phone no. 0715045277 to show its record of calls from October 2011 up to when she was arrested. From serial no.1-1403 is the record from October 2011 to 19/12/2011 serial no. 1390 shows no. 250784203836, which PW.3 had given, came to her on 18/10/2011, showing PW.3 is the one who called the witness. Serial no. 136-139 and 1241 show that no. +250784203836 called the witness on her no. 0715 045277 on 10/11/2011. That she obtained those print outs between 26/9/2014 and 27/9/2014.

That on 21/12/2011 no. 0773 187613 of PW.2 called the witness on her no. 0715 045277 (see serial no. 21). That the witness called PW.2 back the same day (see serial no. 20). That PW.2 called the witness again (see serial no. 19). Those show that the witness was in Kireka. The telephone print outs between PW.2 and the witness (the accused) on 19/12/2011 were admitted in evidence as defence exhibit D.2. the print outs showing the calls the accused exchanged with PW.3 on 10/11/2011 and 11/11/2011 by telephone no +250784203836 of PW.3 and no. 0715 045277 of the accused were admitted in evidence as defence exhibit D.3.

Finally she denied bringing the two girls to Uganda for exploitation and stated that all the allegations were made against her so as to produce her husband who had deserted the army of Rwanda. In cross examination by the prosecutor she said her husband is

one of her witnesses and works in a new project in Mpigi. He is an agricultural scientist. He was in South Korea that he had gone for further studies in 2010. He returned on a date she was not sure about but he visited her in prison in 2013. She does not know if the Rwandan army has taken any action through calls and visits from people connected with the Rwandan Government. The information in the 3rd column on the right of exhibit D.3 refers to her phone number and network she was on.

That there was no man in PW.3's home. She spoke to PW.3 only about the girls coming to Uganda and herself. She met the father of PW.5 but did not obtain his permission either from the mother. That she did not give the girls transport to bring them. They transported themselves up to Kigali town from where she paid for their transport up to Kampala. That their parents are poor. She and the girls did not pass through short cuts but through official border posts at Buziba in Rwanda and Rwamatungura in Uganda before, before taking a bus at Muhanga. That the police took her passport and the travel documents of the two girls from her home where she had been keeping their documents and other things for the girls without any bad motives.

She denied leaving one of the girls with the motorcyclist in Rwentobo. That she came with both girls directly from Rwanda to Kampala. That all the names mentioned like Diana, Scovia, Jennifer were staying with her in the same cell of the church (E2B3A) in Bweyogerere. That she did not lead the police to a home in Mbuya to Diana's home to pick PW.6. That PW.6 and the police lied. She did not take PW.6 to Diana's home. All that was said about PW.6 being defiled by Job she heard about it at police after she was arrested. That these girls used to move on their own to different houses. Even her own kids used to do the same.

That she was arrested by a police man and a police woman called Biira while Kainza took her to a doctor for check up. That she did not have any interest in the age of the two girls prior to

crossing the border. That apart from the phone calls of the 10th and 11th November 2011 other calls were made to her.

That she gave PW.3 Rwandese Franks 15,000,000 to help her clear debts they had at a local shop before leaving for the holiday in Uganda. She denied promising any jobs to the two girls as they did not know any relevant language in Uganda. That there was no payment agreement between her and the girls, as this was purely a holiday agreed with PW.3.

In re-examination by defence counsel she said she knew about PW.6's age from her ID (endangamuntu).

In a clarification by one of the assessors she said she travelled with her baby only on the third 3rd time but not on the 1st or 2nd time.

In a clarification to court she said the man she was with at the home cell meeting in Kigali was not her husband. He was just a friend. That PW.3 originally was friendly but after the arrest of the witness PW.3 showed she was not her friend. That her husband was the subject of her questioning by police though he visited her in Luzira.

That she has a child with the muzungu man, a girl aged 12 years. That the baby she had when she visited Kigali was from her husband and was not of a mixed blood.

Dr. Alex Akishure (DW.2), aged 45 years, works with Ministry of Agriculture, Animal Industry and Fisheries as a consultant for support Institutional Programme on a project in Mpigi District. He testified that the accused (DW.1) is his wife since 02/4/2005 when they wedded. That at that time he was an officer in Rwandan army as a lieutenant in Military Intelligence. That he stopped working as such in 2006 when he was posted to Addis-Ababa till 2008. He settled in Bweyogerere where he has a house. He was not officially discharged but that he informed his superiors by e-mail. That they sent an official to meet him but he refused to meet him. They sent mails and friends who told him he was being looked for. He

reported himself to the CMI of Uganda being a Ugandan who had left Rwandan army and got cleared. That from that time the Rwandan Government continued looking for him. He did not participate in politics and wanted to live a normal life as a Ugandan.

That from July 2010 he left Uganda on a scholarship to South Korea. At that time he was hiding because the Rwandan Government was looking for him. That through friends in Kigali and e-mails and internet they warned him that he could be taken back to Rwanda and be disciplined according to military code of conduct. That many officers were kidnapped by UPDF and repatriated back to Rwanda. That during this time of hiding he would not stay with the accused sometimes as he would, for security reasons, stay somewhere without telling her. While he was away the accused went to Rwanda to sell their property and while there, some officers of Military Intelligence tapped her phone. That the prospective buyer was such officer of Military Intelligence. That the witness was cleared by Military Intelligence of Uganda in 2008 and he settled and worked for the Uganda Government.

However, the accused was arrested when she went to sell their property. That General James Kabarebe told her to convince the witness to go back but the witness refused. That is when he got a scholarship to go and study in South Korea, far from Uganda. That when he went that far his wife started to suffer as she could not convince him to go back to Rwanda. As she did not succeed they were not happy and they continued to witch-hunt her since they could not get to him.

In cross examination by the prosecutor he stated that he returned from South Korea in July 2012. That from 2010 he did not return till July 2012. That the accused never went to South Korea.

He left for South Korea in November 2010 and the accused delivered his child in June 2011. He knew only their three children she had with him but by the time the two met he did not

know how many children she may have had. That since he returned from South Korea he tries to be security conscious. At that point of the trial defence counsel intimated that the defence had closed its case as the accused had not succeeded in getting the other witnesses. The defence filed its submission on 03/10/2014 and prosecution filed its submission on 07/10/2014.

THE LAW

Article 28(3) of the constitution of Uganda provides:-

“Every accused person who is charged with a criminal offence shall:-

(b) be presumed innocent until proved guilty or until that person has pleaded guilty”

In all criminal cases, excepting a few statutory ones not including human trafficking, the burden of proof lies squarely upon the prosecution in regard to every essential ingredient of the offence. That burden which is on the standard of beyond reasonable doubt remains upon the prosecution throughout the trial and never shifts to the accused. See :-

1. **Woolmington V.D.P.P (1935) A.C.462;**
2. **Okethi Okale & others V. Republic [1965] E.A. 555;**
3. **Lubowa & Others V. Uganda [1967] E.A.440;**
4. **Joseph Kiiza & Anor [1978] E.A. 279.**

The offence of Aggravated child trafficking which is the subject of each of the two counts in the indictment before court and each of which the prosecution has to prove beyond reasonable doubt has five ingredients:-

1. The victim was a child;
2. Transportation and transfer
3. By means of the use of threat or use of force or other forms of coercion, of abduction, of fraud, of deception....or of giving or receiving of payments or benefits....

4. For purposes of exploitation
5. Accused's participation.

Before embarking on evaluation or analysis of the evidence so as to conclude or determine whether or not each essential ingredient and the whole offence has been proved by the prosecution to the required standard, I must first dispose of one legal and preliminary issue that was belatedly raised by defence counsel in his final submissions. That issue is that the indictment in this case was bad for duplicity. That the inclusion of the words “abduction and deception and transported and transferred” in each count was not permitted by law since each act is and forms and should have formed a separate count as they all amounted to separate offences. He submitted that under section 3(a) of the Act the use of the words “or” is an indication that more than one offence was created and therefore the words “abduction” and “deception” “transported” and “transferred” were four separate offences which should have been in four separate counts. He cited the case of **Uganda V. Amis [1970] E.A 294** in support of that argument. He further submitted that this duplicity caused miscarriage of justice and as such the ensuing proceedings were a nullity. For that submission defence counsel relied on and cited the case of **Laban Koti V.R [1962] E.A 439.** In reply to this submission counsel for the prosecution stated that at the commencement of the hearing court established from the defence whether it had any issues with the indictment which the defence answered in the negative. Counsel for the prosecution referred to the case of **Laban Koti VR** cited by defence counsel and argued that “in deciding whether there is duplicity in a charge sheet, the test is whether a failure of justice has occurred or the accused has been prejudiced” Further that the case of **Uganda V. Amis [1970] E.A. 291** cited by defence counsel was misinterpreted because in that case the submission that the charge was bad for duplicity was actually overruled by the trial judge and the appellant had been rightfully convicted and the indictment was properly drawn, because even if the offences charged were separate offences,

it was permissible to charge them, conjunctively where the matter related to one single incident. She submitted that the “the abduction” and “deception”, “transporting and transferring” related to one single incident and it was therefore in order to include them in one count and as such there was no duplicity occasioned.

I have carefully considered the submissions of both parties on this issue. It is true that when the case was called on for hearing in the morning of 10/9/2014 counsel for the defence had not had an opportunity to look at the indictment. Quite rightly, in my view, he sought and was granted an adjournment to be availed a copy of the indictment and seek instructions from the accused. Court directed the prosecution to avail defence counsel a copy of the indictment and evidence intended to be used at the trial. Court, in those circumstances, adjourned plea taking to the afternoon of that day at 2:30 pm. At 3:45 pm of that day and before the accused pleaded to the indictment Mr. Senkeezi; counsel for the accused then, stated:-

“We are ready and willing to proceed with the indictment as it is.”

That was in response to court’s prompting as to whether counsel had any issues relating to the indictment before his client, the accused, would be arraigned on the indictment. Counsel’s response did not raise any issues such as duplicity or any others. That point in time was, in my view, the appropriate time to raise the issue of duplicity. He did not raise that or any other issue relating to the indictment.

Secondly, as submitted by counsel for the prosecution the test in determining duplicity in the charge is whether there was a failure of justice or the accused was prejudiced. Counsel for the accused has not shown how, if at all, there was any failure of justice or the accused was prejudiced. The accused was afforded, through defence counsel, an opportunity to look at and raise any issues or objections in relation to the charge (indictment) prior to taking plea by

way of an adjournment from the morning to the afternoon on 10/9/2014. In the afternoon, prior to taking plea, court prompted defence counsel to raise, if he wished to, any issues or objections on the indictment and counsel did not raise any issues or objections. Instead he stated that he was ready and willing to proceed with the indictment as it was. In such a situation I find and hold that there was no failure of justice and the accused was not in any way prejudiced.

Following the case of **Uganda V. Amis (supra)** it is permissible to charge an accused in one count in respect of acts which are stated in a way that shows separate actions done separately in one single transaction which constitutes an offence. For that reason the indictment would not be bad for duplicity. Accordingly, I find and hold that in the indictment before me there was no duplicity as the actions of abduction and deception, transportation and transfer of the victims in both count no.1 and no. 2 were all done in one transaction in this case as shown in the evidence on record.

Consequently, I hereby over rule the objection as it has no merit.

ANALYSIS

1. The victims being aged 18 years.

In relation to count no. 1 of the indictment it was alleged that Mahirwe Angella was aged 14 years. The prosecution had to prove that first ingredient beyond reasonable doubt and thus called Dr. Ndiwalana Bernard (PW.) who tendered in evidence medical examination report (exhibit P.1), Mukamugarura olive (PW.4) the mother of Mahirwe Angella and Mahirwe Angella herself (PW.5) all who testified to show that Mahirwe Angella was aged 14 years having been born on 01/8/1998. That evidence was consistent, without any contradictions and

the defence did not seriously challenge or shake prosecution evidence on that element of the offence in count No.1 of the indictment.

In the circumstances, I accept that evidence and accordingly find and hold that the essential ingredient of the victim in count No.1 of the indictment being aged below 18 years was proved beyond reasonable doubt.

2. Transportation and transfer

In relation to this ingredient of the offence in count No.1 of the indictment, the victim (PW.5) testified that she left home at Gahanga with the accused and was transported by the accused all the way from Rwanda to Uganda. That was her evidence in chief. However, in cross examination she stated that she left her home at Gahanga alone without being escorted by anybody and travelled to Inyanza where she had agreed to meet the accused. That from Inyanza in Rwanda she travelled onwards with the accused who took her the rest of the journey through Rwentobo in Uganda up to Kampala. That evidence is not disputed and it is actually admitted by the accused (DW.1) in her own testimony, as she said that she transported the victim (PW.5) and the other victim (PW.6) all the way from Rwanda and transferred both of them to Uganda.

The contradiction between the evidence of PW.5 in her evidence in chief and her cross examination as to how and with whom she left her home at Gahanga to Inyanza in Rwanda, in my considered view, is minor and would not affect the value or credibility of her evidence on this ingredient.

I would therefore ignore such minor contradiction. (See the cases of:-

- 1. Col. Sabuni V. Uganda [1981] HCB.11;**
- 2. Uganda V Rutaro [1976] HCB. 95;**

**3. Wasswa Stephen & Anor. V. Uganda, crim. Appeal No. 31/1995 (S.C)
(unrepared):**

At any rate whether she left her home with the accused or left that home alone and met the accused at Inyanza where she met the accused and travelled with her from Inyanza in Rwanda through Rwentobo in Uganda and finally to Kampala, the essence of being transported and transferred from Rwanda to Kampala has been proved and conceded by the accused.

In the circumstances, I accept that evidence and accordingly find and hold that prosecution proved beyond reasonable doubt this essential ingredient of the offence.

3 By means of the use of threat or use of force or other means of coercion, of abduction, of fraud, of deception... or of the giving or receiving of payments or benefits.....

In relation to this essential ingredient, the specific means to achieve the commission of the offence were spelt out in the indictment as:-

“abduction and deception transferred and transported...”

I have already dealt with and disposed of the aspect of “transferred” and “transported above. So far as abduction and deception is concerned I have carefully considered the evidence of Furaha Miriam (PW.3), Mukamugarura Olive (PW.4), Umubyeyi Phiona (PW.5) and Mahirwe Angella (PW.6) that both left their homes at Gahanga in Rwanda and were transported and transferred finally to Uganda by the accused. That PW.5 and PW.6 left their homes, albeit voluntarily, but without the knowledge or consent of their parents, especially when PW.5 was, without any dispute still aged below 18 years (a minor).

Finally, that PW.5 and PW.6 were promised jobs in a supermarket in Uganda but that all the time since their arrival in Uganda in early November (on 04/11/201 according to PW.5) up to 19th or 20th December 2011 both victims were instead made to do basically household chores without pay at all.

The accused, on the other hand denied that she abducted the girls and delivered them as alleged in the indictment. She said she brought them from Rwanda for a holiday to Uganda upon their own free will and request and knowledge of one of the mothers (PW.3). That both girls (PW.5) and (PW.6) mainly stayed at her home in Bweyogerere in Kampala, eating and playing with her own kids and under such conditions as buying them clothes and a suit case, all of which both PW.5 and PW.6 denied.

While carefully considering these divergent versions of both sides I note and find that the accused conceded that she did not obtain the consent of the parents of either PW.5 or PW.6 prior to transporting and transferring the two girls from Rwanda to Uganda. These two girls, especially PW.5, were minors. Even though the accused had been housed by PW3 for a few days in Kigali, the accused was not closely related to either the family of either of the girls to justify taking those girls without their parent's knowledge or consent. In those circumstances I hold that the taking away of the two girls by the accused without the knowledge or the consent of their parents amounted to abduction.

Secondly, I do not believe that the girls asked the accused to spend a holiday in Uganda with her since they met her for a few days only when she was a guest at the home of PW.3 and not a relative of any of them. Even at the home of PW.3 the accused had not gone there as a prior known visitor. She was just a casual visitor. I am more inclined to believe the evidence of both PW.5 and PW.6 that the accused falsely promised to give both girls jobs at a

supermarket in Uganda but upon reaching Uganda, did not honour her promise to them. That, in my considered opinion, amounted to deception.

In the circumstances I find and hold that prosecution proved beyond reasonable doubt the essential ingredient of abduction and deception in respect of each of the two victims in counts No.1 and 2 of the indictment.

4 For Purposes of exploitation

With regard to this essential ingredient in both counts No.1 and 2 of the indictment I have noted above in this judgement the evidence of PW.5 and PW.6 on one hand compared to that of the accused (DW.I) on the other hand giving divergent versions of what activities the two girls were actually engaged in from their arrival time in Uganda till police found them. Once again I believe the version of the two girls and disbelieve that of the accused for the reasons given above. Further I find and hold that engaging both girls in taking care of the baby of the accused as well as doing other household chores that the girls did, according to their evidence, without any pay amounts to exploitation, in my considered view. Further still, both girls (PW.5 and PW.6) testified that the accused placed each of them (PW.5 at Rwentobo) and PW.6 at Kyobutungi Jennifer's house) in situations where each of PW.5 and PW.6 were sexually abused. That evidence, in my considered view, amounted to exploitation even if it was not to the advantage or benefit of or in the knowledge and with the consent of the accused, all of which are not necessary to prove exploitation as defined in section 2(d) of the Act.

For the above reasons I find and hold that prosecution proved beyond reasonable doubt the essential ingredient of exploitation in counts No.1 and 2 of the indictment, in respect of both victims of the offence.

Let me at this stage return to the age of the victim in count No.3, namely Umubyeyi Phionah. There was the evidence of Dr, Ndiwalana Bernard (PW.1) and particularly the medical examination report on PF3A which was admitted in evidence as P.1 in respect of Umubyeyi Phiona, on which PW.1 concluded that the victim was aged 16 years in 2011 but conceded in cross examination that she could be aged above 16 years or even above 18 years as she had well developed secondary characteristics such as breasts. However, in re-examination that witness stated:-

“Any one aged below 18 years cannot have a complete dental formular. The victim had incomplete dental formular, so she could have been 18 years old in this case”.

In addition to the evidence of PW.1 there is the evidence of the victim herself (PW.6) who testified that she was born on 20/12/1996 in her evidence in chief. Under cross- examination by defence counsel she said her mother (PW.3) told her when she was born and the witness kept knowing her age. Apparently, that is why she stated her age to be 18 years upon being sworn in as a witness at the end beginning of her evidence. If that was the only evidence regarding the age of this victim there would not be any doubt at all about her age.

However, there is the evidence of her own mother, Furaha Miriam (PW.3) that stated in her evidence in chief that PW.6 was aged 16 years but under cross examination by defence counsel she stated that she delivered PW.6 in 1992 at home and that she did not register the birth of PW.6. Further that PW.6 did not possess the official identification document of Rwanda known as “endangamuntu”, which elsewhere in the evidence on record every resident in Rwanda aged 18 years and above ought to have and indicates the age of that person.

Faced with the contradiction between the evidence of PW.1 and PW.6 which puts the age of the victim about 15 or 16 years in 2011 on one hand and that of PW.3 (the mother of the

victim) which puts the age of the victim at 19 years. I would resolve this contradiction in favour of the accused. See the cases of :-

1. **Alfred Tajar V. Uganda, EACA, Crim. Appeal No. 167/69;**
2. **Col. Sabuni V. Uganda, [1981] HCB 11;**
3. **R.V Chamulon Wero Olango [1937] 4EACA 46;**
4. **Siraji Sajabi V. Uganda Crim Appeal No. 31/98(C.A).**

I therefore find and hold that due to the contradiction/ inconsistency in the evidence regarding the age of the victim, Umubyeyi Phiona, the proof of her age has been cast in doubt and hence fall below the required standard beyond reasonable doubt.

Consequently, that part only of count no. 2 has not been so proved.

5. Participation of the accused

The above and last ingredient of the offences in counts No.1 and No.2 was, in my considered opinion, sufficiently touched on by nearly all witnesses at one stage of the transaction constituting the offence in both counts in the indictment.

While dealing with the essential ingredient of transporting and transferring the victims I found and held that prosecution proved beyond reasonable doubt that the accused transported and transferred both victims from Rwanda to Uganda. What I must bring out clearly now is that both victims (PW.5 and PW.6) testified that they did not have or use any travel documents and as such they appear not to have entered Uganda through official boarder post but rather crossed from Rwanda and entered Uganda through crossing swamps or swampy rivers on foot, which suggests unlawful entry into Uganda. As such the accused brought the two girls into the country illegally.

Similarly I held and found that the accused used abduction, deceit and fraud as a means of committing the actions constituting the offence in the indictment before court.

Thirdly, I held that the victims were exploited through unpaid labour in various homes they were kept, including the home of the accused. The victims suffered forceful sexual intercourse both at Rwentobo (in the case of PW.5) and at Bweyogerere (in the case of PW.6) when the accused brought them from Rwanda to Uganda illegally.

In all those circumstances and stages of the commission of the offence I find and hold that the accused did participate in the commission of the offences in both counts No.1 and 2 of the indictment. Therefore I find and hold that the prosecution proved beyond reasonable doubt this last ingredient of the participation of the accused in the commission of the offence in each count of the indictment.

I have carefully considered the evidence DW.1 and DW.2, especially imputing conspiracy between prosecution witnesses on one hand and elements of the Rwandan army on the other, to frame the accused with malicious charges purposely to force the accused to cooperate with the Rwandan army to get the husband of the accused (DW.2) to face disciplinary proceedings for deserting the Rwandan army which (DW.2) at some time served in but later deserted. That defence evidence did not in my view, show any connection between any of the prosecution witnesses with any elements of the Rwandan army or government. I was neither convinced nor persuaded to believe that evidence and I reject it, particularly the veiled imputation of some sort of conspiracy between prosecution witnesses and the Rwandan army or government.

In conclusion I find and hold that prosecution proved beyond reasonable doubt all the essential ingredients of the offence in count No.1 of the indictment.

However, I find and hold that in count No.2 of the indictment the prosecution did not prove beyond reasonable doubt the essential element regarding the age of one of the victims (Umubyeyi Phiona) though prosecution proved all other essential ingredients of the offence in that count.

Consequently, I find and hold the accused guilty on count No.1 as charged but acquit the accused of the offence she was indicted for in count No.2 of the indictment. Instead I find the accused guilty of the offence under section 3 (a) of the Act as charged.

E.K. Muhanguzi

JUDGE

16/10/2014

Court: By consent of both parties let the prosecution file and serve defence counsel impact statements with aggravation and mitigation submissions including compensation offer and on 17/10/2014 and the defence do likewise on 21/10/2014 and prosecution shall reply on 27/10/2014. Thereafter sentencing judgment will be delivered on 03/11/2014 at 9:00 am.

E.K. Muhanguzi

JUDGE

16/10/2014

COURT

Judgment delivered, signed and dated in presence of:-

1. Accused
2. Ms. Joan Kagezi; SPSA for prosecution
3. Ms. Louis Tumwesigye for accused
4. Ms. Peace Kaudha- Court Clerk
5. Mr. P.C Kiggundu- present.

E.K. Muhanguzi

JUDGE

16/10/2014

SENTENCE AND REASONS

Following the conviction of Umutoni Annet (hereinafter called the convict) on count No.1 for aggravated child trafficking C/S 5 (a) and on count No.2 for human trafficking under the

Prevention of Trafficking in Persons Act, the prosecution filed written submissions on 20/10/2014 and defence also filed submissions on 23rd/ 10/2014 as directed by court at the sentencing hearing. The respective submissions form part of the court's record.

I have carefully studied the submissions of both parties. I have noted that no victim or community impact statements were referred to, understandably because the victims are residents of Rwanda and were only available during the trial in Uganda and after testifying they immediately travelled back to Rwanda before conclusion of the trial. Also presumably due to logistical reasons the prosecution could not readily obtain community impact statement from Rwanda in good time for this hearing. It appears therefore that the submissions at the sentencing hearing were largely based on what transpired at the trial.

To that extent therefore Court will largely base the sentence to what can be gathered from the trial. Conviction under section 5 (a) attracts a maximum death sentence while that under section 3 (a) attracts a maximum sentence of fifteen years prison term. The prosecution submission on aggravating circumstances refers to:-

1. in count No.1 the victim being aged only 14 years at the time she was trafficked.
2. that the victim lost her chastity as a result of being forced into sexual intercourse and being infected with a sexually transmitted disease.
3. The victim looked malnourished at the time she was recovered from the convict's home.
4. The victim was exploited by not being paid for the house chores she performed.
5. The victim's mother (PW.4) exhibited anguish and distress at the trial.
6. Human trafficking cases in Uganda and internationally are increasingly registered in courts and the Attorney General has consented to prosecution of 6 (six) of them so far.

7. The victim and their parents have had to travel three (3) times from Kigali, Rwanda and Kampala for investigation and prosecution of this case.
8. One of the victims, Angella Mahirwe, who had been in primary five (5) at the time she was trafficked had to abandon formal school and resort to vocational training.
9. The victim in count No.2, Umubyeyi Phiona, was moved from home to home and was made to do domestic chores without pay.
10. The victim too lost her chastity when she was forced into sexual intercourse for a week by one Job and PW.1, in his medical report stated that the injuries in her sexual organs were recently inflicted on her by a blunt object.
11. The victim too, who was a secondary student in senior one (1), dropped out of school and became a salon attendant, thereby suffering an interruption of her studies.
12. Both that victim and her mother suffered anxiety and distress as a result of this offence.

In view of the above cited aggravating factors prosecution sought a custodial sentence of fifteen (15) years.

Defence counsel, in mitigation on the other hand, submitted and prayed for lenience on grounds:-

- 1- that the convict is a first offender, which prosecution could not dispute.
- 2- that she is aged only 30 and a student at Cavendish University.
- 3- that consideration be had to guideline 9 (5) where for a first offender, imprisonment is not a desirable sentence (perhaps here he meant guideline 11 (2) (d)).
- 4- that she suffers from peptic ulcers and high blood pressure (but provided no evidence).
- 5- that she has been in custody for 20 months.
- 6- that the victims left their homes on their own up to where they met the convict.

- 7- that there was no use of violence.
- 8- that the convict was not personally responsible for the sexual assault of the victims.
- 9- that the victims did not contract the STD from the convict
- 10- that the victims stay in Uganda for 2 or 3 weeks was during holidays and could not have caused their disruption or loss of study opportunities.
- 11- that payment for work done in Uganda for the 2 or three weeks could not have been made as the period was less than a months.
- 12- that the statistics referred to by prosecution did not show conviction numbers but only reported cases.
- 13- that there has not been any other conviction before this one.
- 14- that the victims did not loose their chastity at the instance of the convict or during the period in issue.
- 15- that the victim's coming to Uganda willingly is a mitigating factor.
- 16- lastly defence counsel submitted that the convict, being a primary care giver who looks after her three (3) children including one aged three (3) years while their father works far away from their home, is the best person to look after her children. Therefore he prayed that the convict be sentenced to a fine and/ or caution instead of a custodial sentence.

After serious and thorough consideration of the submissions of both parties I am of the considered view that:-

- 1- the offences of aggravated child trafficking and human trafficking that the convict had been convicted of are very serious offences. They attract maximum sentences of death and fifteen (15) years prison terms respectively. Neither of them has an option of a

fine or similar sentence, though defence counsel prayed for and suggested a fine and or a caution as an alternative sentence.

- 2- I have considered both aggravating and mitigating factors referred to by both counsel, such as the convict being a first offender, being aged 30 years and a student at Cavendish University.
- 3- I am also aware that she is a mother of three whom her husband is aware of plus another child from another man (according to the evidence of the convict herself and of other witnesses).
- 4- Further, I note that the convict shares the care of the children with her husband who is a well educated and highly remunerated person as he is employed as a consultant while the convict is a mere student at University who at times leaves the children in the care of other people, especially when she travels outside Uganda.

After balancing the aggravating and mitigating factors and after considering the seriousness of the offences and the maximum sentences of death for aggravated trafficking in children and fifteen years prison term for trafficking in persons, and finally considering that the convict has spent a total of twenty (20) months on remand I hereby sentence the convict to prison terms of eight (8) years on the count of aggravated child trafficking and five (5) years on the count of trafficking in persons. The two prison terms shall run concurrently.

The convict is hereby informed of her right of appeal to the court of appeal against both conviction and sentence or any of the two within fourteen (14) days from today.

E.K. Muhanguzi

JUDGE

16/10/2014

03/11/2014

Accused in court

Ms.Nabisenke PSA for prosecution

Ms Peace Kaudha- Court clerk

Mr. P.C. Kiggundu and Ms. Kasendwa-Assessors

Court: Sentence passed / pronounced in the presence of all the above.

E.K. Muhanguzi

JUDGE

16/10/2014