



CASE BRIEF

Simplified Version

**Representing Doctor
caught up in the Justice
System for Provision of
Post-Abortion Care**

**UGANDA V KATO FREDERICK
CRIMINAL CASE 56 of 2020**



CONTEXT

Abortion in Uganda like in many other countries is only textually legal where it is performed by a medical practitioner who deems that surgical abortion is the only way to save a mother's life. Abortion is therefore not illegal but rather highly restricted. However, this has not restricted young girls and women from carrying out abortions. Complications from unsafe abortions are still the cause of nine per cent of the ratio of maternal mortality rate (State of Uganda Population Report 2019). This is still high. Most of these deaths are a result of the failure to access post-abortion care. The causes for this are not only legal but are also rooted in cultural and societal stereotypes creating stigma against abortion. Medical practitioners have also shied away from providing legal and comprehensive post-abortion care due to the uncertain legal

and policy environment to avoid criminal liability. This has led to an increase in the number of unsafe abortions, a general lack of accessibility to post-abortion care and stigma.

THE STORY

Kato Frederick provided drugs to a young woman who he suspected had just carried out an abortion and was in need of post-bortion care. The woman had had an abortion that was unsuccessful which resulted in complications. She then came to his clinic claiming to have pain in her stomach. He noticed that she had been pregnant but she insisted that she had fibroids. On diagnosis, he was able to ascertain that she had had an incomplete abortion and he recommended medication to ensure that the entire foetus comes out.

The parents questioned her about what had happened to the pregnancy and who had given her the medication that she was taking. She responded by implicating the health worker herein referred to as the accused. The girl and her mother then came to see him again looking for her medical records. He noticed that her breasts were engorged implying that she had just given birth to a full-term baby. When he asked what had happened to the baby, the mother said that she had given birth to an abnormal growth and that they had buried it. He was then approached by the Security secretary and told to inform them when the girl was back at his clinic. He later learnt that she had been apprehended by the police for having carried out an abortion.

In April 2020, the accused was arrested for allegedly committing the offence of Supply of Drugs to procure abortion contrary to Section 143 of the Penal Code Act, Cap. 120 of the Laws of Uganda. He was arraigned in court, formally charged and subsequently remanded to Kitulya Maximum Security Prison, Wakiso District, Uganda. This affected the accused's work and the eventual closure of his pharmacy.

He then reached out to the Center for Health Human Rights and Development (CEHURD) requesting help in form of legal representation. On the 8th May, 2020 upon an application, the accused was released on bail and the matter was fixed for the 10th June, 2020 and indeed the accused appeared on that day in obedience to the court directive.

THE CHARGE

Kato Frederick was arrested and charged with supplying drugs to procure an abortion contrary to Section 143 of the Penal Code.

DELIBERATIONS

The matter first came up on the 10th June, 2020 and came up for hearing 17 (seventeen) times up to the 22nd November, 2021 at 9am. The girl was later acquitted but sentenced to community service.

However, on all the aforesaid dates, the matter failed to take off and neither the complainant nor any prosecution witnesses attended court. Consequently, the matter was adjourned and/or fixed for another date at the behest of the prosecution which was not ready to prosecute the matter, in as much as the Prosecution has, at all times material to this case, always made aware of the time, place and date of the hearing.

CEHURD lawyers, a Legal Support Network (LSN) lawyer and the accused promptly and duly attended court without skipping any day whatsoever and his bail was also extended at all times. We therefore wrote an application to the court for dismissal of the suit for want of prosecution which was received and the matter was scheduled for 1st February 2022.

OUR ARGUMENTS

In the determination of any criminal charge, Article 28 (1) of the Constitution of Uganda, 1995 (as amended) inter alia provides that a person shall be entitled to a fair, speedy and public hearing before a court of law in Uganda. We argued that the matter had not kicked off despite the lawyers and accused's compliance to attend court and that despite the State's knowledge of the matter, no preparation or attempt was made to ensure the matter was heard. Such a delay without any action being taken to commence the prosecution of the case infringes on the accused's right to a fair and speedy trial.

Section 119 (1) of the Magistrate's Courts Act, of the Laws of Uganda, states that the magistrate's court has jurisdiction to hear and determine a case to dismiss the charge against an accused of want of prosecution if the accused person appears in obedience to the summons at a place and time appointed for court but the matter does not take off.

Pursuant to Section 161 (1) (a) of the Magistrates Courts Act of Uganda, indeed this court had jurisdiction to hear and determine the charge against the accused as the penalty prescribed by Section 143 of the Penal Code Act is imprisonment for 3 (three) years AND NOT the death penalty.

We, therefore, prayed that the matter against the accused is dismissed for want of prosecution, for the ends of justice to be met.

THE RULING OF THE COURT

- ◆ The matter, on 1st February, 2022 came up for hearing and was dismissed for want of prosecution. The reason was that the case had been adjourned so many times and these adjournments were given to allow the prosecution to appear and make a case for themselves.
- ◆ Her Worship Stella Maris Amabilis ruled that the complainants had not entered any appearances which implied that they had lost interest in the matter and the failure to proceed despite the accused's constant appearance in court was a violation of the client's right to fair and speedy trial contrary to Article 28 of the 1995 Constitution of Uganda. She also stated that due to the insufficient evidence by the prosecution who had a burden of proving that indeed the accused had committed the said offence, there was no case to answer and thus dismissed the case for want of prosecution.
- ◆ The case was dismissed on a technicality and as such, the substantial matter of the case was never handled.

THE SIGNIFICANCE OF THE CASE

Progressive realisation of SRHR

This case is a classic manifestation of the general avoidance of courts to create a precedent in matters concerning abortion and

self-care. The prosecution in the case totally avoided starting prosecution at the expense of the accused who lost morale, and confidence to practise his profession.

The courts are not yet progressive enough to realise or even entertain such matters. Several times we were judged and questioned regarding our morals and values. From the beginning of the case, the case would not reflect on the cause list despite being adjourned and being noted in the Magistrates diary, the one time it was cause listed, the charge read miscarriage which was contrary to what our client was charged with.

Confidence for the client and suppliers of post-abortion care drugs

After the dismissal, Kato Frederick opened his clinic and started to work again. He had closed it partially due to the stigma he was facing in the community and the constant time and money he had to spend while trying to attend court every time his matter came up for hearing.

The dismissal also encourages other doctors or medical practitioners to continue providing post-abortion care to the different people that enter their doors seeking this help. This will, in turn, reduce the effect unsafe abortion has on the maternal mortality rate.

The exchange learning from LSN lawyers

Throughout the existence of the matter, the Legal Support Network (LSN) Lawyers would not only sit down to craft a way forward but also make appearances in court to defend the client. This aided in the capacitation of the lawyers that are looking forward to advocating for Sexual and Reproductive Health Rights in Uganda.

CONCLUSION

This case demonstrates that medical practitioners can provide post-abortion care without fear of getting prosecuted. This case also manifestly shows the reluctance both the prosecution and the court system in Uganda have in relation to the issues of abortion and self-care in Uganda. The magistrates and the judges are not willing to handle the substantive matters of these concepts given that this will bring about progressive jurisprudence on issues that surround abortion.

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