**Byagonza v Uganda**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 7 April 2000

**Case Number:** 43/99

**Before:** Oder, Tsekooko, Karokora, Kanyeihamba and

Mukasa-Kikonyogo JJSC

**Sourced by:** B Tusasirwe

**Summarised by:** M Kibanga

*[1] Criminal practice and procedure – Age – Appellant stating his age during trial – No order for*

*medical examination to ascertain Appellant’s age made – Whether such order necessary – Whether*

*Appellant’s age in issue.*

**Editor’s Summary**

The Appellant was charged with and convicted of the offences of murder, attempted murder and aggravated robbery committed in June 1991. He was sentenced to death in respect of the offences of murder and aggravated robbery and seven years’ imprisonment for the attempted murder. The sentences in respect of the aggravated robbery and attempted murder were suspended.

During the trial the Appellant had testified that he was twenty-two years old (at the time of the trial).

The offences had been committed three years earlier. The prosecution did not have the age of the

Appellant ascertained at the trial.

The Appellant appealed to the Court of Appeal on the ground that the age of the Appellant was not ascertained and could have been below 18 years at the time the offence was committed, and asked the

Court of Appeal to quash the sentence. The Court of Appeal ordered the medical examination of the

Appellant to ascertain his age at the time of the offence. The court concluded that the Appellant was above 18 years at the time of the offence. Dissatisfied by that conclusion, he appealed to the Supreme

Court on the grounds that the Court of Appeal did not ascertain the Appellant’s age and had not complied with section 104 of the Trial on Indictment Decree and section 109 of the Children Statute (1996). The appeal was against the sentence only.

**Held** – One of the legally acceptable ways of proving age was a statement by a witness of his own age.

Given what the Appellant had said was his age at the trial, the judge had no reason to doubt the age of the

Appellant and, consequently, his age was not an issue at his trial. The provisions of section 104(1) of

Trial on Indictment Decree (1971) were not applicable to the case.

It was unnecessary for the Court of Appeal to order a medical examination of the Appellant, considering what the Appellant had said was his age; *Moses Kayondo v Uganda* criminal appeal number 11 of 1992, distinguished.

Section 109 of the Children Statute (1996) was irrelevant to the case and was, in any event, enacted long after the Appellant had been tried and convicted.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Moses Kayondo v Uganda* criminal appeal number 11 of 1992 – **D**