



## Rosaria Mashita Katakwe v. Hakasenke, et al.

2006/HP/0327

**Country:** Zambia

**Region:** Africa

**Year:** 2006

**Court:** High Court for Zambia

**Health Topics:** Child and adolescent health, Health care and health services, HIV/AIDS, Sexual and reproductive health, Violence

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to liberty and security of person, Right to life

### Facts

Rosaria Mashita Katakwe, a 13-year-old girl, was raped by her teacher Edward Hakasenke. She developed a sexually transmitted infection as a result of the rape and tested for HIV/AIDS. The Headmaster of the school had been warned before with respect to a prior relationship of the teacher with another girl in the school. The defendant was detained by the police but was not charged with any criminal offense. Through her representatives, the child called for civil responsibility from the teacher, her school, and the Ministry of Education. They cited Article 4 (rights to life, integrity and security of the person) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

### Decision and Reasoning

The Court found the teacher negligent, holding that there can be no consent by a child under 16 of age and therefore, the defendant was strictly liable for breach of duty owed to his student. The Court also held that the school and the Ministry of Education were vicariously liable for the teacher's acts since the teacher acted within the course of employment and also because the school is responsible for the school children.

The Court awarded the victim damages for permanent mental torture and pain and suffering and ordered the Ministry of Education to make the necessary regulations concerning students/teachers relations.

### Decision Excerpts

“In terms of assessment of damages the case is a novel, however society's indignation has to be reflected abus[ed] girl either gets in an abusive relationship or may not trust a partner, the effects are long term. The healing process is long and lonely and the emotional scars never heal. There is enduring psychological brutalization.” Page 112.