

UGANDA / JUDGMENT

Basobokwe & 5 Others v Monday & 2 Others (Miscellaneous Cause 5 of 2023)

[2024] UGHC 325 (19 January 2024)

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COURT

High Court of Uganda

BEFORE

Tom Chemutai, J

CASE / FILE NUMBER

Miscellaneous Cause 5 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT RUKUNGIRI

IN THE MATTER OF APPLICATION FOR AN ORDER OF HABEAS CORPUS
ADSUBJICIENDUM.

MISCELLANEOUS CAUSE NO.005 OF 2023

- 1. BASOBOKWE JOHN WILSON
- 2. KARUNGI HOPE
- 3. KABASOBOKWE DAVID
- 4. KYOMUHENDO ANNA
- 5. TUSIIME JUDITH KYASHIMIRE
- 6. EMILY KATETE ::::::::::::::::::::::::::::::

VERSUS

- 1. MONDAY BENSON
- 2. KEMIGYISHA MAUREEN FLORENCE
- 3. ATTORNEY GENERAL OF UGANDA ::::::::::::::::::::::::::::::

BEFORE: HON. JUSTICE TOM CHEMUTAI RULING

This is an application brought by motion by the Applicants under Article 44(d) and 23(9) of the 1995 Constitution of Uganda, Section 34(a) of the Judicature Act and Rules 1, 2, and 3 of the Judicature (Habeas Corpus) Rules, against the Respondents for orders that:

- (a) An order that a writ of habeas corpus ad subjiciendum issues to Monday Benson, Kemigyisha Maureen Florence; and the Attorney General of Uganda.
- (b) The body of Basobokwe John Wilson be brought before this Court and receive all and singular such matters or things as this Court shall there and then consider concerning him on the grounds set out in the affidavits of Hope Karungyi Tindyebwa, Kabasobokwe David and any others as may be filed in the course of determining this application.
- (c) The costs of this application be paid by the 1st and 2nd Respondents.

The grounds of this application are that:

- 1. The 1st Applicant herein, Basobokwe John Wilson is a 97-year-old adult male Ugandan of sound mind, the father of the 1st, and 2nd Applicants and 1st and 2nd Respondents.
- 2. The 2nd Applicant is an adult female Ugandan of sound mind, a daughter of the 1st Applicant, and a resident of Lyamujungu cell, Nyakasharara Parish, Kaharo Sub County, Ndonua East, Kabale District.
- 3. The 3rd Applicant is a male adult Ugandan of sound mind, son of the 1st Applicant, and a resident of Kyambogo Masooli Zone, Nangabo Kasangati Sub County, Wakiso District. He is an Engineer with experience in aviation in Uganda, Nigeria, and the United Kingdom.
- 4. The 4th, 5th and 6th Applicants are female adult daughters of the 1st Applicant of sound mind. The 5th Applicant is a female adult niece of the 1st Applicant of sound mind.
- 5. The 1st and 2nd Respondents are adult Ugandans of sound mind and are respectively the son and daughter of the 1st Applicant.
- 6. The 3rd Respondent is the Chief Legal Advisor of the Government clothed with liability to sue and be sued on behalf of the Government in Civil proceedings.
- 7. Since 2nd May 2023 up to 14th November 2023, the 1st Applicant elected and peacefully lived with his daughter, Karungi Hope, the 2nd Applicant herein at her premises in Lyamujungu cell, Nyakasharara Parish, Kaharo Sub County, Ndonua East, Kabale District.

- 8. The 1st and 2nd Applicants lived happily in Kabale, out of the 1st Applicant's free will in exercise of his personal liberty, freedom of movement, and in the best interest of health and welfare.
- 9. The 2nd Applicant has been religiously taking care of the 1st Applicant's health and medical challenges some of which are age-related with the support and backing of the 3rd Applicant and the rest of the Applicants.
- 10. The 1st and 2nd Respondents have always opposed the 1st Applicant's right and liberty to stay with his daughter or his other chosen place treating him like a minor hence falsely alleging that his eldest daughter, 2nd Applicant, is detaining him.
- 11. On the 2nd day of November 2023; the 1st and 2nd Respondents dishonestly instituted Habeas Corpus proceedings vide Miscellaneous Application/ Cause No. 51/2023 at the High Court of Uganda Holden at Rukungiri. The application was grounded on such falsehoods as the lie that his free stay at the 2nd Applicant's home in Kabale since 5/5/2023 was a detention.
- 12. The 1st Applicant can testify once produced in Court that he has never been detained by the 2nd Applicant but is currently being detained by the 1st and 2nd Applicants who have failed to meet his medical needs.
- 13. The 1st Applicant's current detention since 14/11/2023 by the 1st and 2nd Respondents is at the dilapidated house in Muruhura, Karubeizi, Nyakinoni, Kinkizi, Kanungu District which he had last occupied some 40 years ago before the 1st Respondent harassed him out of it.
- 14. The 1st and 2nd Respondents misled the High Court to believe that the 1st Applicant was in illegal detention hence the 8/11/2023 habeas corpus

order directing the removal of Basobokwe John Wilson from Hope's residence to produce him to Court on 14/11/2023.

- 15. After the Court hearing on the 14th November 2023, during which the 1st Applicant was not allowed to explain to the Court that he was not illegally detained by the 2nd Applicant, the 1st and 2nd Respondents forced the 1st Applicant into a waiting vehicle and drove to Kanungu where he is detained up to date.
- 16. Since the said 14th November 2023, the 1st and 2nd Respondents have detained the 97-year-old, 1st Applicant in Kanungu in a dilapidated house whose roof is leaking to the prejudice of his health, liberty and freedom and against his free will.

- 17. On Sunday, the 19th day of November 2023 at 9:59 am, the 1st Applicant stealthy called his granddaughter, Tindyebwa Annitah Nieuwpoort whom he told, that his medicine was running out.
- 18. On 20th November 2023 the said the 1st Applicant's granddaughter, Tindyebwa Annitah Nieuwpoort, also established that the 1st and 2nd Respondents attempted to subject the 1st Applicant to some suspicious injection which he resisted.
- 19. The 1st and 2nd Respondents' detention of the aged 1st Applicant in a dilapidated structure in remote Kanungu since 14/11/2023 to date is illegal, arbitrary and blatant abuse of his fundamental human rights to wit, Personal liberty, Freedom of movement and Human dignity.
- 20. It is uniquely urgent that the 1st and 2nd Respondents' illegal detention of the 1st Applicant be brought to an end to ensure that he exercises his freedom to seek medication of choice and continue with

the medical regime at Nsambya Hospital and that he freely chooses where and with whom to live.

- 21. The 1st Applicant being of sound mind can speak for himself upon being produced in court and allowed to do so.
- The 3rd Respondent has the duty to respect, protect and promote 22. the fundamental liberties of the Applicants and all persons.
- It is lawful, just and equitable that all the reliefs herein sought be 23. granted.

This application is supported by the affidavits of Ms. Karungi Hope, 2nd Applicant, Kabasobokwe David, 3rd Applicant, Tindyebwa Annitah Nieuwpoort, Emily Katete, 6th Applicant, Tusiime Judith Kyasiimire, 5th Applicant, Kyomuhendo Anna, 4th Applicant, all dated 21st November, 2023.

The 1st Respondent filed his affidavit in reply in this Court, dated 27th November 2023, and denied the Applicant's allegation that the 1st Applicant was under detention and contended that the 1st Applicant was free, living with his wife at home with two domestic workers. The 2nd Respondent also filed her affidavit in reply, dated 27th November, and her averments were similar to those of the 1st Respondent.

The 3rd Respondent filed its affidavit in reply, it was sworn by Mr. Nduhikire Francis, the Secretary of Local Council One, where the 1st Applicant is a resident. He contended that the 1st Applicant was not in detention and that he was free and accessible by anyone. He also contended that 1st Applicant's family has disagreements over land.

The Applicants were presented by M/s Kiiza & Mugisha Advocates, the 1st and 2nd Respondents were presented by M/s Mark Mwesigye & Co. Advocates, and the 3rd Respondent was presented by Ms. Betty Karungi from Attorney General's chambers.

Court's determination

Section 34 of the Judicature Act provides for Prerogative the writ of habeas corpus and states as follows:

"The High Court—

- a. may, at any time, where a person is deprived of his or her personal liberty otherwise than in execution of a lawful sentence (or order) imposed on that person by a competent court, upon complaint being made to the High Court by or on behalf of that person and if it appears by affidavit made in support of the complaint that there is a reasonable ground for the complaint, award under the seal of the court a writ of habeas corpus ad subjiciendum directed to the person in whose custody the person deprived of liberty is; and when the return is made, the judge before whom the writ is returnable shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires;
- b. may award a writ of habeas corpus ad testificandum or habeas corpus ad respondendum for bringing up any prisoner detained in any prison before any court, a court-martial, an official or special referee, an arbitrator or any commissioners acting under the authority of any commission from the President for trial or, as the case may be, to be examined touching any matter to be inquired into by or pending before a court, a court-martial, an official or special referee, an arbitrator or the commissioners."

A Writ of Habeas Corpus is also defined by the 9th Edition of Black's Law Dictionary as,

A writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal (habeas corpus ad subjiciendum).

The purpose of the writ of Habeas Corpus was defined in the case of Jovia Karuhanga vs The Inspector General of Police M. C. 86 of 2013, where the Court stated as follows;

"The purpose for a writ of habeas corpus ad subjiciendum is to review the legality of the applicant's arrest, imprisonment, and detention and challenge the authority of the prison or jail warden to continue holding the applicant. The application is used when a person is held without charges or is denied due process. It ensures that a prisoner can be released from unlawful detention i.e. detention lacking sufficient cause evidence or detention α incommunicado. The detention must therefore be forbidden by the law. An application of this nature does not necessarily protect other rights such as entitlement to a fair trial."

The parties in this Application, apart from the 3rd Respondent are sons, daughters, and grandchildren of the 1st Applicant. The dispute is about where the 1st Applicant should reside and under whose control. There is a contest between the parties to this application, who are siblings, over their father, the 1st Applicant.

The 1st and 2nd Respondent filed in this Court, **Miscellaneous Application** No.51 of 2023 for a writ of habeas, contending that the 1st Applicant was kidnapped and detained by security agencies under the orders of the 2nd Applicant. I granted the said application and ordered that the 1st Applicant be produced before this Court on 14th November, 2023, and indeed on the said date the 1st Applicant was produced and taken to his home at Muruhura cell, Karubizi parish, Nyakikoni sub-county, Kinkizi County in Kanungu district.

Thereafter the Applicants filed this application alleging that now the 1st and 2nd Respondents are detaining the 1st Applicant against his free will and they also contended that the 1st Applicant was about to be subjected to some suspicious injections.

Due to these serious accusations and averments in this application over health and life threats to the 1st Applicant, I conducted a *locus in quo* visit on 28th November, 2023 at the 1st Applicant's home which is located in Muruhura Village, Karubizi Parish, Nyakikoni Sub-county, kinkizi County in Kanungu District. All the parties were present with their respective counsel.

The 1st Applicant was of sound mind and told the Court that he was 101 years old. He was living together with his wife, Ester Basobokwe, aged 96 years. The 1st Applicant together with his wife was able to name their twelve children, who among are the parties in this application. The 1st Applicant further informed the Court that he had divided and given out his land to his children and he was remaining with a piece of 8 acres, where his homestead is allocated, and that it had a banana plantation, coffee plantation among other crops on it. The 1st Applicant stated that all daughters take care of them and added that was happy at his home with his wife. He further clarified that he had never been detained by his daughter Hope (2nd Applicant). That the 2nd Applicant took him to her home for medical attention. The 1st Applicant stated that all his children were free to go and see him at his home. The wife of the 1st Applicant expressed great joy in being reunited with her husband.

After getting the views of the 1st Applicant, counsel, and the parties at locus in quo, I gave the following directions as the way forward, that;

- 1. The 1st Applicant had chosen to settle at his home.
- 2. The children including the parties to the Application were to give the necessary support to the 1st Applicant and his wife at their home.
- 3. The 1st Applicant was free to choose where to live.

Therefore, it is clear that the 1st Applicant had never been in detention or any kind of kidnap as alleged by both the Applicants and the Respondents in their earlier application. The children of the 1st Applicant were using the Court process to fight their personal wars. I find no merits in this Application and I hereby dismiss it with no order as to costs since the parties are siblings.

Ruling read Rukungiri and delivered at this day TANO 2024. of TOM CHEMUTAI JUDGE

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