

UGANDA / JUDGMENT

Kiiza Eron v Uganda (Miscellaneous Application 443 of 2025) [2025] UGHCCRD 23 (25 June 2025)

[2025] UGHCCRD 23

COURT

HC: Criminal Division (Uganda)

BEFORE

Matovu, J

CASE / FILE NUMBER

Miscellaneous Application 443 of 2025

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)****MISCELLANEOUS APPLICATION NO 0443 OF 2025****(ARISING FROM MISCELLANEOUS CRIMINAL APPLICATION NO 118 OF 2025)**

(Arising from Criminal Appeal No 31 of 2025)

(Arising from Court Martial Appeals Case No 1 of 2025 which arose from Criminal Case No UPDF/
GCM/040/2024)

KIIZA ERON.....

VERSUS

<table>

UGANDA

RULING**BEFORE HONOURABLE JUSTICE DAVID MATOVU****INTRODUCTION**

1. This is an application brought by Notice of Motion under Article \$20(1)\$ &(2),22,28,29(2),42,44,50 and 126(2) of the Constitution of the Republic of Uganda; Sections 14(1),37 and 42 of the Judicature Act, Rules 2&4 of the Judicature (Criminal Procedure) (Applications)Rules seeking for the release of the applicant's passport No AA00541257 deposited

with this court on 4th April, 2025 as one of the terms of his release on bail in Criminal Miscellaneous Application No 118 of 2025 pending the hearing and determination of his appeal.

BACKGROUND FACTS

- 2. Kiiza Eron the applicant in this matter is an advocate of the High Court of Uganda who was on the 7th January,2025 convicted of contempt of court by the General Court Martial sitting at Makindye and was sentenced to 9 (nine) months imprisonment.
- 3. The applicant filed Appeal No 1 of 2025 with the Court Martial Appeals court and he also filed another appeal before this court which is Criminal Appeal No 31 of 2025 both appeals are yet to be heard and determined.
- 4. The applicant successfully applied for bail vide Criminal Miscellaneous Application no 118 of 2025 before Honourable Justice Michael Elubu and he was conditionally released on bail and one of the conditions was that he was to deposit his passport with this court and in the event, he required to use the same he had to apply for it before this court.
- 5. The applicant has filed the instant application seeking the release of his passport to enable him travel and get appropriate medication, rest and respite as advised by his doctor.

LEGAL REPRESENTATION

6. The applicant is represented by KTA Advocates together with M/S Kiiza& Mugisha Advocates while the respondent is

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represented by the office of the Director of Public Prosecutions

EVIDENCE OF THE APPLICANT

- 7. According to his affidavit in support of this application deponed on 13th June, 2025 the applicant contended that as one of the conditions of his release on bail he was required to deposit his passport with this court and the same court ordered him to apply for his passport in case, he required the same for travel.
- 8. That he had written two (2) letters dated 24th April, 2025 and 7th May, 2025 which letters were applying for the release of his passport to travel abroad and get appropriate medication, rest and respite as advised by his doctor.
- 9. That of late he has been relying on a travel document while travelling within East Africa and he had found this travel document to be an inconvenience to him.
- That he is on a verge of missing a trip to Costa Rica 10. slated for early July, 2025 which trip is part of his rejuvenation efforts.
- \$11.\$ That the delay in releasing his passport is causing him sleepless nights and worsening his trauma.
- 12. That he was advised by the Deputy Registrar of this court on the 12th June, 2025 to file a formal application which he has done.

EVIDENCE OF THE RESPONDENT

According to the affidavit in reply by Kyomuhendo 13. Joseph deponed on the 24th June, 2025 he stated that he was

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a Chief State Attorney conversant with the court ruling in Criminal Miscellaneous Application No 118 of 2025.

- 14. That the applicant's passport was lawfully held by court as there were ongoing proceedings where the applicant is a convict
- That the purpose of retaining his passport is to restrict \$15.\$ his travel pending the determination of his appeal.
- That the applicant is a flight risk considering the 16. seriousness of the allegations against him and sentence of 9 (nine) months imprisonment imposed on him and for this reason the release his passport at this stage is rather premature.
- 17. applicant's medical attention is rather That the speculative as it is not supported by any credible, independent, or verifiable medical documentation and in any case the applicant has not proved that he cannot be treated in Uganda.

- 18. That the applicant does not seek to vary the bail terms nor has he furnished any binding recognizance, surety guarantee to this specific application, or court sanctioned bond or security for costs to mitigate the risk of absconding that may arise from the grant of this application.

LEGAL ARGUMENTS BY COUNSEL FOR THE APPLICANT

\$19.\$ In his written submissions dated 19th June, 2025 counsel for the applicant argued that Article 29(2) of the Constitution guaranteed the applicant a right to enter, leave and return to Uganda and it also entitled him to his passport or other travel document.

- 20. Counsel submits further that Article 13 of the Universal Declaration Human Rights also emphasises the applicant's right to travel as mentioned above and in order for the applicant to enjoy this right to travel he needs to access his passport.
- 21. Counsel cited the Kenyan case of **Khalid Salim Ahmed** versus Attorney General & Another [2018] Elk where court found that impounding a passport without legal basis violated article 39 of the Kenyan Constitution which Article is analogous to Article 29 of the Ugandan constitution and in the case of **Khalid Salim Ahmed** the court awarded damages to the plaintiff.
- Counsel further argued that a passport is personal 22. property protected by Article 26(2) of the Ugandan Constitution and therefore its seizure like in the instant case is a violation of the applicant's right to property.
- Counsel concluded his submissions by stating that the \$23.\$ continued retention of the applicant's passport constitutes an unjustified and disproportionate infringement on his fundamental rights.

LEGAL ARGUMENTS BY COUNSEL FOR THE RESPONDENT

\$24\$ In his submissions in objection to the release of the applicant's passport filed on 24th June, 2025 counsel for the respondent argued that restriction of movements may be limited in the interests of public order, health and morality.

- 25. Counsel went further to rely on the case of **In Foundation for Human Rights Initiatives versus Attorney General** (Constitutional Petition No 20 of 2006) [2008] where the constitutional court affirmed that the exercise rights must be balanced against legitimate state interests, including the administration of justice.
- Counsel argued that the applicant's passport in this \$26.\$ case was retained pursuant to a lawful court order.
- 27. Counsel submitted that the risk of flight in this case is a real one as the applicant had to serve the remainder of his sentence.

- Counsel also submitted that the applicant had not substantiated the medical grounds he was relying on to secure the release of his passport

DECISION OF COURT

29. Court has carefully perused the ruling of Hon Justice Michael Elubu in Criminal Miscellaneous Application No 118 of 2025 specifically the last order which read as follows;

"The applicant shall be required to deposit his passport with this court. In the event that he requires it to travel, an application to that effect will be made before this court"

It is clear from the above order that the learned Judge envisaged a situation where the applicant would require his passport to travel and the court did not impose any limitations as to which countries the applicant could travel to

or even circumstances for which he would require his passport.

- \$31. With the above finding in mind, this court agrees with counsel for the applicant that the applicant has a right to access his passport and travel abroad.
- 32. However, court finds counsel for the applicant's condemnation of the requirement by this court to file a formal application as rather misplaced since the applicant's passport was held lawfully pursuant to an order of court and the wording of the said order was that the applicant was obliged to apply to court for his passport in case he wanted to travel and this order was issued on 4th April, 2025 in the presence of the respondent.
- 33. Court deemed it necessary for the applicant to file a formal application in order for the respondent to participate in these proceedings relating to the release of the applicant's passport. It would be improper for the court well aware that the respondent had an interest in this particular matter to proceed and make further orders relating to the applicant's passport without notification to the respondent.
- 34. Court has carefully considered the affidavit in reply of Kyomuhendo Joseph and the written submissions by counsel for the respondent and finds that the order of the learned judge in Criminal Miscellaneous Application No 118 of 2025 did not provide any other special conditions to exist before the release of the applicant's passport for purposes of his travel.

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- 35. Court also finds the failure to furnish proof of medical evidence alluded to by counsel for the respondent to be an omission on the part of the applicant, but as already stated the learned judge while ordering for the deposit of the applicant's passport did not attach impose specific reasons for which the applicant had to prove before release of his passport, therefore the omission to furnish medical proof alone cannot be relied upon to deny the applicant access to his passport in the instant case.

- Court has also considered counsel for the respondent's \$36. submission that the risk of flight in this case was real and not speculative and court has seen annexures A and B to the applicant's affidavit in rejoinder and is satisfied that that applicant has no risk of flight as he actually travelled to Nairobi using a travel document while on bail and he returned to his home country Uganda.
- In the final analysis court finds that the order to deposit 37. the applicant's passport with court was not punitive in nature and that is why the learned Judge provided for the release of the same whenever the applicant intended to travel.
- Court also finds the other conditions imposed by the 38. learned Judge while granting bail to the applicant as sufficient enough to guarantee the applicant's appearance for the hearing and determination of his appeal.
- 39. This application is hereby allowed and the applicant's passport no AA00541257 should be released to him to enable him travel and get treatment abroad and this passport should

be returned to this court as soon as the applicant returns to

Uganda. Uganda. Dated this \$\pi\$

David Matovu

Judge

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