

UGANDA / JUDGMENT

**Male H.Mabirizi K.Kiwanuka Vs Uganda
(Criminal Miscellaneous Application No. 4
of 2022) [2022] UGHCCRD 27 (23 June 2022)
[2022] UGHCCRD 27**

COURT

HC: Criminal Division (Uganda)

BEFORE

Muwata, J

CASE / FILE NUMBER

Criminal Miscellaneous Application No. 4 of 2022

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(CRIMINAL DIVISION)****CRIMINAL APPLICATION NO.04 OF 2022****(ARISING OUT OF ENTEBBE CHIEF MAGISTRATE COURT CRIMINAL CASE NO:666 OF 2021)****MALE H. MABIRIZI K. KIWANUKA-----APPLICANT****VERSUS****UGANDA-----RESPONDENT****BEFORE HON: JUSTICE ISAAC MUWATA****RULING**

The applicant herein brought this application for revision challenging the proceedings in Entebbe chief magistrates court in criminal case no.0666 of 2021.

When the matter first came up for hearing the applicant sought an order of this court to be allowed to access internet for purposes of research. This order was specifically directed to the O/C Kitalya Mini Max Mr. Ayikomundu Hamidu

During the further hearing of the matter, the applicant raised a preliminary objection to the effect that he had been denied access to internet contrary to that order. That he was subsequently transferred to Luzira prison where he has since been denied access to the same.

It was his contention that the denial to access internet violates his right to a fair hearing in the sense that he is unable to effectively prosecute his application. He also prayed that the respondents be held in contempt of court for violating the said court order.

In reply, the respondents argued that the applicant is a convict serving a sentence and as such he is not entitled to internet services. That allowing the applicant access internet poses a great security risk to the other prisoner and the institution as a whole, it was also submitted by the respondents that the prisons have adequate facilities to enable the applicant conduct his research. With regard to the contempt, counsel for the respondent Mr. Amerit Timothy argued that the order was specifically directed to the O/C Kitale Mini Max and not Luzira prisons where the applicant has since been transferred to.

Consideration

After listening to the parties and specifically SP Herbert Kaheru the assistant OC Luzira Upper who was invited by court on its own motion to guide it in resolving this matter I make the following observations.

Under the constitution, the prisons act and the regulations made thereunder, there is no provision that an inmate/convict is entitled to access internet services as a matter of right.

The framers of the constitution did not envisage this right under the tenets of a fair hearing enshrined under Article 28 of the constitution and rightly so because the prohibition on the use of the internet by prisoners/inmates primarily arises from the need to preclude communication of a prisoner with persons outside. Further, this is also to preclude obtaining information from the internet which could endanger the security of the prison public safety. The fact that the internet can be used for commission of offences is a well-known fact.

I have also considered whether granting this access is within the competence of the prison service. The applicant has not requested for particular information, but he requests to access it in a particular manner. Allowing the applicant to access internet services through this manner may necessitate additional supervision of the applicant which in turn would bring about additional expenses not ordinarily catered for by the prison service. A situation may develop where there is no actual control over the activities of the applicant. Furthermore, the fact that the applicant's incarceration arises from the misuse of the internet makes it even of greater concern to allow his prayers to access the internet.

The applicant can therefore access whatever information he needs through the library and the prisons legal clinic because access to information need not be ensured necessarily electronically, but it may be ensured also on paper. The applicant is also at liberty to instruct his legal clerk to do research on his behalf.

