

UGANDA / JUDGMENT

**Nduhukire Nasser alias Don Nasser v
Attorney General (Miscellaneous Application
No. 8 of 2025) [2025] UGHC 474 (30 June 2025)
[2025] UGHC 474**

COURT
High Court of Uganda

BEFORE
Bashaija, J

CASE / FILE NUMBER
Miscellaneous Application No. 8 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[INTERNATIONAL CRIMES DIVISION]

HCT-ICD-MISCELLANEOUS APPLICATION NO.008 OF 2025

(Arising from HCT- ICD-PT – NO. 0001 OF 2025)

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NDUHUKIRE NASSER alias DON NASSER APPLICANT 10

VERSUS

THE ATTORNEY GENERAL OF UGANDA

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW RULING

NDUHUKIRE NASSER alias DON NASSER (hereinafter referred to as the "Applicant") brought this application against the Attorney General of the Republic of Uganda *(hereinafter*) *referred to as the "Respondent");* under Article 50(1) & (4) of the *Constitution of the Republic* of Uganda 1995 (Constitution); Articles 5, 7 and 17 of the Universal Declaration of Human 20 Rights; Article 1 of the International Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment; Article 5 of the African Charter on Human & Peoples Rights; Ss. \$3(1)\$ & 2(a), \$4(1) (a)\$ & (2), 6, \$8(1)\$ & (2), 10, \$11(1)\$ & (2) and 17 of the *Human Rights Enforcement* Act 2019; Rules 2, 3(a), 5(1)a, (2)a & b, 6(1) a & b, 7(1), 8(1) and 11 of the Judicature (Fundamental and Other

Human Rights & Freedoms)(Enforcement Procedure) Rules 2019; seeking the following reliefs;

- > 1. A declaration that the Applicant's right to personal liberty was violated by the officers of the Uganda Police Force who caused the illegal and unlawful arrest and rendition of the Applicant from the Republic of Kenya without due extradition process contrary to Article 23 of the Constitution.
- ⁵ 2. A declaration that the non derogable rights and freedoms and other fundamental rights of the Applicant have been violated, threatened and or infringed upon through use of torture by officers of the Uganda Police Force.
- 3. A declaration that applicant's trial in Criminal Case No. 979 of 2024 is a nullity for the blatant violations, infringement and threatens his non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment and other human rights and freedoms guaranteed under Articles 23,24, 42 and 44(a) of the Constitution. by the Uganda Police Officers.
- 4. A declaration that the Attorney General is vicariously liable for the actions of its agents, the Uganda Police Officers.
- 5. Compensatory orders be made against the Respondent for the gross and blatant violations, infringements and threats to the applicant's non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment and other human rights and freedoms, guaranteed under Articles 23,24,42 and 44(a) of the Constitution. 15
- 6. Any other relief that this Honourable Court may deem fit and just to grant in the interest of justice.
- 7. Costs of the application.

^I he (grounds of the application are that:

- The Applicant is accused person NO. I (AI) in Criminal Case No. 979 of 2024; Uganda v. Ntuhukire Nasser alias Don Nasser & Anor.
- The Applicant is charged with the offences of Aggravated Rape in Children C/s 2(1)(a); and 4(a) of the Prevention of Trafficking in Persons Act Cap. 131; and Illicitment C/s 120(1)(a) of the Penal Code Act Cap. 128.)
- On 21st November 2024, the Applicant was committed for trial to the International Crimes Division (ICD).
- On 11th September 2024, at about 2200 hours, the Applicant was arrested/kidnapped by five plain clothed armed men at Startart Apartments, 8th floor, Condominium Apartment No. 801, Wood Avenue Kilimani, Nairobi Kenya, on allegations of murder and brought back to Uganda before being charged and indicted with the above said offences. .1

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- 5. The Applicant was arrested and or kidnapped from Nairobi Kenya and brought back to Uganda by officers of the Uganda Police Force.
- 6. That prior to the Applicant's arrest and or kidnap from Nairobi-Kenya to Uganda, there was no order of court and or due extradition process undertaken.
- 7. Following his arrest and or kidnap from Nairobi-Kenya, the Applicant was detained for five days before being arraigned in court on 23rd September 2024.
- 8. The Respondent has a duty to respect, uphold, observe, promote and fulfil the fundamental human rights, freedoms and dignity of the Applicant and any other person.
- 9. The Uganda Police Force is enjoined to be patriotic, professional, disciplined, productive and of good character.
- 10. The Respondent and the Uganda Police Force, in general, is mandated to protect life, property, preserve law and order and prevent crime.
- 11. The Respondent, its agents, employees and or servants, the Uganda Police Forces' conduct aforesaid and complained of, is not only unbecoming of police officers with a heightened duty to respect, uphold, observe and promote the fundamental human rights, freedoms and dignity of any person in his custody or detention, but also a clear gross and blatant violation of non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment and other human rights and freedoms, guaranteed under Articles 23, 24, 42 and 44(a) of the Constitution.
- 12. The Applicant as a person directly affected by the said violations has a right to bring to the attention of this Honourable Court, the gross and blatant violations, abuses and infringements of the non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment, and other human rights and freedoms by the Respondent's Uganda Police Force or any other person, and to seek redress from this Court as provided for under the *Enforcement of Human Rights Act, 2019*, and this Court ought to thoroughly investigate and inquire into the violations aforesaid and give appropriate redress.
- 13. In these circumstances, it would be just and convenient for this Honourable Court to grant the declarations and orders sought.

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The Applicant's evidence.

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In his affidavit supporting the application dated 30th April 2025, the Applicant states that he is a businessman with business dealings in Uganda, Kenya and Dubai. That he is accused person N0. 1(A1) in *Criminal Case No. 979 of 2024* before this Court. That he is a victim of human rights violations by the Respondent's agents, servants and or employees of the Uganda Police Force.

That the Respondent being the principal Legal Adviser to the Government of Uganda is vicariously \$10\$ liable for the actions of the officers of the Uganda Police Force. That the Respondent, its agents, servants and or employees of the Uganda Police Force have a duty to respect, uphold, observe, promote and fulfil the Applicant's fundamental human rights, freedoms and dignity and of any other person; and that the Uganda Police Force is enjoined to be patriotic, professional, disciplined, productive and of good character, and or mandated to protect life, property, preserve law and order, 15

and prevent crime.

That on 18th September 2024 at about 2200 hours, the Applicant was arrested/kidnapped by fifteen plain clothed armed men at Staroot Apartments, 8th Floor, Condominium Apartment N0. 801, Wood Avenue Kilimani, Nairobi in Kenya, on allegations of murder and was brought back to Uganda before being charged with the aforesaid offences. That he was arrested and or kidnapped

That prior to his arrest and or kidnap from Nairobi in Kenya to Uganda, the Applicant has since discovered that there was no order of court and or due extradition process undertaken. That his arrest and kidnap from Nairobi Kenya and his subsequent rendition to Uganda by armed Uganda from Nairobi, Kenya, and brought back to Uganda by officers of the Uganda Police Force.

Police Officers without any lawful orders and or due extradition process, is illegal, unlawful and a 25 blatant violation of his fundamental rights to liberty as enshrined under the Constitution of Uganda.

That his detention exceeding the Constitutional 48 hours' limit before being arraigned in court is illegal, unlawful, unconstitutional and a violation of his fundamental rights as enshrined under Articles 23, 24, 42 and 44 of the Constitution. That the Respondent, its agents, employees and or servants, the Uganda Police Force's conduct is not only unbecoming of Police officers with a 30 heightened duty to respect, uphold, observe and promote the fundamental human rights, freedoms and dignity of any person in its custody or detention, but also a clear gross and blatant violation of the non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment, and

- other human rights and freedoms guaranteed under Articles 23, 24, 42 and 44(a) of the \$ \mathsf{S} \$ Constitution. That as a person directly affected by the said violations, he has a right to bring to the attention of this Court, of gross and blatant violations, abuses and infringements of non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment and other human rights and freedoms by the Respondent's Uganda Police Force or any other person, and to seek redress
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from the Court as provided under the *Enforcement of Human Rights Act 2019*. That this Court ought to thoroughly investigate and inquire into the violations aforesaid and give appropriate redress.

Applicant's supplementary affidavit.

The Applicant in his supplementary affidavit states that at the time of his travel to Kenya, he used his National Identity Card issued by the Government of the Republic of Uganda and that he passed 15 through immigration points normally. That on 18th September 2024, at around 10pm while at Staroot Apartments in Kilimani-Nairobi Kenya, six armed men in casual civilian clothes wielding pistols accompanied by a security guard of Staroot Apartments broke into his apartment, abducted him and confiscated his National I. D card.

- Further, that he was forcefully removed from his apartment. That prior to the incident, his friend 20 Sarah Njeri had just visited him at the apartment and had just left shortly before the event occurred, and that she witnessed the Applicant's forceful arrest and abduction. That the Applicant was blindfolded using pieces of cloth (scarves) and bundled in a motor vehicle and driven to an unknown place in Kenya where he was placed in a container and detained for three days.
- That while being detained in the container, the Applicant was subjected to various forms of torture 25 and threats by members of the Uganda Police Force, including but not limited to being regularly beaten and slapped while blindfolded, as the police officers demanded for access to the his phone passwords and bank account information, being denied food for three days, with the police claiming that the deprivation was due to the Applicant's alleged refusal to cooperate with them;
- and having the Applicant's genitals forcefully squeezed and forcing him to surrender his passwords 30 and bank account details.

That after being detained in the container for three days, the Applicant was removed, blindfolded again, forcefully placed in another motor vehicle and driven to unknown location, which the

- ⁵ Applicant later came to learn was the Malaba border. That upon arrival, he was transferred from the car they had travelled in and put in another car/van belonging to Uganda Police Force. That the cloths they had used to blindfold him were removed and later the Applicant was driven to Kampala.
- That upon arrival in Kampala, Shenna Kamuhogo and the Applicant were briefly detained in at Nakasero in a cell which was guarded by armed men dressed in Uganda Police uniforms. That they were then transferred to Naguru Police Station where they were taken to the Applicant's home for a search. That following the search, they were taken to Kira Road Police Station where the Applicant was held for two nights before being arraigned in the Uganda High Court Magistrates Court on 23rd September 2024, jointly with Alcott Promisc. 10

with offences of Aggravated Trafficking in children and confinement under Buganda Road Court AA 28 of 2024. 15

The Applicant contends that the actions of the officers of the Respondent in abducting him on 1st September 2024, and arraigning him in Court on the 23rd September 2024, constitute a violation of his right to personal liberty as enshrined in the Constitution. That his abduction by agents of the Respondent from Kilimani, Nairobi Kenya and illegally transferring him to Uganda without conducting extradition proceedings constitute a violation of extradition laws of both Uganda and Kenya, to wit: Reciprocal Backing of Warrants Instrument; The East African Community Treaty; and international laws governing extradition. That his rendition and repatriation from Nairobi Kenya to Uganda without an extradition order from Kenya was illegal and such illegality should not be condoned by court. That he was unlawfully returned to Uganda in total violation and or breach of local, regional and international laws and treaties to which Uganda is a party. That his trial is a nullity having been unlawfully repatriated to Uganda from Nairobi Kenya. 20 25

Re: s 1(1)(b) of the Uganda Human Rights Act, 1994.

In an affidavit in reply sworn by Mr. Kyomuhendo Joseph, a Chief State Attorney (CSA) in the Office of the Director of Public Prosecutions, the Respondent denies that its agents, servants and or employees of the Uganda Police Force violated the human rights of the Applicant. Mr. Kyomuhendo Joseph states that he is part of the team assigned to prosecute Criminal Case No. 30 of 2024.

Kira Road CRB 678 of 2024, Uganda v. Nduhukire Nasser alias Don Nasser; and the case is a \$ prosecution -guided investigation. That he is well versed with the facts.

That the Applicant was charged with Aggravated Trafficking in persons' s 2(1)(a) and 4(a) of the *Prevention of Trafficking in persons Act Cap. 131*. That it is not true that the Applicant was kidnapped from Nairobi Kenya by Uganda Police Officers. That the investigations reveal that the Applicant was arrested from Malaba, in Tororo on the Uganda's territory. That it is not true that

the Applicant was tortured by officers of the Uganda Police Force. That the Applicant was produced at Buganda Road Court on 23rd September 2024, and the presiding Magistrate read to him the charges of Aggravated Trafficking in Persons' C/s 2(1)(a) and 4(a) of the *Prevention of* Trafficking in Persons Act Cap. 131.

- 15 That the case was thereafter mentioned several times in the presence of Mr. Kyomuhendo Joseph, in presence of Mr. Kyazze Ivan a Senior State Attorney, until the Applicant was committed to this Court for trial. That at the time the Applicant appeared in court for mention of the charges, he did not at any one time raise the torture allegations or complain of pain or injury, and that the allegations of torture are an afterthought.
- Mr. Kyomuhendo stated that he knows that where a National Identification Card is used by a 20 person to travel out of Uganda, an interstate pass is issued and the traveller's particulars (biometrics) are scanned and captured by the database of the Immigration Department. That during investigations, the Applicant was examined on Police Form 24A and was found to be mentally sound, and did not have injuries on his body. That the application is devoid of any merit, and it is in the interest of justice that the same be dismissed. 25

In another affidavit in reply by the Respondent, D/PC Ruth Tumwikirize, states that she is attached to Kira Road Police Station Criminal Investigations Department. That she is the investigating officer in the case vide; *Kira Road CRB 678/2024*. That she is part of the team that was assigned to investigate *Criminal Case No. Kira Road CRB 678/2024* (aggravated trafficking in children).

That she received the file and upon perusal, the complainant and victim's statements had been 30 recorded. That the first suspect, Ateete Promise was arrested and interviewed on 17th June 2024, while the Applicant who was the prime suspect, was still on the run until 21st September 2024, when he was arrested.

That upon the Applicant's arrest, he was handed over to her and the team in September 2024, at \$ \mathsf{S} around 10:00am. That a body search was conducted on the Applicant and he was also examined on PF 24A. Then he was served lunch and thereafter led the team to his home in Kira Kito Zone Wakiso District, where they conducted a search. That upon the examination, the Applicant was found to be mentally sound with no injuries on any part of his body. That from his home, the Applicant was detained at Kira Road Police Station on Saturday 21st September 2024, vide *Kira* 10 Road CRB 678/2024, pending investigations. That the Applicant was interviewed on Sunday 22nd September 2024, and his statement recorded.

That the charges of Aggravated Trafficking in Children and Defilement were sanctioned and on Monday 23rd September 2024, the Applicant was taken to Court. That he applied for bail and stated in his affidavit that he was kidnapped from Kenya - an allegation D/PC Ruth Tumwikirize doubted. That she wrote a letter to the Director Citizenship and Immigration Control through her supervisor D/SP Ahimbi Maclean requesting for the Applicant's travel history. That the Director Immigration replied and stated that a search had been conducted on the available systems and the travel history report indicated that the Applicant last arrived into

the country on 26th October 2023, through

Enterogenetic International Airport from Nairobi. That according to the travel history, the Applicant did not travel out of Uganda between the 26th October 2023, and the 21st September 2024, when he was arrested.

That it is a Standard Operating Procedure(SOP) that for every person travelling out of the country using a National I. D card, an interstate pass is issued to him or her, and also the traveller's particulars are captured and stored in the data base. D/PC Ruth Tumwikirize denied that for all the time, the Applicant was in detention at Kira Road Police Station, he was tortured. She averred that all the human rights that accrue to a suspect in detention were respected/fully available to him. That it is in the interest of justice that the application be dismissed.

The Respondent filed another affidavit in reply sworn by D/ASP Musasizi Edward. That it is not true that the Applicant was kidnapped/arrested from Nairobi Kenya by officers of the Uganda Police Force. That in May 2024, he came to know through a radio call communication that was made to all Police Stations and Posts across the country, that Mr Nduhukire Nasser, the Applicant, was a wanted suspect to answer charges of human trafficking and defilement. That because he is a socialite and public figure, the Applicant was already known by D/ASP Musasizi Edward as to \$ \mathsf{S}\$ how he looks like by appearance.

That on 21st September 2024, at around 8:00am, while at Malaba Town Council in his area of deployment, Tororo District on the territory of Uganda, he saw the Applicant walking on the streets with a certain light skinned girl. That he immediately called D/IP Tworekeirwe Wilber and inquired from him whether the Applicant was still a wanted man; to which the officer confirmed in the affirmative. That he called for back-up from Malaba Police Station and they started trailing the Applicant. That he stopped the Applicant, introduced himself and informed the Applicant that he was wanted on charges of human trafficking and defilement.

That during arrest, D/ASP Musasizi Edward discovered that the young lady the Applicant was walking with is called Kamuhogo Sheena, and that the two were friends. That he arrested the 15 Applicant and handed him over to Tworekeirwe Wilber who transported both the Applicant and the young lady to Kampala where the Applicant was wanted. D/ASP Musasizi Edward denied that the Applicant was abducted from Kenya and forcefully repatriated to Uganda. That the Applicant was arrested from Malaba, Tororo District in Uganda and not Nairobi in Kenya.

Applicant's affidavit in rejoinder. 20

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In his rejoinder, the Applicant states that all the affidavits in reply contain falsehoods, are incurably defective, and as such should be struck out. In particular, to paragraphs. 7, 16, 19, 20 and 21 of Ruth Tumwikirize's affidavit, the Applicant avers that they contain falsehoods and the same contradict the depositions she had made in *Criminal Application No. 0031 of 2024*. That in

- paragraph 9 of her affidavit in *Criminal Application No. 0031 of 2024*, Ruth Tumwikirize stated that investigations revealed that the Applicant fled to Kenya through ungazetted border points where the Applicant hid until 21st September 2024, when he was arrested. In specific reply to paragraph 20 of the said affidavit, the Applicant states that Ruth Tumwikirize was not in Kenya at the time of his abduction and she is not the arresting officer. That she cannot depose on facts she
- does not possess. 30

In rejoinder to paragraphs 2, 7, 8, 11, 12, 13 and 15 of Mr. Kyomuhendo's affidavit, the Applicant states that they also contain falsehoods and contradict his earlier depositions in Criminal Misc Application No. 0031 of 2024. That in paragraph 7 of his affidavit in reply in Criminal Misc

- ⁵ Application No. 0031 of 2024. Kyomuhendo stated that the Applicant ran away from his home and crossed into Kenya through ungazetted border points. However, in his rejoinder to paragraphs 11, 12, 13 and 14 of Kyomuhendo's affidavit, the Applicant avers that Kyomuhendo was not present at the time of his abduction from Starroots Apartments in Kiliman Nairobi Kenya on 11th September 2024, and that he was not present during the Applicant's detention in a container in Kenya. That Mr. Kyomuhendo cannot depose to facts whose knowledge he does not possess. In 10
- addition, that torture does not necessarily need the person adducing medical evidence of physical injuries, and that depositions to that effect are intended to hoodwink court.

In rejoinder to paragraphs 2, 6, 11 to 15 of Mr. Musasizi's affidavit, the Applicant states that the same contain falsehoods. That the Applicant has never been arrested by Musasizi and neither has he ever met the said Musasizi. That Musasizi was not present at the time of the Applicant's abduction from Kiliman Nairobi Kenya on 11th September 2024. In rejoinder to paragraphs 9 and 12 of Musasizi's affidavit, the Applicant states that the contents therein are full of falsehoods, and that Kamuhogo Shenna is not light skinned as claimed by Musasizi.

20 The Applicant's submissions.

The Applicant submits as follows:

- 1. Whether control can be used to validate what has been done by the sole in flagrante delicto of the Applicant's procedures of extradition.

- 2. Whether the Applicant's right to personal liberty was violated by the officers of the Uganda Police who caused the illegal and unlawful arrest, detention of the Applicant from the Republic of Kenya without due extradition process.
- 3. Whether the Applicant's non-derogable right to freedom, from torture, cruel, inhuman and degrading treatment was violated by the Respondent.
- 4. What remedies are available to the parties.
- 30 On issue 1, Counsel for the Applicant submitted that the question to be addressed is whether the court would condone the violation of international, regional laws and member state obligations. That according to Articles 21 I and 212 of the Constitution as amended, the jurisdiction of the Uganda Police Force is restricted within the territorial boundaries of Uganda. That in this case members of

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- the Uganda Police Force did enter Kenya on 18th September 2025, in total violation of the $\$ \{S\}$ principles of sovereignty enshrined under Article 2(4) of the UN Charter and abducted the Applicant. That the Respondent ought to have followed procedure to in order to have the Applicant returned to Uganda to answer charges against him. That the Respondent could have followed one of two procedures under the law. That Article 124(5) of the *Treaty of East African Community*
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provides that the partner states agree to enhance co-operation in handling of cross-border crime, provision of mutual assistance in criminal matters including the arrest and repatriation of fugitive offenders and the exchange of information on national mechanisms for combating criminal activities.

That in a bid to operationalise or give effect to Article 124(5) (supra) the Republic of Kenya did

- enact the *Extradition (Contiguous and Foreign Countries) Act*, Laws of Kenya and also did enter into a *Mutual Legal Assistance Agreement (MLA)* in 1967, to facilitate cooperation in criminal investigations including extradition and information sharing. That S. 5 of the *Extradition* (Contiguous and Foreign Countries) Act, laws of Kenya provides that a requisition for the surrender of a fugitive criminal of any country who is in or suspected of being in Kenya, shall be made to the Minister by a diplomatic representative or consular officer of that country. That upon receipt of such requisition, the Minister may, by order under his hand, signify to a magistrate that a requisition has been made and require the magistrate to issue his warrant for the arrest and detention of the fugitive criminal. That this is the first option the Respondent had to follow but instead did not follow.

- That the Second option for the Respondent to follow is provided for under Ss. 16 & 17 of the 25 *Extradition Act*, laws of Uganda and the *Extradition (Reciprocal Backing of Warrants)* **Instrument**. That the magistrate, in the instant case at Buganda Road court, would have issued a warrant for the apprehension of the Applicant. The warrant would then be sent for endorsement by a magistrate in Kenya and after endorsement, the magistrate in Kenya would order the police officers to execute the warrant to bring the accused before the endorsing magistrate. That a 30 magistrate before whom an apprehended person is brought, if satisfied that the warrant is duly authenticated and was issued by a person having lawful authority to issue it, may order the prisoner to be returned to the country in which the warrant was issued.
- 5 'That the Applicant's 1<lrclul repatriation lion.r Nairobi-Kcnya to lJganda lo stand trial without lblowing the duc process ol'the law ol'the country wherc he was arrested. denied him his right to bcnclit liom extradition procccdings and instcad rcsulld in extraordinary rendition; which is illegal. 't'hat all proccsscs leading to tho abduction ol'the Applicant liom Kenya and his subsequent repatriation to (Jgarrda wcrc tainted with illecalitics which this court should not condonc. 'lo
- buttress their argur'].lent, counsel lirr the Applicant cited nrtilc 2[i6 ol'the Consitution of the Republic of Uganda, Article 2 ol'the Cottslitlution of the Republic of Kenya; Article 2(4) ol'the UN Charter; Article (r(a) ol' the Treaty for the lltablishment of the liasl African Communityl Articles 1.7 & l0 ol'The Inter-Govern mental Authori4, o, llrur,onmenl (IGAD) Convenlion otr Exlroditiott: Article tl8(2) ol'the Additionol Protocol I of 1977. 10
- On Issuc 2, Counsel lirr the Applicant subrnitted that the Applicant upon his arresl and or abduction on lltr' September 2024, was blindtoldcd using picccs ol'cloths and bundled in a nrotor vchicle and drivcn to an unknown place in Kenya wherc he was detained in a container frrr threc days. 'That this lact ol'the Applicant's dctention was not denied or controvrld by the llespondent. Furthor, that upon rcaching Kanrpala, he was bricly detained in a cell at Nakascro and guarded by 15
- arnrcl men dressed in [Jl)li unilirm. 'That Article 23(2) ol'the Constitution provides that when a person is so arrested, restricted or detained, he or she shall bc kept in any place authorised by law. 'l hat the places authorised by law to kecp accused persons arc either police cclls or prisons and not containers and military cclls. Counsel cilcd the case ol- Uganda v. Jamal Ki1,ep6o o,,nt Abtlulloh nlios 'lon1' Kiyemha I ICT-00-ICD-SC-001-2023, in a ruling on a trial rvithin a lrial, wherc court tbund that the r:rilitary dctention lacity wherc the accused in lhat case was. is a place 20 25

not authorised by law and as such violates Article 23(2) <tl't|rc Constilution.

'l hat in the instant case, the Applicant spent a period ol'five days at various police stations before being arraigned in courl on 23'd Septcmber 2024.'lhat this lact is not rebutted by either liuth 'l unrwikirizc, Musasizi l,ldward or Mr. Kyomuhendo Joscph in their rcspective alfidavits in rcply.

'That in *linergo l'rojekl v. Brigadier Kasiryg Qe1111f, & Anor IICMA No. 558/2009*. it was held that where facts are sworn in an affidavit and they are not denied or rebutted by the opposite party, the presumption is such facts are admitted. That similarly in *URA v. Stephen Mhosi SCCA No. 26 of 1995*, the court held that an omission to challenge/controvert evidence in chief of a material or essential point or during cross examination in itself means it is not denied but acceptance of 30 t

that evidence. Also, that in *Sserunkuuma George William & Anor v. Attorney General Misc* \$ \mathsf{S} Cause No. 102 of 2021*, it was held that there is no window or ventilator that is left by the law that can be exploited by the police as to justify a breach of the 48-hour rule.

On Issue 3, Counsel for the Applicant submitted that the right to freedom from torture, cruel, inhuman and degrading treatment is non derogable; meaning that it is inviolable. That the right is

guaranteed under Article 24 & 44(a) of the **Constitution** as amended. That S. 2 of the **Prevention* and Prohibition of Torture Act Cap. 130* defines torture. That there is no required degree of proof for torture in that even the slightest torture is enough to constitute an infringement.

That in *Paul Wanyoto Mugoya v. Sgt Oumo & Attorney General Civil Appeal No. 91 of 2021*, court held that medical evidence is not a standard requirement for proving torture as it has no legal basis. That it is rare to have direct evidence of torture because of the nature of the crime. That most 15 of the torture cases are carried out in secret while the victim is in detention; making it hard to obtain medical reports. Therefore, affidavit evidence can be relied on to prove torture.

Counsel submitted that the Applicant upon his abduction and arrest on 18th September 2024, was blindfolded using pieces of cloths, bundled into a motor vehicle and driven to an unknown place

- in Kenya where he was placed in a container and detained for three days. That while under 20 detention in the container, the Applicant was subjected to various forms of torture and threats by members of the Uganda Police Force, including being beaten and slapped regularly while blindfolded as they asked for his phone passwords, bank accounts, not giving him food for three days while in the container as the officers claimed he had refused to cooperate. That they
- squeezed his genitals and this forced the Applicant to surrender his passwords and bank account 25 numbers.

Counsel submitted that the Respondent did not controvert these facts about the torture inflicted upon the Applicant during the three days of his detention. That Ruth Tumwikirize, in paragraph 20 of her affidavit, only spoke about the period the Applicant was under detention at Kira Road

Police Station where he was taken on 21st September 2024. That in paragraph 14 of Mr. 30 Kyomuhendo's affidavit, he stated that the Applicant was examined and did not have injuries on his body. Counsel cited the case of Dr. Kiiza Besigye & Ors v Attorney General, Constitutional Petition No. 7 of 2007, where court held that by physical assaults of the petitioners and Counsel Kiyemba Mutale on 1st March 2007, not only were the petitioners severally beaten and tortured,

- but their lawyer was also badly beaten to the extent that constituted torture. The International S Convention against Torture and other Cruel or Degrading Treatment or Punishment, defines torture to mean any act which causes severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession pushing him for an act he or a third person has committed or intimidating or coercing
- him or a third person or for any kind, when such pain or suffering is inflicted by or at the instigation 10 of or with the consent or acquiescence of a public official or other person acting man official capacity. Counsel buttressed this proposition citing the case of *Union Trade Centre L. M. D v.* Attorney General of Rwanda EACJ Appellate Division Appeal No. 1 of 2015 and Agaba v. Attorney General & 3 Ors HCCS No. 247 of 2016.
- On Issue 4 concerning remedies, Counsel for the Applicant submitted that the Applicant has 15 satisfied the onus that warrants this court to issue the declarations prayed for. That as such the Applicant's trial should be declared a nullity as required by S. 11(2) of the *Human Rights Enforcement Act.* Counsel cited the case of *Robert Asiimwe Akanga & Anor v. Attorney General* & 2 Ors IIC Misc Application No. 007 & 008 of 2022 to support their submissions. The Applicant also prayed for punitive damages of Ugx. 50,000,000/ \$=\$, and costs of the application. 20

Respondent's submissions.

On Issue 1, Counsel for the Respondent submitted that there was no violation of the laws and procedure for extradition. That the Respondent's affidavits in reply clearly show that the Applicant was not arrested in Kenya, but rather at Malaba within the territory and jurisdiction of Uganda.

That S. 101 of the *Evidence Act*, provides that whoever desires any court to give judgment as to 25 any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

That in the instant case, the Applicant has not furnished court with the evidence to prove that he was indeed arrested in Kenya. That the Statutory Declaration the Applicant sought to rely on and collaborate his claim was rendered inadmissible in court during the hearing of this application. That there is no other evidence on court record collaborating the Applicant's claim of having been arrested in Kenya. That the Respondent furnished court with evidence from the Director Citizenship and Immigration Control demonstrating that the Applicant did not officially leave Uganda after 23rd October 2023.

- Further, that the Applicant insists that he used the National Identification Card to pass through $\mathbb{S}$ immigration points. That, however, it is common knowledge that Ugandans use their passports or national identity cards to leave the country and enter Kenya. That travellers are always issued with an interstate pass which is provided at no cost at the border. That the Applicant has not furnished such evidence to prove his claim.
- 10 Counsel submitted that there was no need for extradition in this case as the Applicant was arrested in Uganda. That S.23 of the *Police Act* and S. 10 of the *Criminal Procedure Code Act*, give powers to police to effect arrest of a person without a warrant, if the police have reasonable cause to suspect that the person has committed or is about to commit an arrestable offence. That in the instant case, the Applicant was already wanted to answer charges of human trafficking and defilement. That the arresting officer had the legal authority to arrest the Applicant. That as such, 15 this court has not sanctioned any illegality as the Applicant's arrest was in line with both national and international laws.

On Issue 2, Counsel for the Respondent submitted that the Applicant's right to personal liberty was not violated by the Respondent's agents. That the Applicant was detained at Kira Road Police Station vide **Kira Road CRB 678/2024**, on Saturday 21st September 2024, and was presented to 20 court on Monday 23rd September 2025. That in the calculation of time, Sundays are excluded. That the 48-hour rule was hence not violated. In support of this position, Counsel for the cited the case of *Ochwa v. Attorney General Civil Suit No. 41 of 2012*, and maintained that the arrest and detention of the Applicant did not violate his right to personal liberty.

- On Issue 3, Counsel for the Respondent submitted that the Applicant has not furnished court with 25 any evidence to show that he was subjected to any form of torture, inhuman or degrading treatment or punishment. That the Respondent furnished court with the evidence of a PF24 which shows that the Applicant was mentally sound and had no injuries on any part of his body. That the Applicant's claims of torture are baseless accusations.

- 30 Counsel submitted that torture is a serious allegation that should not be taken lightly. That in the instant case, the Applicant claims that 15 plain clothed persons tortured him, but he does not identify those who arrested him or the Ugandan agency they belong to. That this alone casts doubt on the veracity of the claims. That in **Issa Wazembe v. Attorney General Civil Suit No. 154 of 2016**, it was held that the courts should apply a very strict test when considering whether there has
- been torture or inhuman or degrading treatment. Only the worst examples are likely to satisfy the $\$ \backslash \mathrm{mathsf{S}} \$$ test. That the Applicant is required to adduce cogent evidence to prove his claim, and the standard of proof for torture is slightly higher. To back this proposition, counsel cited the cases of *Issa Wazembe (supra)*; *Twine Emmanuel v. Attorney General, HC Miscellaneous Cause No. 03 of 2024*; and *Rights Trumpet & 2 Others v. AIGP Asan Kasingye & 5 Ors.*
- On Issue 4, Counsel for the Respondent submitted that whereas it is true that the courts of law $\$10\$$ have the power to declare criminal proceedings a nullity, nullification of proceedings is not an order that courts should be granting lightly. That such orders like stay of proceedings and nullifying proceedings should be granted sparingly and only in exceptional cases. That nullifying criminal proceedings is a grave judicial action which interferes with the right of the litigant to conduct their litigation, in this case, the state on behalf of the people of Uganda. 15

The Respondent also drew to the court's attention to **Constitutional Reference No. 002 of 2024**; *Attorney General v. Akamba Paul* which challenges the constitutionality of S.11 of the **Human Rights Enforcement Act, 2019**, relied on by the Applicant seeking to nullify his criminal trial. That a premature decision by this court risks conflicting with the anticipated ruling of the Constitutional Court thereby undermining judicial consistency and the supremacy of the Constitution.

Counsel for the Respondent maintained that the Applicant is not entitled to compensatory orders sought. In support of this submission, counsel relied on the cases of **Kenya Wildlife Service v. James Mutembei** (2019) eKLR; *Attorney General v. David Tinyefuza*, Constitutional Appeal No. 1 of 1997; *Uganda Law Society v. Attorney General*, Constitutional Petition No. 18 of 2005; and *Nasif Mujib & Anor v. Attorney General* HCCS No.160 of 2014.

Applicant's submissions in rejoinder.

Counsel for Applicant submitted that the Respondent's submissions in reply were served onto the Applicant on 12th June 2025, contrary to the court's direction. That for that reason, the Applicant could file his submission in rejoinder by 13th June 2025. This court has studied the submissions in rejoinder and found them to be a repetition of the Applicant's evidence and submission. It is thus not called for to reproduce the same.

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This court has carefully analysed the pleadings, the evidence and submissions of all counsel in this application. There are essentially two key issues, which are the heart of the applicability of the extradition processes and laws of Uganda and Kenya as they relate to the Applicant. The other issue concerns the allegations of acts of torture of the Applicant by persons he perceived to be officers of the Uganda Police Force while in detention in Nairobi Kenya. The last issue pertains to allegations of the violation of the Applicant's right to personal liberty by the Respondent's failure to produce him in court within 48 hours after his arrest. All these issues have a direct bearing on the jurisdiction of this court, and whether in light of the facts of the case this court is clothed with the power even to inquire into those issues.

The Applicant contends that together with one Shenna Kanruhogo, he was on 18th September 2024, abducted by five plain clothed men armed with pistols, from Starool Apartments in Kilimani Nairobi Kenya. That he was blindfolded and driven to an unknown place in Nairobi Kenya. That the duo was placed and detained in a container for three days and denied food. That he was tortured by his abductors who threatened him to disclose to them information of his phones passwords and 15

- bank details. That thereafter the duo was driven while blindfolded up to Malaba. That they were removed from the vehicle they travelled in and put in another and driven up to Kampala. The Applicant contends that those who abducted him were officers of the Ugandan Police Force, and that their actions violated his right to freedom from torture, inhuman and degrading treatment and the right to liberty. 20
- 25 30 The inference drawn by court from the evidence is that the alleged abduction of the Applicant and acts of torture by the alleged officers of Uganda Police Force, took place in Nairobi on the territory of Kenya. This alone fundamentally affects the jurisdiction of this court in adjudicating this application. The issue of jurisdiction was extensively dealt with by the Kenya Court of Appeal in the case of *Orurrrers of Motor Vessel "S" v. Callex Oil Kenya Limited* [1989] KLRJ also cited by Mubiru J in *Uganda v. Ilon Kassiano Iizati IYaadri & 31 Ors* IIC Crim Rev, No. 0002 of 2018 (Gulu High Court). Nyaragi JA while citing *11/ords ud Phroses Legallt Defined Vol.3 1-N ptge /J. held that;*

"R.1 jurisdiction, is not only limited to which is territorial but also extends to, matters which are local or lake cognix. (of all, rollers prece nel in u Jitrnol n,u.1, for its decisiotr. Tha

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limits of this authority are imposed by statute, charter or commission under which court is constituted and may be extended or restricted by the like means. If no restriction or limitation is imposed, the jurisdiction is said to be unlimited. A limitation may be of a kind and nature of the actions and matters which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics."

Article 139(1) of the *Constitution* as amended, vests the High Court with unlimited original jurisdiction in all matters and such appellate and other jurisdiction as conferred by the constitution or other law. It is worth emphasizing that the concept of jurisdiction entails both pecuniary and territorial aspects. It is also the established position that jurisdiction is a creature of statute and

cannot be inferred. See *Baku Raphael & Obiga Kania v. AG Constitutional Appeal No. 1 of 15 2003*; *Musisi Kibugujju Badman v. Namakula Zam and Another HC Misc. Application No.303 of 2016* (Jinja High Court).

Thus whereas the High Court has unlimited jurisdiction in all civil and criminal matters over all persons in Uganda, the Court's territorial jurisdiction is limited by law to the extent of the borders of Uganda, with the exception of a few legally specified and limited instances where the High

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Section 4(1)(2) and (3) of the *Penal Code Act Cap. 128* provide for the extent of jurisdiction of this court as follows;

"Extent of jurisdiction of courts.

Court has extraterritorial jurisdiction.

- (1) The jurisdiction of the courts of Uganda for the purposes of this Code extends to every place within Uganda.
- (2) Notwithstanding subsection (1), the courts of Uganda shall have jurisdiction to try offences created under sections 23, 24, 25, 26, 27 and 28 committed outside Uganda by a Uganda citizen or person ordinarily resident in Uganda.
- (3) For the avoidance of doubt, the offences referred to in subsection (2) committed outside Uganda by a Ugandan citizen or a person ordinarily resident in Uganda shall be dealt with as if they had been committed in Uganda."

Section 5 also provides for offences committed partly within and partly beyond the jurisdiction, as follows:

- "When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction."

- Given the above position of the law, the issue which becomes relevant is whether the courts in 15 Uganda have jurisdiction to try a case involving acts, offences or violations which are said to have been committed outside the borders Uganda; such as alleged in the instant application.

From the Applicant's own evidence and submissions of his Counsel, it is quite clear that the two countries of Kenya and Uganda are involved. The alleged acts of torture complained of by the

- Applicant are said to have occurred in Nairobi Kenya when he was allegedly abducted from his 20 rented apartment by about fifteen men in plain clothes, bundled into a motor vehicle and driven while blindfolded and detained in a container for three days. It was while the Applicant was under the alleged detention that the alleged acts of torture took place, to wit; deprivation of food, being beaten/ slapped; the squeezing his genitals while being quizzed to disclose his phone password
- and bank accounts, among others. Even assuming that these allegations of torture are true, and 25 that the armed persons who abducted and detained the Applicant were officers of the Uganda Police Force, this court would not be clothed with the necessary jurisdiction to adjudicate over acts of torture that occurred in Nairobi Kenya. The High Court of Uganda is not vested with extraterritorial jurisdiction to entertain cases committed over the territory of Republic of Kenya
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and other countries. The limited exceptions of offences spelt out in S. 4(2) of the *Penal Code Act* (supra) do not include the offence of torture. This application therefore fails on that issue.

The complaint of the Applicant of acts and or violations within the territory of Uganda, over which this court has the jurisdiction, relates to allegations of the infringement of the Applicant's right to

⁵ personal liberty. 11 arose lionr the time the Applicant and Shcna Kamuhogo were driven from Malaba in lirrro District up to Kampala. The Applicant stated in his evidence that they were bricly detained in a cell at Nakasoro which was guarded by armed men dressed in [J'I'I] uniform. That they were then transferred to Naguru Police Headquarters aller which they were taken lbr ^a search at the Applicant's home. Following the search, they were taken to Kira Road Police Station and were charged on 23'd September 2024 at Iluganda Road Chief Magistrate's Court.

From the evaluation of the evidence on the issue, the Applicant was detained on Saturday, 21 " September 2024. He was arraigned at Ilugar. Road Road Court on a Monday, 23'd September 2024. In the computation of the 48-hour rule, weekends are excluded. Therefore, the Constitutional 48 hour rule was not violated, and the Applicant's right to personal liberty was not infringed upon. The Application therefore fails on this issue too.

The Applicant also relied on the Human Rights Enforcement Act 2019, to seek the nullification of his criminal trial. Once again, premised on the assumption that the acts complained of concerning the Applicant's abduction in Nairobi Kenya and rendition to Uganda are true, the High Court of Uganda would have no jurisdiction; let alone to apply the Human Rights Enforcement

Act 2019, to determine acts that occurred outside the territory of Uganda. The particular law is only applicable and enforceable for violations that occur within the territory of Uganda. Any violations outside the territory of Uganda would be adjudicated upon by the law governing the matter and applicable in that other territory. 20

Regarding the issue of extradition and rendition as they pertain to the facts of this application, the Applicant alleges that together with one Shem Kamuhogo, after being abducted and detained in the container for three days and tortured in Nairobi, they were driven while blindfolded up to Malaba. That they were then removed from the vehicle they travelled in and put in another in which they were driven up to Kampala. The Applicant contends that his rendition was illegal as the Respondent did not have an extradition order from Kenya government in accordance with the

extradition laws of both countries. 30

> Section 1(c) of the Extradition Act provides that for a person to be extradited, the person should be accused or convicted of a crime committed within the jurisdiction of any other country who is or suspected to be in another country. The Act lays down an elaborate procedure for extradition which involves one country requesting another country to surrender the suspect, e)<

or convict. It is not necessary to delve into detail of this procedure as it is not relevant to the determination of this matter.

Court has had the benefit of carefully examining the evidence of both the Applicant and Respondent. It is noted that the Respondent went to great lengths to secure and adduce in evidence the travel history of the Applicant using his passport. The record shows that the Applicant last travelled from Nairobi through Entebbe International Airport in October 2023. A letter from Ministry of Internal Affairs addressed to the Divisional CID Officer attached to the statement of

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"...he last arrived into the country on 26th October, 2023 through Entebbe International Airport from Nairobi."

The Applicant in his affidavit averred that he travelled to Nairobi-Kenya normally through the 15 border using his Uganda National I. D card.

D/PC Ruth Tumwikirize dated 18th November 2024 - EXH'F' reads in part as follows;

Section 101 of the Evidence Act Cap.8, provides for the burden of proof as follows;

"(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

This court takes judicial notice of the fact that a person travelling outside Uganda through the gazetted borders, using a national I. D card, is granted an inter-state pass by the Directorate of Citizenship and Immigration Control of Uganda, to cross to another country, and their details captured in the data base. The official website of the Directorate of Immigration clearly elucidates, under a heading; "Inter-State Pass" as follows;

> "Nationals of Uganda, Rwanda and Kenya are FREE to move between these countries with only an ID card i.e. NATIONAL ID instead of their passports. Residents require a work permit to be issued the inter-state pass.

> No visas are needed and no charge is required for inter-state pass. The Inter-State Pass is issued FREE at the border at the point of exit."

- The Applicant alleges that he travelled to Kenya using his national I. D card. However, he does not S proffer any proof of his allegation. As the person who travelled to Kenya using his national I. D card, he bears the burden to prove his claim. He ought to have adduced in evidence the inter-state pass or at least accessed one from the border he once passed through to Kenya. The Applicant has failed to discharge the burden placed on him under Section 101 of the *Evidence Act*(supra) to prove that he indeed travelled and was in Kenya. Having failed thus, he does not qualify to fit 10
- within the description under Section 1(c) *Extradition Act* (supra). Therefore, even the issue of extradition and rendition would not arise on the facts of this case.

Having found as above, the determination of issues regarding jurisdiction of this court renders the resolution of other issues unnecessary. This application has no merit and the Applicant is not entitled to any of the orders sought. The application is dismissed with costs to the Respondent.

BASHAIJA K. ANDREW JUDGE 30th JUNE 2025

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