

UGANDA / JUDGMENT

Sebwalida v Attorney General (Miscellaneous Cause 29 of 2024) [2025] UGHC 298 (19 May 2025) [2025] UGHC 298

COURT

High Court of Uganda

BEFORE

Lubega, J

CASE / FILE NUMBER

Miscellaneous Cause 29 of 2024

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE****MISCELLANEOUS CAUSE NO. 29 OF 2024****(ARISING FROM NAKALOKI CHIEF MAGISTRATE COURT CASE NO. 001 OF 2023 OF
NAKALOKI POLICE STATION CRB NO. 006 OF 2023****SEBWALIDA JEAN PAUL ::::::::::::::::::::::::::::::::::::::****VERSUS****ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::****BEFORE: HON. JUSTICE LUBEGA FAROUQ****RULING****1. Introduction**

- 2. This application was brought under section 3, 15(2) and (4) (a) and (c) of the Human Rights (Enforcement) Act, 2019 [now Cap. 12 of the revised laws of Uganda 2023] and paragraph 10 (1) and 2) of the Constitution (Bail Guidelines for courts of judicature) (practice), (direction) 2022 for-

- (a) A declaration that continued detention of the applicant beyond 360 days at Mbale main prison is illegal and in contravention of section 15 (4) (c) of the Human Rights (Enforcement) Act, 2019,
- (b) A declaration that the pending proceedings against the applicant before the Chief Magistrate Court of Mbale are null and void and in contravention of the Constitutional and Fundamental rights of freedom guaranteed under the constitution,
- (c) an order to the officer in charge of Mbale main prison to have the applicant immediately unconditionally released from her custody,
- (d) an order for general damages for wrongful detention of the applicant beyond 180/360 days which is in contravention of the law, and
- (e) an order of costs for the application be provided for.
- 3. The application is supported by the affidavit in support sworn by the applicant and the grounds are briefly as follows-
- 4. That the applicant was on 2nd of January, 2023 arrested by the police officers of Nakaloke Police Station and detained in their custody up to around 4th of January, 2023 when he was charged with aggravated robbery contrary to sections 285 and 286 of the Penal Code Act Cap 120, [now sections 266 and 267 of the Penal Code Act, Cap 128]. He was afterwards, on 9th of January, 2023 arraigned before the Chief Magistrate Court of Nakaloke at Mbale and the same charges were read to him and remanded to Mbale main prison.
- 5. The applicant contended that he has a right to apply for enforcement of his fundamental rights under sections 15 (3) (c) of the Human Rights (Enforcement) Act, 2019 [now Cap.12] or apply for mandatory release on bail under Article 23 (6) (c) of the Constitution of the Republic of Uganda. He further averred that he has a right to be treated like others as per Article 21 of the Constitution
- 6. He stated that he has been on remand and continues to be for a period of more than a year yet not committed to High Court for trial which contravenes section 15 (4) (c) of the Human Rights (Enforcement) Act.
- 7. It is further the applicant's contention that he applied for mandatory bail vide Miscellaneous Application No. 079 of 2023 but the same was denied and yet he has never been committed to High Court.
- 8. In addition, the applicant argued that his continued detention at Mbale main prison beyond 360 days by the respondent is in contravention of section 15 (2) of the Human Rights (Enforcement) Act, 2019. He contended that he is still presumed innocent as per Article 28(3) a) of the Constitution.

9. Legal representation

- 10. Counsel Topachu Juliet holding brief for Isaac Olucho represented the Attorney General while the applicant represented himself.
- 11. At the hearing of 4th March, 2025, the parties requested to proceed by way of written submission. The Applicant complied while the Respond did not comply.

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12. Issues framed by court

- (a) Whether the Applicant was wrongly detained beyond the required period and if so, whether court can make the orders and declarations *prayed for?*
- (b) What are the remedies available to the parties?
- 13. Before I delve into the resolution of the issues, I have to note that ordinarily, arrest is carried out where there is reasonable ground for suspicion of guilt. The test to be applied is that the onus of proof is on the person making the arrest to justify his conduct, must be that of a reasonable person acting without passion or prejudice. An arrest and detention properly made against a person reasonably suspected of having committed an offence cannot amount to breach of fundamental human rights. (See: Miscellaneous Cause No. 31 of 2024 Hilman John Bosco Alepher V. Attorney General)
- 14. In the instant case, the applicant is challenging his long detention without being committed to the High Court and long detention without any particular date when he is likely to appear in court.
- 15. Article 23(1)(c) and 2 of the Constitution (supra) provides that-
- "No person shall be deprived of personal liberty except in any of the following cases-
- (c) for the purposes of bringing that person before a court in $\frac{1}{2}$ *execution of the order of a court or upon reasonable suspicion* that the person has committed or is about to commit a criminal offence under the laws of Uganda.
- (2) A person arrested, restricted or detained shall be kept in a place authorized by law."
- 16. The applicant in this case was detained at police and later remanded at Mbale main prison. These two places are gazetted places and are proper places of detention, hence, the applicant could access his relatives and Counsel without any hindrance.
- 17. Having given that background, I will now determine the issues as below-

18. Analysis of court

- 19. Issue No.1: Whether the Applicant was detained beyond the required period and if so, whether court can make the orders and declarations sought?

20. Article 50 (1) of the Constitution of Uganda provides that-

"Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for *redress which may include compensation.*"

- 21. Section 15 (1) (2) (3) and (4) of the Human Rights (Enforcement) Act, Cap. 12 provides that-
- (1) A person who has reason to believe that another person is being unreasonably detained in the circumstances prescribed in subsection (4) may petition the High Court for the unconditional release of such a person.
- (2) A person in charge of a prison, police station or any other gazetted detention facility shall, where he or she has reason to believe that a person in that prison, police station or detention facility is unreasonably being detained, release or apply to the competent court or any other authority for authorization to release that person from detention.
- (3) The High Court shall on being satisfied that a person is unreasonably detained—
- (a) order for the production of such a person before court;
- (b) impose obligations on the person in charge of a detention centre in which such a person is detained as the High Court considers appropriate; or
- (c) Order for the release of such a person from detention on any terms and conditions as the High Court determines.
- (4) In this section, a person shall be taken to be unreasonably *detained where—*
- (a) he or she has been detained **beyond forty-eight hours after arrest** without being brought before a competent court;
- (b) he or she being charged with an offence triable by a subordinate court, is remanded in custody before trial for a period exceeding one hundred and twenty days;
- (c) he or she being charged with an offence triable by the High Court, is remanded in custody for a period exceeding three **hundred and sixty days** before the case is committed to the *High Court for trial..." (Emphasis added)*
- 22. On proper reading of the above section, it is clear that whereas the wrongful acts are under subsection 4, the remedies are however provided for under subsection 3.
- 23. In the instant case, the Applicant alleges to have been wrongly detained beyond the period required by the law both at police and in prison.

- 24. He averred under paragraph 2 of the affidavit in support that he was on 2nd of January, 2023 arrested by the police officers of Nakaloke Police Station and directly detained in their custody up to 4th January, 2023 when he was charged with the offence of aggravated robbery.
- 25. The Applicant further averred under paragraphs 4, 7 and 9 of the affidavit in support that on 8th of January 2023, he was arraigned before the Magistrate's Court of Nakaloke at Mbale and the charges were read to him but since then, he has never been committed to the High Court for trial. He contended that, he has been on remand beyond the period required by the law.
- 26. The Respondents did not however file any reply to oppose the applicant's averments in the affidavit in support. I note that there is no affidavit of service of the notice of motion on the Respondents on the court record, but since they appeared in court for hearing on 4th of March, 2025, this

court would have expected them to ask for time to file the reply but they did not.

- 27. It should be noted that this application was instituted by a party who is in custody and for that reason, he is not expected to strictly follow up service of the said documents since his movements are restricted.
- 28. The Respondent's counsel having appeared in court on 4th of March, 2025, it is presumed that the Respondent was aware of this application and if it was interested in objecting to the applicant's prayers, it should have asked court for time to file its reply.
- 29. Further, when counsel for the Respondent appeared in court on 4th of March, 2025, this court gave directions to file submissions. The Respondents did not still comply, which is further proof that it is not interested in objecting or opposing the applicant's prayers.
- 30. Section 15(4) of the Human Rights (Enforcement) Act, prohibits detention of inmates for a period beyond 360 days for offences triable by the High Court. The applicant in this case averred that he has been on remand since 8th of January, 2023 without being committed to the High Court for trial. That means he has been on remand for a period of 2 years and 4 months which is beyond 360 days required by law.
- 31. However, apart from the applicant's averments in the affidavit in support, there is no further evidence which was adduced to prove that he has been on remand for the period intimated. The lower court file was not attached to the application nor was any document from prison attached by the applicant to prove his averments.
- 32. In the case of Lalchand Bhagat Ambica Ram V. Commissioner of Income
- 33. Tax, Bahir, the Supreme Court of India stated that-

"Upon a view of facts which cannot reasonably be entertained. It is a settled position of law that in making the assessment, the AO is not entitled to make a pure guess and make an assumption without reference to any evidence or any material at all. It has been consistently held by various courts that there must be some matter more than their suspicion to support the assumption made".

- 34. In this court, the Applicant did not adduce any evidence to prove that he has been on remand for more than 360 days without committal to the High Court.
- 35. As it is clearly stated in the authority cited, courts can only rely on proven facts supported by evidence but not speculations. What the applicant adduced in court is merely speculations which is not supported by any evidence. (See: State of Madras V. A. M Nanjan and Another)
- 36. The applicant ought to have adduced more evidence like the remand papers to prove the facts alleged in the affidavit in support. In absence of that evidence, the applicant failed to prove that he has been on remand beyond the required period.
- 37. In light of the above finding, the applicant is not entitled to any remedies sought. This application is accordingly dismissed.
- 38. Since the Respondent did not participate, no costs are awarded. I so order.

LUBEGA FAROUO Ag. JUDGE

Ruling delivered in open court in the presence of the Applicant on 19th day of May, 2025.

> **THE APPENDIX** $\mathcal{L}_{\mathcal{L}} = \mathcal{L}_{\mathcal{L}} \mathcal{L}_{\mathcal{L}}$

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