

UGANDA / JUDGMENT

Sserwadda v Uganda & Another

(Miscellaneous Application 16 of 2024)

[2024] UGHCI CD 13 (23 September 2024)

[2024] UGHCI CD 13

COURT

HC: International Crimes Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

Miscellaneous Application 16 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(INTERNATIONAL CRIMES DIVISION) MISCELLANEOUS APPLICATION NO. 0016 OF
2024 5 (ARISING FROM HCT-00-ICD-SC-0004-2022) (ARISING FROM MASAKA
CRIMINAL CASE NO. 0288 & 0258 OF 2021)

SSERWADDA MIKE APPLICANT

VERSUS

10 1. UGANDA

2. ATTORNEY GENERAL RESPONDENTS

BEFORE: HON. LADY JUSTICE ALICE KOMUHANZI KHAUKHA

15 RULING

Introduction

This Ruling is in respect of an Application brought by way of a Notice of Motion under Article 50 (1) of the 1995 Constitution (as amended), Sections 4, 6, 8 (1) & (2), 11 (1) and 15 (4) of the Human Rights (Enforcement) Act, 2019, Section 98 of 20 the Civil Procedure Act and Order 52 Rules 1 & 3 of the Civil Procedure Rules for the following:

- a) A declaration that the Applicant's non-derogable right to freedom from torture, cruel, inhuman treatment and degrading treatment was violated by the Respondent, its agents and/or servants contrary to Articles 24 and 44 (a) 25 of the 1995 Constitution;
- b) A declaration that the right of the Applicant to a fair, speedy and public hearing as guaranteed under Articles 28 (1) and 44 (c) of the Constitution of

the Republic of Uganda (as amended) was and is being infringed upon and/or threatened by the Respondent, its agents and/or servants;

- c) A declaration that the Applicant's right to personal liberty was violated by the Respondent, its agents and/or servants, contrary to Article 23 (2), (3), (4) 5 and (5) of the 1995 Constitution;
- d) A declaration that the current trial of the Applicant under Criminal Session No. 04 of 2022 (Uganda versus Sserwadda Mike & 5 Others) is a nullity;
- e) An Order acquitting the Applicant and/or discharging and/or releasing him immediately;
- 10 f) An Order directing the Respondent to facilitate and/or pay for the Applicant's treatment and rehabilitation at the African Center for Treatment and Rehabilitation of Torture Victims (ACTRTV), or any other similar facility;
- g) An Order that the Respondent pays the Applicant compensation/damages for the above human rights violations;
- 15 h) An Order for interest on the compensation above at a rate of 25% per annum from the time the first respective violations happened till payment in full;
- i) An Order that the Respondent pays the Applicants the costs of this Cause.

In the alternative, Orders that:

- 20 j) The Applicant be unconditionally released from prison (Luzira Upper Prison);
- k) Costs of this Application.

Representation

25 The Applicant was represented by Mr. Turyamusiima Geofrey of M/S Kratos Advocates, while the Respondents were represented by Mr. Nganzi Raymond and Mr. Muhesi Matthew both State Attorneys from the Attorney General's Chambers. Mr. Birivumbuka Richard, Chief State Attorney from the Office of the Director of Public Prosecutions was also in the Court as a representative of the 1st Respondent.

I would like to note that this Ruling was supposed to be delivered on 30th July 2024⁵ but Counsel for both parties failed to comply with the filing schedules given to them by the Court. On 30th July, the Applicant through his lawyer sought the leave of the Court to extend the time within which to file his Affidavit in rejoinder and submissions which was granted by this Court. New

schedules were then given but Counsel for the Applicant filed only submissions in support of the Application but 10 did not file the Affidavit in rejoinder. The Respondents, though out of the given time, filed their submissions in reply. At the time of writing this Ruling (20th September 2024), the Applicant's Affidavit in rejoinder and submissions in rejoinder were not on the Court's record as per the new directives of the Court. Therefore, this Ruling has been written without considering the Applicant's Affidavit and submissions in 15 rejoinder.

The Application

The grounds upon which this Application is premised are contained in the Affidavit of Sserwadda Mike (**the Applicant**) and they can be summarised as follows:

That the Applicant on 18th November 2021 was charged with: Terrorism contrary to Section 7 (1) (a) and 2 (b) & (d) of the Anti-Terrorism Act, 2002 (as amended); 3 alternative counts of Murder contrary to Sections 188 and 189 of the Penal Code Act, Cap. 120; 1 count of Attempted Murder contrary to Section 204 (a) of the Penal

25 Code Act, Cap. 120; and Aiding and Abetting Terrorism contrary to Section 8 of the Anti-Terrorism Act, 2002.

The Applicant's fundamental rights and freedoms were violated by the security and other armed forces at his arrest, during transportation and in illegal detention. In particular, the Applicant's fundamental right to: personal liberty; freedom from both psychological and physical torture, cruel, inhuman and degrading treatment and 5 punishment; and a fair, speedy and public hearing were violated. That it is unfair, illegal and unconstitutional to charge and try the Applicant in Criminal Session No. 04 of 2022 in as far as the same is mounted on infringement of his non-derogable and other rights and freedoms and the same should be declared a nullity and the Applicant acquitted and/or discharged.

That in the alternative, it is in the interest of justice, constitutionalism and rule of law that the Applicant be unconditionally released from detention and that the Prosecution will not be prejudiced in any way if the Application is granted.

15 In reply to the Application, the Respondents filed a total of 3 Affidavits in Reply which can be summarised as follows:

The first Affidavit in Reply was deposed by Mr. Richard Birivumbuka who stated that: he is a Chief State Attorney in the Office of the Director of Public Prosecutions 20 who was assigned to prosecute Criminal Session No. 04 of 2022; that the Application is based on hearsay evidence, is full of falsehoods and does not set out the true and correct account of events; that the Applicant from the time he was arrested in or about August 2021 but before he was committed to the High Court on 18th November, he had always appeared before the Chief Magistrate of Masaka where he 25 even recorded an extra-judicial statement and at no time did the Applicant ever raise any allegations of torture; that on 30th August 2021, the Applicant underwent a medical examination and the findings indicated the absence of any physical injuries suggestive of torture; that this

Application is an afterthought as the Applicant never made any complaint of torture up until he appeared before this honourable Court; that the Applicant's right to a fair hearing has at all material times been observed by the trial Court; that the Office of the Director of Public Prosecutions and the Uganda

5 Police Force have at all times executed their mandates in accordance with the law; and that it is just, fair and equitable that this Application be dismissed.

The second Affidavit in Reply was deponed by D/SP Mubangizi Innocent who stated that: he is a superintendent of Police who is currently serving as a Deputy Head of 10 investigations in Kampala Capital City Authority (KCCA) but in the year 2021, he was the District CID Officer at Masaka Central Police Station; that in August 2021, the Applicant was arrested and he recorded a Charge and Caution statement where he admitted to the offences he was charged with; that on 30th August, the Applicant recorded an extrajudicial statement before the Chief Magistrate of Maska and he 15 never raised any allegations of torture; that on the same date, the Applicant was medically examined and the findings indicated the absence of any physical injuries suggestive of torture; that the decision to charge the Applicant is based on evidence gathered during a thorough and impartial investigation and that he was lawfully arrested by the Uganda police and arraigned in Court; that between the time the 20 Applicant appeared before the Chief Magistrate until his committal to the High Court, the Applicant did not raise any allegations of torture as he was exceedingly cooperative that it did not necessitate any use of force as such this Application is an afterthought; that the Uganda Police Force and the Office of the Director of Public Prosecutions have at all times carried out their mandates in accordance with the law

25 as such the Application is misconceived, bad in law, an abuse of Court process, intended to circumvent and/or interfere with an ongoing criminal trial and should be struck out; that it is just, fair and equitable that this Application be dismissed.

The third Affidavit in Reply was deponed by Mr. Deogracious Ogwapit who stated: that he is a Senior Superintendent of Prisons and the former Officer in Charge of U. G. Prison Masaka Main; that he knows the Applicant who was remanded with 5 others to Masaka Main Prison; that at the time of the Applicant's admission, a physical examination was conducted as it is the standard procedure and that upon examination, the Applicant did not have any visible injuries and none were recorded and/or reported by the Applicant and he showed no signs of distress, did not request for any medical attention, nor did he require any medical treatment during his 10 remand at the Prison; that a review of the Applicant's medical records point to no evidence that he received any medical treatment for any injuries sustained while in custody and that from the time he was remanded until his committal to the High Court, the Applicant did not raise any allegations of torture; that this Application is an afterthought, it is misconceived, bad in law, an abuse of Court process, intended 15 to circumvent and/or interfere with an ongoing criminal trial and should be struck out; that the Uganda Prisons Service, the Office of the Director of Public Prosecutions and the Uganda Police Force have at all material times executed their mandates in accordance with the law; that it is just, fair and equitable that this Application be dismissed.

Issues

- 1. Whether the Applicant's human rights were violated; and
- 2. Whether the Applicant is entitled to any of the remedies he prayed for in the Application.

Resolution of Issues

Issue 1: *Whether the Applicant's human rights were violated.*

The Applicant in Affidavit in Support of the Notice of Motion listed a number of human rights that he claims were violated by the security and other armed forces at his arrest, during transportation and in illegal detention. The same can be categorised into three sub-headings for ease of reference and resolution of the said issue.

5 1) The fundamental right to personal liberty.

The Applicant both in his Affidavit and submissions made by his Counsel stated that his right to be informed in a language he understands, of the reasons for his arrest, restriction and detention; the right to be brought to Court as soon as possible but in any case, not later than 48 hours from the time of his arrest; the right to reasonable 10 access to his next-of-kin, lawyer and personal doctor were all violated.

In response, all Affidavits in Reply to the Application and submissions of Counsel for the Respondent state that all due process and procedures were followed during the arrest, detention and arraignment of the Applicant in Court. That the Applicant's 15 detention was necessary and justifiable as he was leading the security organs to other key suspects in other areas.

Court's determination

Chapter Four of the 1995 Constitution of the Republic of Uganda (as amended) 20 provides for the protection and promotion of fundamental and other human rights and freedoms. In particular, Article 20 provides that:

- *(1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.*
- *(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be* 25 *respected, upheld and promoted by all organs and agencies of Government and by all persons.*

Article 23 of the Constitution provides for protection of personal liberty. It stipulates, among others that no person shall be deprived of personal liberty except:

- a) in execution of the sentence or Order of a Court.
- b) a person arrested, restricted or detained shall be kept in a place authorized by 5 law.

- c) a person arrested, restricted or detained shall be informed immediately, in a language that the person understands, of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice.
- d) a person arrested or detained to bring him or her before a Court in execution 10 of an Order of a Court; or upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to Court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.
- 15 e) where a person is restricted or detained, the next-of-kin of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention; the next-of-kin, lawyer and personal doctor of that person shall be allowed reasonable access to that person; and that person shall be allowed access to medical treatment including, at the request and at the cost 20 of that person, access to private medical treatment.
- f) a person unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that other person or authority whether it is the State or an agency of the State or other person or authority.
- 25 Regarding the issue that the Applicant's right to be informed in a language he understands, of the reasons for his arrest, restriction and detention was violated, I find that the Applicant has not adduced any evidence to the satisfaction of this Court.

On the contrary, in his own Affidavit, the Applicant gives an account of what happened upon his arrest and how he was being questioned and how he was responding to the questions. By this, this Court can only conclude that the Applicant was spoken to in a language that he could understand because according to him, they

5 asked and he responded to the questions.

The Applicant also complained that his right to reasonable access to the his next-ofkin, lawyer and personal doctor was violated. However, from the reading of the Applicant's Affidavit in Support to his Application, I find that he did not provide 10 any evidence to prove the same. All that he avers therein is hearsay evidence. The Applicant did not make any effort to at least attach evidence from his relatives or next-of-kin whom he claims sought access to him at the various Police Stations he was detained at to substantiate his claim. In the absence of any evidence to support the said claims, I find that the Applicant's right to reasonable access to his next-of – 15 kin, lawyer and personal doctor was not violated.

In light of the above, I find that this first limb of this issue wholly fails.

- 2) **The fundamental right to freedom from both psychological and physical 20 torture, cruel, inhuman and degrading treatment or punishment.**

The Applicant claims that he was detained in illegal facilities in different places some of which were unknown to him from the time of his arrest on 24th August 2021 to 7th September 2021 when he was arraigned in Court. That he was beaten up, his eyes were sprayed with pepper, he was tied up and left hanging in the air, he was not given food nor water, his toe nails removed, stripped of his clothes in the cold and that he was only promised his freedom if he implicated or incriminated people belonging to the opposition party to wit: Allan Ssewanyana, Mohammad Ssegirinya and Wamala Bulu. That in a bid to save his life, the Applicant accepted to incriminate the aforesaid and he was coached on what to say about the killings in Masaka while he was being recorded on camera in the presence of the OC CID, Innocent Mubangizi.

Counsel for the Applicant in his submissions while relying on Section 2 (1) and the 2nd Schedule of the Prevention and Prohibition of Torture Act, 2012 (hereinafter referred to as **the PPTA**), the cases of **Dr. Kizza Besigye & Others versus Attorney General, Constitutional Petition No. 0007 of 2007*, *Paul Wanyoto Mugoya versus* 10 *Sgt Oumo & Attorney General Civil Appeal No. 0091 of 2021* and *Union Trade Centre Limited versus Attorney General of the Republic of Rwanda, East African**

- **Court of Justice Appellate Division Appeal No. 0001 of 2015**, referred to Paragraphs 5 and 6 of the Applicant's Affidavit in Support to the Application and stated that there is no required degree of proof of torture, for even the slightest torture is enough violation; that medical evidence is not a standard requirement for proving
- torture and that proof of torture may take the form of testimonial evidence (oral or affidavit), documents produced in the Court or other things (real evidence). Counsel then prayed that the Court regards the Applicant's affidavit evidence and expunges the Respondent's attached medical report off the Court record.

In response, the Respondent's deponents in their different Affidavits in Reply all aver to the fact that from the time the Applicant was arrested and remanded to the time he was committed to the High Court, the Applicant never raised any allegation of torture. That medical examinations were carried out on him and none of the 25 findings of the said examination indicated any physical injuries suggestive of torture and that these allegations are only but an afterthought.

Counsel for the Respondents while referring to Articles 120 and 212 of the Constitution of the Republic of Uganda, Section 101 of the Evidence Act, Section 2 (1) (b) of the PPTA and Article 1 of the Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the cases of **Irene Wambuli**

*5 *Muchai & Others versus the Attorney General, Kenya Constitutional and Human rights 211 of 2013*, *Uganda versus Nansamba, Criminal Session Case No. 0152 of 2015*, *Felix Cuthbert Esoko & Others versus Attorney General & Others Miscellaneous Cause No. 0042 of 2019* and *Ireland versus United Kingdom ECHR Application No. 5310/71**, defined torture, listed the ingredients of torture and stated 10 that the Applicant has to satisfy the Court of the allegation that he was tortured by

the Respondent's agents.

He further contended that the Applicant made mere allegations without attaching any evidence of any injuries suggestive of torture and that the Applicant was never 15 tortured since he attached no proof of severe pain whether physical or mental that was inflicted upon him. It was also the argument of the Respondents that owing to the intensity of his allegations, there should be sufficient corroborating statements to sufficiently prove his allegations

20 The Respondents insisted that the Courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment and only the worst examples are likely to satisfy the test. The Respondents also argued that the alleged actions in the Applicant's case are non-existent as all the actions done by the security agencies did 25 not amount to torture. On the contrary, the Applicant willingly cooperated and was helpful in the investigations that led to the arrest of others that were at large. As such, the Applicant had failed to prove on a balance of probabilities that he was tortured or that his rights to freedom against torture as provided for under the Constitution was violated.

Court's determination

- 5 Article 24 of the 1995 Constitution of the Republic of Uganda (as amended) provides for respect for human dignity and protection from inhuman treatment. It stipulates that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.
- 10 Article 44 of the same stipulates freedom from torture and cruel, inhuman or degrading treatment or punishment as one of the non-derogable rights.

Section 1 of the PPTA defines torture. It provides that:

- *(1) In this Act, torture means any act or omission, by which severe pain or suffering whether* 15 *physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as—*
- *(a) obtaining information or a confession from the person or any other person;*
- *(b) punishing that person for an act he or she or any other person has committed, or is* 20 *suspected of having committed or of planning to commit;*
- *(c) or intimidating or coercing the person or any other person to do, or to refrain from doing, any act.*
- *(2) For purposes of this Act, "severe pain or suffering" means the prolonged harm caused by or resulting from—*
- 25 *(a) the intentional infliction or threatened infliction of physical pain or suffering;*

- *(b) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;*
- *(c) the threat of imminent death;*

12

- *(d) or the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.*
- 5 *(3) Without limiting the effect of subsection (1), the acts constituting torture shall include the acts set out in the Second Schedule.*
- *(4) The definition of torture set out in subsection (1) does not include pain or suffering arising from, inherent in or incidental to a lawful sanction.*
- 10 The Second Schedule of the PPTA categories torture into three categories that is: physical torture, mental or psychological torture and pharmacological torture and lists the following as acts constituting torture:
 - *1. Physical torture including—*
 - *(a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts;*
 - 15 *jumping on the stomach;*
 - *(b) food deprivation or forcible feeding with spoiled food, animal or human excreta;*
 - *(c) electric shocks;*
 - *(d) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices;*
 - 20 *(e) the submersion of the victim's head in water or water polluted with excrement, urine, vomit or blood;*
 - *(f) being tied or forced to assume a fixed and stressful body position;*
 - *(g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;*
 - 25 *(h) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue;*
 - *(i) dental torture or the forced extraction of the teeth;*
 - *(j) harmful exposure to the elements such as sunlight and extreme cold; or*

- *(k) the use of plastic bags and other materials placed over the victim's head with the intention* 30 *to asphyxiate.*
- *2. Mental or psychological torture including—*
- *(a) blindfolding;*
- *(b) threatening the victim or his or her family with bodily harm, execution or other wrongful acts;*
- 5 *(c) confining a victim incommunicado, in a secret detention place or other form of detention;*
- *(d) confining the victim in a solitary cell or in a cell put up in a public place;*
- *(e) confining the victim in a solitary cell against his or her will or without prejudice to his or her security;*
- *(f) prolonged interrogation of the victim so as to deny him or her normal length of sleep or*
- 10 *rest;*
- *(g) maltreating a member of the victim's family;*
- *(h) witnessing the torture sessions by the victim's family or relatives;*
- *(i) denial of sleep or rest;*
- *(j) shame infliction such as stripping the victim naked, parading the victim in a public place,* 15 *shaving the head of the victim, or putting a mark on the body of the victim against his or her will;*
- *3. Pharmacological torture including— (a) administration of drugs to induce confession or reduce mental competence;*
- 20 *(b) the use of drugs to induce extreme pain or certain symptoms of diseases; and*
- (c) *other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.*

Thus, from the reading of Section 2 (1) of the PPTA, the ingredients of torture 25 include the following:

- 1. An act or omission which causes severe pain or suffering whether physical or mental;
- 2. The pain or suffering is intentional;
- 3. The pain or suffering is inflicted or instigated or done with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity;

- 4. The pain or suffering is inflicted or instigated for purposes of obtaining 5 information or a confession, punishment, intimidation or coercion; and
- 5. The pain or suffering is inflicted on the Complainant/ Applicant.

Considering the Application and the submissions of both parties in their entirety, I find that whereas the Applicant alleges several ways by which he was tortured, he 10 does not back his allegations with any evidence to support them.

For example, the Applicant states that he was transferred from one Police Station to another. Diligence would have it that the Applicant through his lawyer at least provide Court with records to show that he was detained in all the different Police 15 Stations that he mentions in his Affidavit in Support to his Application because it is expected that he is registered upon arrival or departure from those Police Stations.

However, the Respondents denied that allegation and through the Affidavit D/SP Mubangizi Innocent, the then District CID Officer Masaka revealed in paragraph 11 20 that when the DPC Masaka arrested the Applicant, he was immediately brought to Masaka CPS from where the interrogations were done.

The Applicant also alleges that his toe nails were removed, I would at least expect a picture of the same or at least a medical report ascertaining the period as to which 25 his toe nails have been missing but this evidence was not availed to this Court. The Respondents rebutted this claim through the Affidavit of Deogracious Ogowapit, a Senior Superintendent of Prisons in charge of Masaka Main Prison who stated that

that when the Applicant was admitted in Masaka Prisons, a physical examination was conducted as is a standard procedure and from the examination he had no visible injuries and none were recorded and or reported by the Applicant. He also averred that the Applicant showed no signs of distress. He also attached a record from 5 Prisons concerning the Applicant and it was annexed as "C".

The Respondent also adduced evidence of PF24, the medical examination of the Applicant through the affidavit of D/SP Mubangizi Innocent which was annexed as "E" which reveals that there were no injuries the Applicant. Whereas Counsel for 10 the Applicant prayed that the said medical report be expunged off the Court's record, he does not provide reasons as to why that should be done. Is it because he thinks that it is not authentic? If that is the case, then he needed to prove so. Also, neither

the Applicant nor his Counsel provided contrary evidence to the said medical report. It is trite that he who alleges must prove. Without any evidence to contravene the 15 said medical report, I find no reason to expunge it off the Court's record.

The Applicant further alleges that he was forced to record his statement on camera while implicating some of his co-accused. I would have expected the Applicant to at least avail this Court with the said evidence or camera footages in order to help Court 20 ascertain what condition he was in.

From the reading of the entire Applicant's Affidavit in Support of his Application and his submissions, I find that apart from making allegations, he did not make any effort to furnish the Court with any evidence to support his claims. The Burden of

25 Proof was upon him pursuant to Section 101 of the Evidence Act, Cap 8 (Revised Edition 2023) which provides that:

"*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"*

Section 103 thereof provides that:

5 "*The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by nay law that the proof of that fact shall lie on any particular person."*

Section 106 further provides that:

10 "*In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person.*"

As already observed and in agreement with the case cited by Counsel for the respondents, to wit, *Felix Cuthbert Esoko versus Attorney General & Others*

15 *Miscellaneous Application No. 42 of 2019* where it was held that Courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment, I find that the Applicant failed to adduce any evidence to prove any of the alleged acts or facts of torture. As such this limb of this issue also fails.

3) The Applicant's right to a fair, speedy and public hearing

The Applicant avers that he was arrested on 24th August 2021 and arraigned in Court on 7th September 2021 after a month in illegal detention which violated his right to a fair, speedy and public hearing as guaranteed under Articles 28 (1) and 44 (c) of 25 the Constitution of the republic of Uganda (as amended).

In his submissions, Counsel for the Applicant while citing the case of *Rights Trumpet and 2 Others versus AIGP Asan Kasingye & Others High Court*

Miscellaneous Causes No. 17 and 3 of 2017 submitted that the respondents do not deny the fact that the Applicant was held in custody way beyond the constitutional standard and neither do they give a justifiable reason for their conduct; that whatever is not denied is taken to be accepted

by the Respondents; that the duration spent in 5 custody does not matter, what is of essence is the fact that the Applicant was kept beyond the required 48 hours rule; that the matter before Court was set down for pretrial, unfortunately, it is over six months, the respondents have intentionally refused to conclude the process of disclosures to the extent that there is no physical inspection done.

In response, Counsel for the Applicant while citing the cases of *Uganda versus Sserwadda Mike Miscellaneous Cause No. 0014 of 2022 which referred to the case of Juma and others versus Attorney General [2003] 2 EA 461, [2003] AHRLR 179, Kitutu Mary Gorreti kimono versus A. G Miscellaneous Application No. 0053 of*

15 *2023, Soon Yeon Kong Kim and Kwanga Mao versus Attorney General, Constitutional Reference No. 0006 of 2007, and Dr. Stella Nyanzi versus Uganda Criminal Appeal No. 0079 of 2019*, submitted that if there are any issues regarding disclosures, it is an issue for the trial Court and should not be raised in this Application; that the trial Court has power to assess and determine whether 20 disclosures should be made, when and how depending on the unique circumstances of each case; that the respondent through the Uganda Police and the DPP exercised their constitutional and statutory mandates appropriately; that the DPP under Article 120 (5) of the Constitution is given power to have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal 25 process; that it should be noted that a fair trial is not just about protecting suspects and perpetrators of offences but it is a representation of a safe and strong democratic society; that the Uganda Police and the DPP exercised their Constitutional and

Statutory mandates appropriately and in accordance with the law and that at all material times, the Applicant's rights to a fair hearing were observed and respected.

Court's determination

5 Article 28 of the 1995 Constitution of the Republic of Uganda (as amended) provides for the right to a fair hearing. Clause 1 of the same stipulates that, in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

Clause 3 of the same provides for different components of a right to a fair hearing which include: that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty; be informed immediately, in a language that the person understands, of the nature of 15 the offence; be given adequate time and facilities for the preparation of his or her

defence; be permitted to appear before the Court in person or, at that person's own expense, by a lawyer of his or her choice; in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State; be afforded, without payment by that person, the assistance of 20 an interpreter if that person cannot understand the language used at the trial; be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the Court.

The Applicant did not provide any evidence that points to the derogation of his right 25 to a fair, speedy and public hearing. He has not proved to this Court that ever since 7 th September 2021 when he was first arraigned in Court, he has failed to appear in Court as scheduled or has been deprived in anyway of any aspect of his right to a

fair hearing. As the Judge handling the pre-trial, I would like to note that all the delays that have occasioned in this trial have been perpetrated by the Accused persons in this matter, the Applicant inclusive. It is also not true that the Prosecution has intentionally refused to conclude the process of disclosures. There are 5 complexities in HCT-00-ICD-SC-0004-2022 (main suit) from which this Application arises which I shall not discuss herein but are well known by both the Applicant and his Counsel which is the reason as to why the main suit has moved at the pace it is at currently and I find it is not proper for the Applicant to shift the blame of not having a speedy trial to the Prosecution and/or this Court.

In light of the above, therefore, I find that the Applicant's right to a fair, speedy, and public hearing has not been derogated. This limb of this issue like all others equally fails.

15 Issue 2: *Whether the Applicant is entitled to any of the remedies he prayed for in the Application.*

The Applicant prayed for several remedies to wit:

- a) A declaration that the Applicant's non-derogable right to freedom from torture, cruel, inhuman treatment and degrading treatment was violated by 20 the Respondent, its agents and/or servants contrary to Article 24 and 44 (a) of the 1995 Constitution;
- b) A declaration that the right of the Applicant to a fair, speedy and public hearing as guaranteed under Articles 28 (1) and 44 (c) of the Constitution of the Republic of Uganda (as amended) was and is being infringed upon and/or 25 threatened by the Respondent, its agents and/or servants;
- c) A declaration that the Applicant's right to personal liberty was violated by the Respondent, its agents and/or servants, contrary to Article 23 (2), (3), (4) and (5) of the 1995 Constitution;
- d) A declaration that the current trial of the Applicant under Criminal Session 5 No. 04 of 2022 (Uganda versus Sserwadda Mike & 5 Others) is a nullity;
- e) An Order acquitting the Applicant and/or discharging and/or releasing him immediately;

- f) An Order directing the Respondent to facilitate and/or pay for the Applicant's treatment and rehabilitation at the African Center for Treatment and 10 rehabilitation of Torture Victims (ACTRTV), or any other similar facility;
- g) An Order that the Respondent pays the Applicant compensation/damages for the above human rights violations;
- h) An Order for interest on the compensation above at a rate of 25% per annum from the time the first respective violations happened till payment in full;
- 15 i) An Order that the Respondent pays the Applicants the costs of this Cause.

In the alternative, Orders that:

- j) The Applicant be unconditionally released from prison (Luzira Upper Prison);
- 20 k) Costs of this Application.

On the other hand, the Respondent prayed that the Application be dismissed.

Court's determination

25 Section 11 of the Human Rights (Enforcement) Act, 2019 provides for the remedies available to an Accused where Court determines that there was a derogation from their non-derogable rights and freedoms. The remedy provided for in this Section of

the law is that, the trial shall be declared a nullity and the Accused person shall be acquitted.

I have considered the submissions of both Counsel regarding the remedies. 5 However, having determined that there isn't sufficient evidence to support any of the Applicant's claims of violation of his fundamental human rights, none of the above-mentioned remedies is granted to him.

Conclusion

10 In light of the above, therefore, this Application wholly fails and is dismissed with no order as to costs.

Dated at Kampala this 23rd day of September 2024.

.....

15 Alice Komuhangi Khaukha **Judge** 23/09/2024

20

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcid/2024/13/eng@2024-09-23>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/sserwadda-v-uganda-miscellaneous-application-16-of-2024-2024-ughcid-13-23-september-2024-and-others-unknown-topic-unknown-court-2024--6a3ea4d93b1caa91297e590b>

Prepared on 14 October 2026 · Esheria