

UGANDA / JUDGMENT

Tumwesigye v Uganda (Miscellaneous Application 133 of 2025) [2025]

UGHCCRD 18 (17 April 2025)

[2025] UGHCCRD 18

COURT

HC: Criminal Division (Uganda)

BEFORE

Muwata, J

CASE / FILE NUMBER

Miscellaneous Application 133 of 2025

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA CRIMINAL DIVISION

CRIMINAL MISCELLEANOUS APPLICATION NO. OI33 OF 2025 ARISING FROM CRIMINAL NO. UPDF/GCNII02ZIZOZO

TUMWESIGYE ENOCK APPLICANT

VERSUS

UGANDA RESPONDENT

BEFORE HON: JUSTICE ISAAC MUWATA

RULING

This is an application for mandatory bail brought by the Applicant, Tumwesigye Enock, a civilian currently detained at Kitalya Government Prison. The Applicant contends that he has been in detention for over 1,500 days (approximately 4 years) without trial, following his arrest and arraignment before the General Court Martial. The application is grounded in Article 23(6)(c) of the 1995 Constitution of Uganda, Sections 14 and 15 of the Trial on Indictments Act, Paragraphs 10 and ¹ of the Judicature (Bail Guidelines) (Practice Direction), 2022, Articles 139(2) and 126(2)(e) of the Constitution, and Sections V and 17(2) of the Judicature Act.

The Applicant seeks release on mandatory bail, arguing that his prolonged detention without trial violates his constitutional rights to liberty, a fair and speedy trial, and the presumption of innocence. He further contends that the General Court Martial lacks jurisdiction over him as a civilian, and that this Court should exercise its inherent powers to grant the relief sought.

Background

The Applicant was first arrested on 4th September 2019 in Rubanda, charged with murder under CRB 33212019. The charges were withdrawn by the Director of Public Prosecutions (DPP) on 9th December 2019. On 1st January 2021, the Applicant was re-arrested and on 22nd March 2021 and he was arraigned before the General Court Martial and charged with murder, despite being a civilian. The Applicant has remained in detention without committal for trial for a period exceeding 1,500 days as of the date of this application.

Applicant's Submissions

Counsel for the Applicant submitted that the General Court Martial lacks jurisdiction over the Applicant, as he is a civilian and not a member of the armed forces. Counsel relied on *Attorney General v. Hon. Michael Kabaziguruka*, Constitutional Appeal No. 2 of 2021, and *Gen. David Sejusa v. Uganda*, HCMA No. 15 of 2016, which affirmed that military courts lack jurisdiction over civilians, and that the High Court has supervisory jurisdiction to intervene.

It was further argued that this Court should exercise its inherent powers under Section 17(2) of the Judicature Act to prevent abuse of process, ensure an expeditious trial, and administer substantive justice, as was done in *Shabahuria Matia v. Uganda*, Criminal Revision Case No. 05 of 1999.

Counsel also submitted that the Applicant's detention for over 1,500 days without trial far exceeds the constitutional threshold of 180 days under Article 23(6) (c) of the 1995 Constitution and Section 15(2) of the Trial on Indictments Act, entitling him to mandatory bail.

The Applicant invoked his rights to personal liberty and the presumption of innocence under Article 28(3) (a) of the Constitution, citing *Uganda v. Col. Dr. Kiiza Besigye & Others*, Constitutional Reference No. 20 of 2005, which held that bail must be granted unless the State provides compelling reasons to the contrary.

Respondent's Submissions

The Respondent opposed the application, raising these arguments against the grant of bail: a) The seriousness of the offence of murder, which carries ^a maximum penalty of death, warrants the Applicant's continued detention. b) There is a likelihood that the Applicant may abscond if released on bail, given the gravity of the charge. c) The Applicant may interfere with witnesses or obstruct the course of justice if granted bail.

Consideration

The issue now is whether this Court should exercise its inherent powers under Section 17(2) of the Judicature Act to grant the Applicant bail. This issue is closely tied to the jurisdictional question.

Article 139(l) of the Constitution specifically establishes the High Court and vests it with unlimited original jurisdiction in all matters civil and criminal, as well as such other jurisdiction as may be conferred upon it by the Constitution or any other law.

In *Attorney General v. Hon. Michael Kabaziguruka*, Constitutional Appeal No. 2 of 2021, the Supreme Court held that military courts lack jurisdiction to try civilians and ordered the transfer of such cases to civilian courts. The Court emphasized that the jurisdiction of military courts is limited to members of the armed forces and offences under military law, neither of which applies to a civilian charged with a civil offence like murder.

Following that order from the Supreme Court, there is no evidence from the prosecution that the applicant's file has been transferred to the civilian court as ordered by the Supreme Court.

The applicant, a civilian charged before the General Court Martial in proceedings subsequently declared illegal by the Supreme Court, has been on remand for over four years without any committal proceedings or trial. There is uncertainty as to when his file will be transferred to the civil courts and that his continued detention

is a violation of his rights. It is on that basis that the applicant seeks to invoke the inherent powers of this court to grant him mandatory bail.

The inherent powers of the High Court are invoked in very rare and exceptional circumstances. These powers are resorted to where no statutory law exists to address a legal dispute. In such scenarios, the inherent powers of the court may be invoked to fill the lacuna created, ensuring a just outcome. See: *Eron Kizza Vs Uganda*, HCMA No.118 of 2025.

Furthermore Justice Michael Elubu, while granting bail pending appeal in *Eron* (Supra), invoked the powers of the High Court as provided for in Article 139(l) of the Constitution and section 17(2) of the Judicature Act, holding as follows:

"There should be no uncertainty in the application of the law; rather, it should be predictable and inspire confidence. Uncertainty is an injustice that may result in oppression. "

Section 17(2) of the Judicature Act therefore empowers the High Court to exercise its inherent powers to: Prevent abuse of process; Ensure expeditious trials; and Administer substantive justice.

In *Shabahuria Matia v. Uganda*, Criminal Revision Case No. 05 of 1999, the High Court exercised its inherent jurisdiction to release an accused person detained for over four years without trial. The Court emphasized that the High Court must protect its ability to function as a forum of justice and not an agent of oppression, particularly in cases where prolonged detention without trial constitutes an abuse of process.

The Applicant's detention for over 1,500 days without trial, under the authority of a tribunal that lacks jurisdiction, is a clear abuse of process. The General Court Martial's lack of jurisdiction over the Applicant renders his continued detention unlawful from the outset, and the failure to transfer his case to a competent court

in time has resulted in a gross violation of his right to an expeditious trial and the right to apply for bail.

Article 126(2) (e) of the Constitution mandates courts to administer justice without undue regard to technicalities. It would be unjust for this Court to decline jurisdiction or refuse to intervene simply because the Applicant is detained under the authority of the General Court Martial. The High Court's role in preventing abuse of process requires it to step in and remedy such violations.

In the instant case, there is no doubt that the High Court possesses the inherent power and is vested with the jurisdiction to grant bail to any accused person, including those charged with capital offenses. This is enshrined in Article 23(6) of the Constitution of Uganda and further detailed in the Trial on Indictments Act.

Where a civilian was initially charged in the former court martial, any subsequent bail application falls under the jurisdiction of the ordinary courts and an accused is at liberty to exercise that right to apply for bail. For offenses typically tried by the High Court, such as murder (a capital offense), the bail application is properly made before the High Court and is considered based on the standard legal principles governing bail in this court, irrespective of the prior, unconstitutional proceedings in the military court.

Having established that the General Court Martial lacks jurisdiction and that this Court has the power to intervene, I now turn to the question of whether the Applicant is entitled to mandatory bail under Article 23(6) (c) of the ¹⁹⁹⁵ Constitution and Section 15(2) of the Trial on Indictments Act.

Article 23(6) (c) of the constitution provides that a person charged with an offence triable by the High Court shall be released on bail after 180 days of remand without committal.

The Applicant has been in detention for over 1,500 days (approximately 4 years) without trial, a period that grossly exceeds the constitutional threshold of ¹⁸⁰ days.

The law is unequivocal: after 180 days of remand without committal for trial, bail becomes mandatory unless exceptional circumstances are demonstrated by the State.

The Respondent raised arguments against the grant of bail, namely the seriousness of the offence, the likelihood of the Applicant absconding, and the potential for interference with witnesses. However, these arguments were not supported by any evidence or proof.

The law places the burden on the State to provide compelling reasons to deny bail once the constitutional threshold for mandatory bail is met. In *Uganda v. Col. Dr. Kiiza Besigye & Others*, Constitutional Reference No. 20 of 2005, the Constitutional Court emphasized that mere assertions by the prosecution, without evidence, are insufficient to deny bail.

In the absence of proof, the Respondent's arguments remain speculative and cannot override the Applicant's constitutional entitlement to bail. I find that the Respondent has failed to discharge its burden of demonstrating exceptional circumstances that would justify the continued detention of the Applicant.

I find that the Applicant has satisfied the requirements for mandatory bail under Article 23(6) (c) of the Constitution and Section 15(2) of the Trial on Indictments Act. His detention for over 1,500 days without trial and committal qualifies him to be released on mandatory bail.

Accordingly, the applicant is granted bail on the following terms:

- 1. The applicant shall deposit a cash bail of Shs.2,000,000/= (two million shillings).
- 2. Each of the sureties presented in court shall execute a non-cash bond of Shs. 10,000,000/= (ten million shillings) each.
- 3. The applicant shall report to the Deputy Registrar of this Court every first Monday of the month, commencing on Monday, May 5, 2025 until the determination of his case or further orders by this court.

I so order.

(Judge t1t04t2025

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Prepared on 12 October 2026 · Esheria