

UGANDA / JUDGMENT

Uganda v Edema William (Criminal Sessions Case No. 0104 of 2016) [2018] UGHCCRD 90 (26 February 2018)

[2018] UGHCCRD 90

COURT

HC: Criminal Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Criminal Sessions Case No. 0104 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI

CRIMINAL SESSIONS CASE No. 0104 OF 2016

UGANDA PROSECUTOR

VERSUS

EDEMA WILLIAM ACCUSED

Before Hon. Justice Stephen Mubiru

PROCEEDINGS

12th February, 2018

9.58 am

Attendance

Ms. Baako Frances, Court Clerk.

Mr. Okello Richard, Principal State Attorney, for the Prosecution.

Mr. Lebu William, Counsel for the accused person on state brief is present in court

The accused is present in court.

Court: the indictment is read and explained to the accused person in the Madi Language.**Accused:** I have understood the indictment. It is not true

Court: A plea of not guilty is entered...

Stephen Mubiru

Judge

12th February, 2018

Court: The following are selected as assessors;

Assessor No. 1: Ms. Adokey Esther, 24 years old, Social Worker at Adjumani Hospital, Resident in Adjumani Town Council.

Assessor No. 2: Mr. Vusso Paulino, 60 years old, Senior Citizen, Resident at Ciforo, in Adjumani District.

Accused: I have no objection to any of the selected assessors

Principal State Attorney: I have no objection to any of the selected assessors

Defence Counsel: I have no objection to any of the selected assessors

Court: Both are hereby appointed as assessors in this case. Hearing of the case shall start on the 20th February, 2018 at 9.00 am. The accused person is remanded until then.

Stephen Mubiru

Judge

12th February, 2018.

20th February, 2018

5.52 pm

Attendance

Ms. Baako Frances, Court Clerk.

Mr. Okello Richard, Principal State Attorney, for the Prosecution.

Mr. Lebu William, Counsel for the accused person on state brief is present in court

The accused is present in court.

Resident state Attorney: we have no witnesses in court. I pray for an adjournment.

Defence Counsel; I have no objection

Court: Hearing of the case is adjourned to the 26th February, 2018 at 9.00 am. The accused person is remanded until then.

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Stephen Mubiru

Judge

20th February, 2018.

26th February, 2018

4.41 pm

Attendance

Ms. Baako Frances, Court Clerk.

Mr. Okello Richard, Principal State Attorney, for the Prosecution.

Mr. Lebu William, Counsel for the accused person on state brief is present in court

The accused is present in court.

Resident state Attorney: we have no return of service although the witness summonses were sent out. I cannot tell whether the witnesses were contacted. I pray for one more adjournment.

Defence counsel: this case was cause listed during the previous session and witnesses did not turn up. It was adjourned to this session and still no witnesses have turned up. There is no guarantee that they will turn up during the next session. I pray that the case be dismissed.

Court; I have considered the circumstances of this case and the fact that the offence is alleged to have been committed during May 2016, yet to-date there are no prospects of an expeditious prosecution. The case was listed for two previous sessions of this court, one in December, 2016 and the other in October, 2017 and still the prosecution witnesses were unavailable. Courts are required to pay great attention to the need for expedition in the prosecution of criminal proceedings. Delays are scandalous, they bring the law into disrepute. Criminal justice should be speedy justice.

Under section 53 of *The Trial on Indictments Act*, absence of witnesses may form the basis of adjournment of a trial but such absence ought to be explained if court is consider it necessary or advisable to postpone the trial. When witnesses, who was clearly and obviously willing witnesses, are unable to attend a hearing because of problems beyond their control, that may indeed justify an adjournment. However unexplained absence of witnesses will not constitute sufficient cause to warrant an adjournment. It is therefore the duty of investigating officers to advise witnesses to provide, maintain and update contact addresses with them, in order to guarantee that they can be reached at short notice whenever the cases are fixed for hearing, and in case of unavailability, to furnish reasons. The prosecution ought to understand that it cannot rely on its own serious failures to notify witnesses.

In applications for adjournment, the court considers both the interest of the accused in getting the case dealt with and the interest of the public that criminal charges should be adjudicated upon, the guilty convicted as well as the innocent acquitted. While the interests of the accused

must always be borne in mind, including his or her legitimate expectation to be dealt with promptly, a proper balance must be struck between those interests and the general public interest in prosecuting and convicting offenders. With serious charges, the public interest that there be a trial will carry greater weight. However, when there is no clear prognosis as to when the witnesses will be able to attend court, there may be little point in adjourning a trial. There may be no point in adjourning a case further in a situation where the whereabouts of the witnesses are unknown and no contact has been established with any of them. It is generally accepted that when granting an adjournment, courts are bound to ensure the avoidance of hardship to the parties involved, particularly when an accused who has yet to be found guilty for the offence(s) that he or she is being indicted with, is still languishing under remand.

Keeping an accused on remand leading up to his or her trial may be justifiable for a number of reasons;- where the accused has previous convictions for similar offences; where there is reason to believe that the accused may fail to turn up at the trial; where there is reason to believe that the accused may interfere with witnesses; or where there are reasonable grounds to believe the accused would commit further offences before their trial. Central to all these considerations is the need to minimise the risk that the accused may by his or her acts or omissions, cause a delay or failure of his or her trial, if he or she is at liberty during the period leading up to the trial. Implicit in remanding an accused therefore is an undertaking by the state to ensure an expeditious trial. I have no doubt there is a public interest in trials taking place on the date set for trial and that trials should not be adjourned unless there is good and compelling reason to do so.

In a situation such as this where the state cannot provide a clear prognosis as to when the witnesses will be able to attend court, it is no longer in position to guarantee the accused an expeditious trial. For that reason, further adjournment of the case risks violation of the constitutional right of the accused to a fair and expeditious trial, in which case it would amount to an abuse of court process. I therefore invoke the provisions of section 17 (2) of *The Judicature Act* and dismiss the case forthwith for want of prosecution.

The accused is accordingly discharged and should be set free forthwith unless he is being held for other lawful reason.

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Stephen Mubiru

Judge

26th February, 2018

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