

UGANDA / JUDGMENT

Uganda v Kiyemba (HCT-00-ICD-CR-SC 1 of 2023) [2023] UGHICID 12 (2 May 2023)

[2023] UGHICID 12

COURT

HC: International Crimes Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

HCT-00-ICD-CR-SC 1 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (INTERNATIONAL CRIMES DIVISION) HCT-00-ICD-SC-0001-2023

5 UGANDA PROSECUTOR

VERSUS

JAMAL KIYEMBA A. K. A ABDULLAH ACCUSED

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA

10 RULING FOR CONFIRMATION OF CHARGES

Introduction

This ruling is in respect of a pre-trial and confirmation of charges whose hearing was conducted in the above case file (HCT-00-ICD-SC-0001-2023) between the dates of 21st February 2023 to 28 th March 2023.

Jamal Kiyemba a.k.a Abdullah (hereinafter referred to as **the accused**) is indicted on three (3) counts that is, rendering support to a terrorist organisation contrary to section 8 of the Anti-Terrorism Act, 2002; belonging or professing to belong to a terrorist organisation contrary to section 11 (1) (a) and (3) of the Anti- Terrorism 20 Act, 2002; and soliciting or inviting support for a terrorist organization contrary to section 11 (1) (b) and (3) of the Anti-Terrorism Act, 2002.

During the pre-trial, the charges were read and explained to the accused persons in English but he was not allowed to plead to them because he could only do so at his 25 trial before the trial judge/ panel should this court confirm these charges.

Representation

The prosecution was represented by Ms. Jacquelyn Okui, a Senior State Attorney from the Office of the Director of Public Prosecutions while the accused was represented by Mr. Geoffrey Turyamusiima of M/S Wameli & Co. Advocates on 5 private brief.

Facts as disclosed by the prosecution

It is the prosecution's allegation that the accused between 2021 and January 2022, in the Democratic Republic of Congo (hereinafter referred to as DRC) rendered 10 support to the Allied Democratic Forces (hereinafter referred to as ADF), a terrorist organization, by recruiting persons for it. It is also the prosecution's allegation that the accused between 2021 and January 2022, in DRC and Uganda, belonged or professed to belong to the ADF, a terrorist organization.

Furthermore, the prosecution alleges that on the 29th 15 day of January 2022 at about 9:30 am, the accused was at Ben Kiwanuka Street in Kampala heading to Bugiri District when he shouted "long live ADF" and advocated for people to support the ADF. That the accused then went to the Old Taxi Park where he boarded a taxi heading to Jinja-Iganga-Kamuli and was arrested therein. While under arrest, he said 20 he was a member, supporter and recruiter of ADF and that his most recent recruit was his son Jamil Abdallah Buyondo. The accused was then charged accordingly and committed to the High Court for trial.

Disclosure/List of exhibits presented by the Prosecution

25 The prosecution made their disclosure and presented the documentary exhibits that were identified and duly marked by court as required under the Judicature (High Court) (International Crimes Division) Rules, 2016 and the High Court

(International Crimes Division) Practice Directions, 2011. The exhibits comprise of: witness statements of the person who reported the accused, statements of officers who arrested and interrogated the accused, statements of the accused, call data records, call matrices and a technical analytical report of the subscriber telephone 5 number belonging to the accused.

Jurisdiction

Clause 6 (1) of the High Court (International Crimes Division) Practice Directions, 2011 provides for the jurisdiction of the International Crimes Division of the High 10 Court. It stipulates that:

"Without prejudice to Article 139 of the Constitution, the Division shall try any offence relating to genocide, crimes against humanity, war crimes, terrorism, human trafficking, piracy and any other international crime as may be provided for under the Penal Code Act, Cap. 120, the Geneva Conventions Act, cap. 363, the International Criminal Court Act, No. II of 2010 or* 15 *under any other penal enactment."* [Emphasis Mine]

All the charges against the accused are brought under the Anti-Terrorism Act, 2002. The said Act according to its long title was enacted to suppress acts of terrorism, **to provide for the punishment of persons who plan, instigate, support, finance or 20 execute acts of terrorism; to prescribe terrorist organizations and to provide for the punishment of persons who are members of, or who profess in public to be members of, or who convene or attend meetings of or who support or finance or facilitate the activities of terrorist organizations; to provide for investigation of acts of terrorism and obtaining information in respect of such acts including 25 authorizing of the interception of the correspondence of and surveillance of persons suspected to be planning or to be involved in acts of terrorism; and to provide for other connected matters.** [Emphasis Mine]

From the foregoing, it is clear that the charges brought against the accused persons under the Anti-Terrorism Act, 2002 are offences that are triable by the International Crimes Division of the High Court as stipulated under Clause 6 (1) of the High Court (International Crimes Division) Practice Directions, 2011. Therefore, this court has 5 jurisdiction to hear this matter.

Position of the Law

In all trials before the International Crimes Division of the High Court, it is a legal requirement to hold a pre-trial hearing. The practice of holding a pre-trial hearing 10 and confirmation of charges in criminal trials is a well-established procedure followed by the International Criminal Court. The International Crimes Division of the High Court of Uganda is a specialized court as established by the High Court (International Crimes Division) Practice Directions, Legal Notice No. 10 of 2011.

15 This Division of the High Court aims at operationalizing the international standards applicable in the International Criminal Court of the Rome Statute to which Uganda is a party and therefore, guiding the practice of this Court. In keeping with the International Law principle of **Pacta Sunt Servanda**, which simply means "agreements must be kept," Uganda having signed, ratified and domesticated the 20 Rome Statute by the enactment of the International Criminal Court Act, 2010 is bound to perform its obligations under that Instrument.

Article 61 (1) of the Rome Statute of the International Criminal Court (hereinafter referred to as **the Rome Statute**) stipulates that:

- 25 **"Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender or voluntary appearance before the Court, the pre-trial chamber shall hold a hearing to confirm**
- 4

the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the presence of the Prosecutor and the person charged, as well as his or her legal counsel. [Emphasis Mine]

5 In our jurisdiction, the legal requirement for holding a pre-trial hearing was introduced by the Judicature (High Court) (International Crimes Division) Rules, 2016 (hereinafter referred to as **the ICD Rules**) specifically under Rule 6 (2) which stipulates that:

"The Division shall, after an accused person has been committed for trial before the Division,
10 *hold a pre-trial conference..."*

The purpose of the pre-trial conference as per Rule 6 (2) (a)-(h) of the ICD Rules is to consider the facts of the case; the markings for identification of the evidence of the parties; any waiver of objections to admissibility of evidence; the settlement of 15 some or all of the issues; the status of victims and witnesses and any special needs of the witnesses; the accused person and the defence witnesses, if any; the necessary orders and directions to ensure that the case is ready for trial, and that the trial proceeds in an orderly and efficient manner, and obtaining of such orders; the modifications of the pre-trial order if the accused admits the charge but interposes a 20 lawful defence; and any other matters that will promote a fair and expeditious trial of the case.

However, it is prudent to note that the pre-trial hearing does not include hearing of witnesses as per Rule 12 (10) of the ICD Rules. The court is only expected to rely 25 on the summary of the case and the evidence that was disclosed by the Prosecution not later than fifteen (15) days before the date of the pre-trial as per Rule 21(1) of the ICD Rules.

Evidential Burden and Standard of Proof

In all criminal matters, the prosecution bears the evidential burden to prove all the elements of the offence charged except in certain offences which however are not the subject of this case (**See: *Woolmington versus DPP [1935] AC 462***). It is also 5 trite that the standard of proof in criminal cases is beyond reasonable doubt (**See: *Miller versus Minister of Pensions [1947] 2 ALL ER 327***).

However, this being a pre-trial, the evidential burden and the standard of proof will most likely differ since no witnesses are being called to testify and neither is any 10 evidence being examined at this stage. Our law does not stipulate the evidential burden and standard of proof that should be met by the prosecution during pre-trial hearings. (*See: Uganda versus Miria Rwigambwa HCT-00-ICD-SC-0006-2021; Uganda versus Nsungwa Rose Karamagi HCT-00-ICD-SC-0007 of 2021*) As such and as earlier noted, we shall adopt the evidential burden and standard of proof 15 provided by the Rome Statute.

In light of the above, I shall consider Article 61 (5) of the Rome Statute in relation to the confirmation of charges which provides that the prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the 20 person committed the crime charged. The prosecutor may rely on documentary or summary evidence and **need not call the witnesses expected to testify at the trial.** [Emphasis Mine]

Article 61 (7) of the Rome Statute further provides for the evidential burden and standard of proof. It stipulates that:

25 *The pre-trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on determination, the pre-trial Chamber shall:*

- *(a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a trial Chamber for trial on the charges confirmed;*
- *(b) Decline to confirm charges in relation to which it has determined that there is insufficient evidence;*
- 5 *(c) Adjourn the hearing and request the Prosecutor to consider:*
- *(i) Providing further evidence or conducting further investigation with respect to a particular charge; or*
- *(ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court."* [Emphasis Mine]

The concept of "substantial ground to believe" was defined in the case of *Mamatkulov and Askarov versus Turkey of 4th February 2005 (Applications Nos. 46827/99 and 46951/99)* by Judges Nicholas Bratza, G. Bonello and J. Hedigan in their dissenting opinion where they stated that "substantial grounds to believe" 15 means "strong grounds for believing". (See also: *Soering versus United Kingdom, Application No. 14038/88 (ECHR); The Prosecutor versus Thomas Lubanga Dyilo, ICC-01/04/06-803-TEN 14-05-2007 1/157*)

From the foregoing, the evidential burden and standard of proof required by the court 20 at the pre-trial stage must be strong and/or concrete and tangible in demonstrating or drawing a clear line of reasoning underpinning the accused to the specific allegations. (See: *Prosecutor versus Bosco Ntaganda ICC-01/04-02/06 at page 5*).

Thus, in determining whether the prosecution has met the above said evidential and 25 standard of proof threshold, the Chambers ought to recognize that the evidence the Prosecution presented must be analyzed and assessed as a whole as was held in the case of *The Prosecutor versus Germain Katonga and Mathien Ngudjolo Chui*

ICC-01/04-01/07 at page 23. This honorable court will adopt the same test in its evaluation of the evidence presented by the Prosecution in this case.

Issue

5 *Whether there is sufficient evidence to establish substantial grounds to believe that the accused persons committed each of the crimes they are charged with.*

Prosecution's submissions

The prosecution, on the first count of rendering support to a terrorist reiterated the 10 provision of section 8 of the Anti-Terrorism Act, 2002 submitted that it would rely on the evidence contained in the statements of Mugamba Anthony marked as PEX1 (ID), Sgt. Rwabihagaro Fred marked as PEX2 (ID) and Jamal Kiyemba marked as PEX5 (ID) where the accused while under arrest confessed to rendering support to ADF activities and admitted to being a recruiter from Namasuba, his most recent 15 recruit being his fourteen year old son, Jamil Abdallah Buyondo. Prosecution also submitted that they intended to rely on the call data records of the accused's phone that were marked as PEX6 (ID), his call matrices marked as PEX7 (ID) and the technical analytical report marked as PEX8 (ID).

20 On the second count of belonging or professing to belong to a terrorist organization, prosecution relying on section 11 (a), section 2, section 10 and the 2nd schedule of the Anti-Terrorism Act, 2002 submitted that the Allied Democratic Forces (ADF) is listed as a terrorist organization and that it would rely on the evidence of Mugamba Anthony that is marked as PEX1 (ID), Sgt. Rwabihagaro Fred marked as PEX2 (ID) 25 and Jamal Kiyemba marked as PEX5 (ID) where the accused confessed that he was a member, supporter, trainer and recruiter of the ADF. Prosecution also submitted that they intended to rely on the call data records of the accused's phone that were

marked as PEX6 (ID), his call matrices marked as PEX7 (ID) which indicate that the accused was in a network of ADF members and was communicating with them and therefore one of them.

5 On the third count of soliciting or inviting support for a terrorist group, prosecution while relying on section 11 (b), section 2, section 10 and the 2nd schedule of the Anti-Terrorism Act, 2002 submitted that the accused confessed that he has been recruiting for the ADF since 2006 and his recent recruit was his fourteen-year-old son Jamil Abdullah Buyondo. Prosecution intends to rely on the statement of Mugamba 10 Anthony marked as PEX1 (ID) and the charge and caution statement of the accused marked as PEX5 (ID).

Prosecution therefore prayed that the pre-trial court be pleased to rule that there are substantial grounds to believe that the accused person committed each of the 15 offences charged given that there is corroborated evidence in support of all the elements of the offences charged.

Defence's submissions

Counsel for the accused made two broad arguments namely: that under the 20 Constitution, an accused is presumed to be innocent until proven guilty or when he/she pleads guilty and the prosecution has the legal burden to prove a case against an accused person beyond reasonable doubt; and that the evidence tendered by the prosecution is manifestly unreliable that no reasonable court could safely confirm the charges against the accused.

Thus, Counsel for the accused while relying on **Article 28 (3) (a)** of the Constitution of the Republic of Uganda and the case of **Uganda versus Aggrey Kiyingi & 2* *Others** submitted that it is a cardinal principle of criminal law that the burden of proving the guilt of an accused person solely lies on the prosecution and that in the instant case, the prosecution did not tender sufficient evidence to support the charges to warrant the confirmation of the charges against the accused.

Counsel for the accused on the first count of rendering support to a terrorist organization reiterated the provisions of section 8 and submitted that the statements that the prosecution intends court to rely on are vague regarding what the accused stated/said that amounts to him rendering support to a terrorist organization. That the evidence tendered in by the prosecution were just mere utterances made by the accused person that need to be corroborated before they can be relied upon. As such, the evidence on record is not enough to sustain the charge.

- Counsel for the accused while relying on the cases of **Fredrick Zaabwe versus* 15 *Orient bank & 5 Others Civil Appeal No. 4 of 2006** and **Makula International Limited versus His eminence Cardinal Nsubuga & Another Civil Appeal No. 4 of 1981** further submitted that the documents prosecution submitted to court cannot be relied upon because they are defective. Counsel stated that the call data records were not certified; the call matrices were merely pictorial, not certified or signed by the person who authored it; the technical analytical report indicates that telephone number 0708413139 is registered in the name of Kaleeba Anthony and not that of the accused; the application for call data records of Jamal Kiyemba is not certified, that the CRB number indicated thereon is not for the file before this honourable court and that the commissioner for oaths that signed on the said document was the same as the judicial officer.

Counsel for accused made no submission regarding count two which is, "belonging or professing to belong to a terrorist organization".

Regarding the third count of soliciting or inviting support for a terrorist organisation, Counsel for the accused stated the ingredients of the offence and submitted that the utterances made by the accused were his prayer and it was not proved whether the accused was in his right state of mind when he made the alleged utterances. That his involvement in ADF activities should have been corroborated with pictorial evidence of him rendered either at the training camp or in immediate possession of the people he is alleged to have recruited or in transit of such people to a training camp or him personally training them otherwise mere utterance is not sufficient enough to sustain a charge for one to be convicted as the standard of prosecution required is one beyond reasonable doubt.

15 Resolution of issue

Whether there is sufficient evidence to establish substantial grounds to believe that the accused persons committed each of the crimes they are charged with.

COUNT 1: RENDERING SUPPORT TO A TERRORIST ORGANISATION

20 The offence of rendering support to a terrorist organization is provided for under section 8 of the Anti-Terrorism Act, 2002 (hereinafter referred to as **the Act**). It stipulates that:

"Any person who ... renders support to any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or* 25 *instigation of acts of terrorism, commits an offence and shall, on conviction, be liable to suffer death."*

Thus, the ingredients for the said offence are:

- 1. rendering support to any person;
- 2. knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism; and
- 3. participation of the accused.

Rendering support to any person

In the instance case, it is the prosecution's allegation that the accused rendered 10 support to a terrorist organisation. The prosecution intends to rely on the statements of Mugamba Anthony marked as PEX1 (ID), Sgt. Rwabihagaro Fred marked as PEX2 (ID) and Jamal Kiyemba marked as PEX5 (ID) and the call data records of the accused's phone that were marked as PEX6 (ID), his call matrices marked as PEX7 (ID) and the technical analytical report marked as PEX8 (ID).

Upon perusal of the statement of Mugamba Anthony that was marked as PEX1 (ID), he stated that he heard the accused preaching to the people on the street of Ben Kiwanuka to support ADF and that upon his arrest and interrogation by the police officers who arrested him, the accused told them that he is an ADF supporter and 20 recruiter who trains children and has a mosque at Namasuba. This evidence is corroborated by the evidence of the accused in both his plain and charge and caution statements marked as PEX 10 and PEX 5 respectively where he admitted to being a recruiter for ADF and had recruited about 50 people. It is also in the accused's statement that he has been recruiting for ADF since 2006 and his most recent recruit 25 was his son Jamil Abdullah Buyondo.

Counsel for the accused in his submissions argued that the testimony of the said Jamil Abdallah Buyondo is not on court record and that he has never been produced in court. He also argued that his failure to produce a statement by the said witness means that the prosecution failed to prove this first ingredient of the case beyond 5 reasonable doubt as was in the case of *Woolmington versus DPP [1935] AC 462*.

However, I find that this argument by Counsel is pre-mature because at the pretrial stage, the standard of proof is not beyond reasonable doubt. I find too that the said statement would not help much at this stage of the trial. As earlier stated, the evidential burden and standard of proof at this stage is whether there is sufficient 10 evidence to establish substantial grounds to believe

that the accused committed each of the crimes charged and not one beyond reasonable doubt as Counsel for the accused alleges in his submissions. All that court is doing at this pre-trial stage is just determining on the face of it from the disclosures presented to it, if the charge levied against the accused can stand without going into the details of the entire case. 15 That is why its normally only the prosecution's disclosures that are relied upon and no witnesses are ever called upon at this stage.

I will also use this opportunity to address Counsel's argument on the presumption of innocence that he made at the beginning of his submissions. I would like to note that 20 Counsel for the accused's argument therein is misconceived because like I emphasized earlier, at this stage of the trial, court is not determining the innocence or guilt of an accused person. That is why the accused person (as stated in the introductory part of this ruling) was not allowed to plead to the charges read to him at this stage but was merely required to state whether he had understood the charges 25 read to him or not. I find that Counsel's argument on the presumption of innocence is not viable at this pre-trial stage and as such, it shall not be considered while resolving the issue herein.

the statements made by the accused are not just mere utterances because he confirms both in his plain statement and charge and caution statement that he is a member of 5 the ADF. I also find that by the mere fact that the accused encourages his congregation to pray for and also to join the ADF is enough to prove that he renders support to the ADF. The act of the accused admitting to being a recruiter who even trains children/members for the ADF also proves that he renders support to a terrorist organization. Therefore, I find that there is sufficient evidence to prove this 10 ingredient.

Knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism.

In light of the above, I find that contrary to Counsel for the accused's submissions,

15 From the evidence disclosed and the finding made in the first ingredient of this charge, I find that the accused knew that his support would be used for preparation or commission or instigation of acts of terrorism. In his charge and caution statement marked as PEX5 (ID) and as rightly submitted by the prosecution, the accused admitted to being a member of the ADF who had decided to negotiate with the 20 Government of Uganda in order to end the war in Congo without bloodshed and has been encouraging his followers to pray for ADF and also to join the same.

It was Counsel for the accused's argument again that the above statements by the accused were mere utterances that had to be corroborated before prosecution could 25 rely on them. That there is no medical examination that was done to prove that the accused was in his right state of mind as the same was/has never been attached on court record. I still find this argument by Counsel for the accused premature at this

stage of the trial. I find that the evidence tendered by prosecution is sufficient enough to prove this ingredient to the required standard.

Participation of the accused

- 5 Upon perusal of the disclosures from the prosecution especially the accused's plain and charge and caution statements, I find that the accused does not deny any of the charges he is being prosecuted for. His statements alone are sufficient evidence to prove his participation for this particular charge to the required standard.
- 10 I find that Counsel for the accused's arguments that these were mere utterances by the accused that need to be corroborated before they can be relied upon to convict a person and that the evidence was not enough to sustain these charges is not viable at this pre-trial stage of this matter.
- 15 Counsel also dwells on the fact that the prosecution relies on different documentary evidence to wit: the call data records, call matrices and the Technical Analytical Report for which he submits that they are defective and not authentic because some are not fully certified while the others did not disclose the authors of the said documents. I find that at this stage of the trial, we are not dealing with the 20 admissibility of documents but rather whether the documents contain sufficient evidence to support the charge preferred against the accused. Whereas Counsel for the accused put up a spirited argument on this ingredient, I find that the said contestations shall be useful at the trial stage and not at this stage of pre-trial.
- 25 In the premises, I find that there is sufficient evidence to establish substantial grounds to believe that the accused committed the offence of rendering support to a

terrorist organization contrary to section 8 of the Anti-Terrorism Act, 2002 and I hereby confirm the charges in count 1.

COUNT 2: BELONGING OR PROFESSING TO BELONG TO A 5 TERRORIST ORGANISATION

The offence of belonging or professing to belong to a terrorist organization is provided for under section 11 (1) (a) of the Anti-Terrorism Act, 2002. It stipulates that:

"A person who belongs or professes to belong to a terrorist organization commits an offence."

Thus, the ingredients of the said offence are:

- 1. the existence of a terrorist organization; and
- 2. the accused person belonging or professing to belong to the terrorist organization.

The existence of a terrorist organisation

A terrorist organisation is defined in section 2 of the Act to mean an organization specified in the Second Schedule. The Second Schedule of the Act lists the Allied Democratic Forces as one of the terrorist organisations.

Section 10 (1) of the Act further provides that:

"The organisations specified in the Second Schedule are declared to be terrorist organisations and any organization which passes under a name mentioned in that Schedule shall be treated as a terrorist organisation whatever relationship (if any) it has, to any other organisation 25
bearing the same name."

From the above provisions of the law, it is clear that the Allied Democratic Forces (ADF) is a confirmed terrorist organisation in Uganda and upon perusal of the disclosures tendered in by the prosecution, they all mention or connect the accused to ADF. I therefore find that there is sufficient evidence to prove this ingredient to the required standard.

5 The accused person belonging or professing to belong to the terrorist organization

Upon perusal of the disclosures of the prosecution especially the charge and caution statement of the accused marked as PEX5 (ID), he admits to telling the officers who interrogated him at Clock Tower after he was arrested from the old taxi park for 10 having chanted or uttered the words, "long live ADF", that he was a member of the ADF who had decided to negotiate with the Government of Uganda in order to bring to an end the war in Congo without bloodshed. This evidence is corroborated by the statement of Mugamba Anthony marked as PEX1 (ID) who heard the accused chant/utter/talk about the ADF.

Also, the call matrices marked as PEX7 (ID) and the Technical Analytical Report of the subscriber numbers belonging to the accused indicate that the accused had been communicating to a one Musa Yosa, among others who was an ADF recruiter in Busia. I find this to be sufficient proof that the accused belongs to ADF, a terrorist 20 group in Uganda otherwise he would have no business communicating with a person who was/is an ADF recruiter in Busia. This evidence apart from the accused's profession about ADF that he made at Ben Kiwanuka Street in Kampala connects him to belonging to a terrorist organisation.

25 I find that the accused's utterances, contrary to his Counsel's argument that he was just making mere utterances, to be very deliberate and as such the accused's utterances can sufficiently be used by the prosecution to prove that the accused

belongs to ADF, a terrorist organization. Thus, the evidence tendered by the prosecution is sufficient enough to prove this ingredient too to the required standard.

In light of the above, I find that this evidence is sufficient enough to establish 5 substantial grounds to believe that the accused belongs or professes to belong to a terrorist organization contrary to section 11 (1) (a) of the Anti-Terrorism Act, 2002. The charges in count 2 are also confirmed for trial.

COUNT 3: SOLICITING OR INVITING SUPPORT FOR A TERRORIST 10 ORGANISATION

The offence of soliciting or inviting support for a terrorist organisation is provided for in section 11 (1) (b) of the Anti-Terrorist Act, 2002. It stipulates that: "A person who solicits or invites support for a terrorist organization, other than support with money or other property, commits an offence."*

Thus, the ingredients of the said offence are:

- 1. Soliciting or inviting support for a terrorist organisation other than support with money or other property; and
- 2. The participation of the accused.

20

Soliciting or inviting support for a terrorist organisation other than support with money or other property

Upon perusal of the disclosed evidence by the prosecution, I find that the statement of Mugamaba Anthony marked as PEX1 (ID) and both the plain and charge and 25 caution statements of the accused marked as PEX 10 (ID) and PEX5 (ID) respectively are sufficient enough to prove the ingredient of the accused soliciting or inviting support for a terrorist organisation.

accused preaching to the people on the streets to support ADF and that if they don't, 5 they will keep on shedding blood in Kampala. This is corroborated by the accused in his plain statement where he states that on 29th January 2022 while in the old taxi park, he saw a soldier and as he approached him, he said in English, "long live ADF" and repeated the same in Luganda and that his intention was to seek the attention of Government to see how to end the war in DRC without bloodshed. In his charge and

10 caution statement, the accused states that as he was heading to the old taxi park on 29th January 2023, and wherever he passed, he was shouting "long live ADF" both in English and Luganda and to him this was a prayer. That among the people he bypassed was a UPDF soldier whom he believed received the message.

Mugamba Anthony in his statement mentions that on 29th January 2022 while he was driving on Ben Kiwanuka Street towards Mini Price, he saw and heard the

15 I take note of the fact that Counsel for the accused on this count submitted that the accused's utterances were his prayer and again submitted that these were just mere utterances and that the prosecution did not prove the accused's state of mind by way of a medical report in regard to his utterances. As such, the prosecution's evidence should not be relied upon. Counsel also submitted that these mere utterances are not 20 sufficient enough to sustain a charge for one to be convicted and relying on the case of *Uganda versus Matanda Richard Wamukota HCCS No. 45 of 2015*, he added that where the court is in doubt, the doubt should be held in favour of the accused.

Concerning Counsel for the accused's submissions, I reiterate my earlier findings 25 that this matter is at pre-trial stage and as such the evidentiary burden and standard of proof is not beyond reasonable doubt as counsel for the accused tends to imply. The burden and standard of proof at this stage is simply whether there is sufficient evidence to establish substantial grounds to believe that the accused committed each of the crimes charged.

I also find that the accused knew what he was doing when he made/chanted the 5 words, "long live ADF" both in English and in Luganda. I find that the accused was very deliberate if not calculative to make sure that he uttered his support for ADF near a UPDF soldier. I therefore respectfully disagree with Counsel for the accused who tries to bring into question the accused's state of mind. However, even if the question of the accused's state of mind were to be considered, I find that it would 10 not be at this stage of the trial (pre-trial) but rather at the trial stage and the burden of proof would now lie on the accused to prove that at the time he committed the alleged offence, he was not in his right state of mind as per the famous M'Naghten rule. (See: *R versus M'Naughten (1843) 8 E. R. 718*) Therefore, I find Counsel's arguments not plausible at this stage. As such, the evidence tendered in by the 15 prosecution at this stage is sufficient enough to prove this ingredient.

The above evidence too proves the ingredient of participation of the accused since I find that they go hand in hand. It was the accused who was soliciting and inviting support for ADF, a terrorist organisation and he does not deny doing so in his 20 statements that were disclosed to court. Therefore, I shall not be going into details of resolving the ingredient of participation since it is already covered in the above ingredient.

In light of the above, I find that this evidence is sufficient enough to establish 25 substantial grounds to believe that the accused solicited or invited support for a terrorist organisation, ADF, which support was other than money or other property but rather in his chanting the words, "long Live ADF" both in English and in

Luganda as he walked towards the old taxi park on the 29th day of January 2022 contrary to section 11 (1) (b) of the Anti-Terrorism Act, 2002. The charges in this count are also confirmed for trial.

5 Conclusion

Having considered all the evidence disclosed by the prosecution and in the absence of any evidence disclosed by the accused and/or his Counsel, I find that the evidence presented to this honorable court is sufficient to establish substantial grounds to believe that the accused committed the offences of: rendering support to a terrorist 10 organization contrary to section 8 of the Anti-Terrorism Act, 2002; belonging or professing to belong to a terrorist organization contrary to section 11 (1) (a) and (3) of the Anti- Terrorism Act, 2002; and soliciting or inviting support for a terrorist organisation contrary to section 11 (1) (b) and (3) of the Anti-Terrorism Act, 2002. The said charges are hereby confirmed and the accused is accordingly forwarded for 15 trial.

Dated in Kampala this 2 nd day of May 2023.

.....

20 Alice Komuhangi Khaukha **JUDGE** 02/05/2023.

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