

UGANDA / JUDGMENT

Uganda v Mansur (HCT-00-ICD-CR-SC 5 of 2022) [2023] UGHCI CD 15 (17 April 2023)

[2023] UGHCI CD 15

COURT

HC: International Crimes Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

HCT-00-ICD-CR-SC 5 of 2022

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BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA**RULING FOR CONFIRMATION OF CHARGES****Introduction**

This ruling is in respect of a pre-trial and confirmation of charges whose hearing was 20 conducted in the above case file (HCT-00-CD-CR-SC-0005-2022) between the dates of 6 th February 2023 to 21st February 2023.

The accused persons are indicted for thirteen (13) counts of aggravated Trafficking in Children contrary to Sections 3 (1) (a) and 5 (a) of the Prevention of Trafficking in Persons Act, 2009 and three (3) counts of Trafficking in Persons contrary to Section 3 (1) (a) of the Prevention of Trafficking in Persons Act, 2009.

During the pre-trial, the charges were read and explained to all accused persons both 5 in English and Lugbar in open court but they were not allowed to plead to them because they could only do so at their trial before the trial judge/ panel should this court confirm these charges.

Representation

10 The prosecution was represented by Mr. Richard Birivumbuka and later Mr. Joseph Kyomuhendo, both Chief State Attorneys, from the Office of the Director of Public Prosecutions while the accused persons were represented by Mrs. Sylvia Namaweje Ebitu of Asiimwe, Namaweje & Co. Advocates on state brief.

15 Facts as disclosed by the Prosecution

On 9/2/ 2019 at about 7:00 am, at Mpondwe Border point of Uganda and the Democratic Republic of Congo, in Kasese District, security officers who were manning the border point intercepted four motorcycles carrying about thirteen (13) passengers who were about to cross to the Democratic Republic of Congo. The 20 passengers were five (5) adults namely Amid Hassan (A2), Kakanyero Robert (A3) from Nwoya, Onen chan Dennis (A7) from Nwoya, Aol Prossy from Nwoya and Okello Jane from Bweyale. The children were Abdul Nazir Mansur (11 years) from Agonga, Arua, Anguyo Amimu (11 years) from Agonga, Arua, Makutari Juma (9 years) from Agonga, Arua, Juma Mansur (7 years) from Agonga, Arua, Amarwot 25 Teddy (3 years) from Nwoya, Acellam Kibunyu (4 months) from Nwoya, Opio John (2 years) and Opio Joseph from Bweyale from Bweyale.

They were asked for their identification documents and they had none save for Amid Hassan (A2) who had a National Identity Card. A2 informed the security officers that he had forgotten the documents of the rest of the passengers. He was permitted to go and collect them and he never returned. The "passengers" were then 5 interviewed and they revealed that they had been mobilized from their different places of origin and were being taken to Democratic Republic of Congo to study Islam and also find jobs. They were then taken to Special Investigations Directorate-Kireka, Kampala for further investigations.

10 Investigations revealed that the accused persons had recruited the victims so as to recruit them in the Allied Defence Forces (ADF), a terrorist organization. The accused persons were then jointly indicted accordingly.

Disclosure/List of exhibits presented by the Prosecution

15 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 statements of the officers who intercepted the victims/ passengers at Mpondwe 20 border post, victims/ passengers, statements of accused persons, police officers who recorded the statements from the accused persons and medical Forms in respect of the accused persons (PF24) and some statements from the families of the victims.

Jurisdiction

25 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 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* 5 *under any other penal enactment."* [Emphasis Mine]

All the charges against the accused persons are brought under the Prevention of Trafficking in Persons Act, 2009. The said Act according to its long title was enacted to prohibit trafficking of persons, create offences, prosecution and punishment of 10 offenders, prevent the vice of trafficking in persons, protect victims of trafficking in persons and other related matters.

From the foregoing, it is clear that the charges brought against the accused persons under the Prevention of Trafficking in Persons Act, 2009 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 jurisdiction to hear this matter.

Position of the Law

20 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 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 25 (International Crimes Division) Practice Directions, Legal Notice No. 10 of 2011. 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 Rome Statute by the enactment of the International Criminal Court Act, 2010 is bound to perform its obligations under that Instrument.

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

"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 the charges on which the Prosecutor intends to seek trial. The hearing shall be held in the* 10 *presence of the Prosecutor and the person charged, as well as his or her legal counsel."*

[Emphasis Mine]

In our jurisdiction, the legal requirement for holding a pre-trial hearing was introduced by the Judicature (High Court) (International Crimes Division) Rules, 15 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, hold a pre-trial conference..."

20 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 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 25 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 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 5 witnesses as per Rule 12 (10) of the ICD Rules. The court is only expected to rely 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.

10 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 trite that the standard of proof in criminal cases is beyond reasonable doubt (See: 15 *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 evidence being examined at this stage. Our law does not stipulate the evidential 20 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 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 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]

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

"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:

- 10 *(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;*
- *(c) Adjourn the hearing and request the Prosecutor to consider:*
- 15 *(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* 20 *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" means "strong grounds for believing". (See also: *Soering versus United Kingdom, Application No. 14038/88 (ECHR); The Prosecutor versus Thomas Lubanga* 25 *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 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 standard of proof threshold, the Chambers ought to recognize that the evidence the 5 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.

10 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.

Prosecution's submissions

- 15 The prosecution submitted on counts 1, 2, 3, 6, 8, 9, 11, 12, 15 and 16. No submissions were made in respect of counts 4, 5, 7, 10, 13 and 14. Prosecution observed that count 10 was a repetition of count 8 and abandoned it. In light of the above, count 10 is accordingly stuck out for being a repetition of count 8.

- 20 It was the prosecution's submission that the evidence disclosed is sufficient to establish substantial grounds to believe that all the accused persons jointly committed the offences in counts 1, 2, 3,6,8,9,11, 12,15 and 16. While citing Section 20 of the Penal Code Act, prosecution submitted on all the ingredients and argued that the accused persons acted with a common intention and they should each be held culpable. The prosecution argued that all the accused persons are agents of the ADF whose area of operation is West Nile and Northern Uganda and they recruited,

transferred and transported their victims for purposes of exploitation, namely to take part in armed conflict and other illegal activities of the ADF.

Defence Submissions

- 5 On the other hand, counsel for the accused persons contended that the accused persons are individuals from different walks of life and were arrested in different circumstances and it was not proper for them to be jointly indicted for the different counts. She argued that it is a basic principle in criminal law that there ought to be individual criminal responsibility for crimes charged. She attacked the prosecution for bundling up all the accused and charging them with offences irrespective of their individual responsibility towards the victims named. She also contended that it was inaccurate to state that all the accused persons are agents of ADF when some of the accused persons were victims being recruited to ADF.
- 15 It was also counsel's contention that whereas the statement of the arresting officer No. 1364371/CPL Kokas AD William [PE7 (ID)] reveals that the children who were intercepted at the Mpondwe border were eight (8) in number, the indictment has more than eight (8) counts relating to the children.
- 20 Counsel for the accused persons handled counts 1,2 and 14 jointly, 3 and 7, 4 and 5, 6 and 15, 8 and 9, 11 and 12. Counts 13 and 16 were handled separately. Her contention on all counts is that not all the accused persons were connected to all the victims for them to be jointly indicted in all counts in respect of all the victims. According to her, prosecution should have isolated the charges.

With respect to count 4 and 5 in respect of the children, **Opio John** and **Opio Joseph**, she submitted that the counts were erroneous because the two victims are

not mentioned in the summary of the case and prosecution did not make any submissions in respect of them. With respect to count 10, she submitted that the count was also erroneous because it was a repetition of count 8. She invited the court not to confirm the charges. Regarding count 13, counsel for the accused persons submitted that it was also an erroneous charge because the victim Abudulu Naziri Manisuru is the same as Nazir Ateta mentioned in count 3.

For counts 1, 2 and 14, she submitted that Aol Prossy (victim in count 14) is a wife of Kakanyero Robert (A3) while Amarwot Teddy and Acellam Kibunyu (victims in 10 count 1 and 2 respectively) are children of A3 and Aol Prossy. She contended that A3 who was in need of better employment was approached by Onen Chan Dennis (A7) who promised him of the employment. A3 also had to go with his family in search for jobs. He invited this court to find that Kakanyero Robert (A3) is a victim as is his wife and two children. She finally submitted whereas there was evidence 15 that Amid Hassan (A2) is alleged to have received the victims in Kampala and Jamal Mohammed Alaru (A6) is alleged to have paid all transport costs for the victims, there is no evidence that Mansur Guma (A1), Kassim Taban (A4) and Taban Siraj Ayisuga (A5) had any connection to the three victims and the three counts.

20 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.

In resolving the above issue, I will adopt the order of counts used by counsel for the accused persons.

25 Counts I, 2 and 14

Counts 1 and 2 relate to aggravated trafficking of children namely: **Amarwot Teddy** (3 years) and **Acellam Kibunyu** (4 months) (victims) while count 14 relates to

trafficking of their mother namely **Aol Prossy** (victim). I note that the amended indictment which was filed in the court on 15th February 2023 indicates the provision of the law contravened as Section 3(a) instead of Section 3(1)(a) of the Prevention of Trafficking in Persons Act, 2009. The indictment shall be accordingly altered in 5 all counts pursuant to Section 50 (2) of the Trial on Indictments Act which provides that:

"Where before a trial upon indictment or at any stage of the trial it is made to appear to the High Court that the indictment is defective or otherwise requires amendment, the court may make such an order for the alteration of the indictment (by way of its amendment or by

- 10 ***substitution or addition of a new count) as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required alterations cannot be made without injustice; except that no alteration to an indictment shall be permitted by the court to charge the accused person with an offence which, in the opinion of the court, is not disclosed by the evidence set out in the summary of evidence prepared under section 168 of the Magistrates***
- 15 ***Courts Act.*** [Emphasis Mine]

The ingredients of the offence of aggravated trafficking in children are:

- (a) Recruiting, or receiving or transporting the victims;
- (b) The victim is a child under the age of 18 years;
- 20 (c) By means of fraud or deception or abuse of power or position of vulnerability;
- (d) For the purpose of exploitation; and
- (e) Participation of the accused.

Recruiting, or receiving or transporting the victims

25 It was the prosecution's submission that the victims were recruited by their father Kakanyero Robert (A3) and Onen Chan Dennis (A7), transported to Kampala by Jamal Muhammad Alaru (A6) and later to Kasese District enroute to DRC Congo by Amid Hassan (A2). Prosecution disclosed the statement of Aol Prossy (victim in

count 14) who is also the mother of the two victims [It was admitted as PE 40 (ID)]. She revealed that she stays in Wiyanono Village in Nwoya District and married to Kakanyero Robert (A3) and on 8th February 2019, A3 received a phone call from someone who told him that they were needed in Kampala. A3 then informed her that 5 they were going to Kampala to study Islam. Together with the two victims and A3 and another man who had telephoned A3, they boarded a motorcycle to Bweyale. At Bweyale, they found another man who had other children and all of them were made to board a taxi which brought them to Kampala.

- 10 She further stated that while at Kampala, they were made to board a bus and when she asked A3 where they were going since she expected the studies to be in Kampala, A3 told her that the schools in Kampala were full and they were going to enroll in another school in Kasese.
- 15 Prosecution further disclosed three statements of Kakanyero Robert (A3) which were admitted and marked PE3 (ID), PE30 (ID) and PE 43 (ID) respectively. In his first statement, A3 stated that he was informed by Onen Chan Dennis (A7) that someone had some employment opportunities in Kasese and he could even be accommodated with his wife and children. That on 8/2/2019, he left Nwoya with his 20 wife, his two children and A7 and they came to Kampala where they met that person who A7 had talked about and they were put in a Link bus.

In the second statement, A3 stated that in 2018, A7 informed him that there was a journey to make to the Democratic Republic of Congo and he should get ready 25 together with his family. That A7 informed him that in DRC, the Muslims were enjoying and training for Jihad. On 8/2/2019, he boarded a bus together with his wife and the two victims and A7 up to Bweyale where they found one Jamal (A6) who had four other children. A6 brought another lady with two children and they all boarded a taxi to Kampala to the Link bus terminal and handed over to another man and they set off for Kasese.

5 In his charge and caution statement [PE 44 (ID)], A3 stated that A7 informed him that they needed to go to Congo and fight for the Islamic faith and when he informed him that he did not have identification documents, he assured him that he would call Jamal (A6) to handle that. Later, A7 informed him that there was no need for the documents all he needed was to get transport money for him and his family which 10 he did. On 8/2/2019 they boarded a bus up to Bweyale where they were handed over to Jamal (A6) who put them in a taxi up to Kampala.

From the above evidence as disclosed by the prosecution, it is evident that the two victims were recruited and transported by their father A3 and Onen Chan Dennis 15 (A7). At Bweyale, they were received and again transported to Kampala by Jamal (A6) and later by Amid Hassan (A2).

Contrary to the submissions of Counsel for the accused persons that A3 was simply trying to look for employment for him and his family, I find that the disclosed 20 evidence reveals that A3 clearly knew that his children were going to be trained on how to fight for the Islamic faith and he recruited them for that purpose. His wife Prossy Aol states that A3 only revealed to her that they were going to Kampala to study Islam and as they went beyond Kampala, he claimed the schools were full and they were going to enroll from Kasese. I find that this ingredient has been proved to 25 the required standard by the prosecution.

The victims being children under the age of 18 years

From the statement of A3 and his wife Aol Prossy, Amarwot Teddy and Acellam Kibunyu were aged 3 years and 4 months respectively. This ingredient has been proved to the required standard by the Prosecution.

By means of fraud, deception or abuse of power and position of vulnerability

Having perused the statements disclosed by the prosecution, I find that the victims were being recruited, received and transported by means of fraud, deception or abuse of power and position of vulnerability. They were clearly moved by their father (A3) 10 purportedly for better life. In light of the above, I find that there is sufficient evidence from the Prosecution to support the said ingredient.

However, it is also worth noting that where the victim of trafficking is a child, it is not necessary to prove the ingredient of "means" and their consent too shall be 15 irrelevant as per section 3 (3) & (4) of the Prevention of Trafficking in Persons Act. The said provisions provide that:

(3) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall constitute trafficking in persons even if this does not involve any of the means set forth in subsection (1) of this section.

20 *(4) The consent of the victim of trafficking or if a child, the consent of his or her parents or guardian to acts of exploitation shall not be relevant.*

For the purpose of exploitation

Section 2 (d) of the Prevention of Trafficking in Persons Act interprets exploitation 25 to include at a minimum, sexual exploitation, forced marriage, child marriage, forced labor, harmful child labor, **use of a child in armed conflict, use of a person in illegal activities**, debt bondage, slavery or practices similar to slavery, servitude,

human sacrifice, the removal of organs or body parts for sale or for purposes of witchcraft, harmful rituals or practices. [Emphasis Mine]

From the evidence of A3, he was fully aware that the victims were being recruited 5 so as to be taught how to fight for their Islamic faith. Clearly, that was an illegal activity which amounts to exploitation within the meaning of Section 2 (d) of the Prevention of Trafficking in Persons Act.

The accused's participation

10 This has been exhaustively covered in the first ingredient but may be summarized as follows: Onen Chan Dennis (A7) convinced Kakanyero Robert (A3) to go to DRC so that they can learn how to fight for their faith. In response to that, A3 brought along the victims. At Bweyale, Jamal Mohammed Alaru (A6) who was waiting for them, put them in a taxi and transported them to Kampala from where Hamid Hassan 15 (A2) transported them up to Mpodwe border post where they were intercepted.

In light of the above, I find that the persons who are implicated for counts 1 and 2 are: **Amid Hassan (A2), Kakanyero Robert (A3), Jamal Muhammad Alaru (A6) and Onen Chan Dennis (*A7)**. I find that **Mansur Guma (A1), Kasim Taban alias 20 Baby (A4) and Taban Siraji Ayisuga (A5)** have no connection with the two victims. Therefore, charges in count 1 and 2 are confirmed in respect of **Amid Hassan (A2), Kakanyero Robert (A3), Jamal Muhammad Alaru (A6) and Onen Chan Dennis (A7)**. They are not confirmed in respect of **Guma Mansur (A1), Kasim Taban alias Baby (A4) and Taban Siraj Ayisuga (A5)** and are accordingly 25 dismissed in respect of A1, A4 and A5.

Count 14

Count 14 relates to the victim, **Aol Prossy**, the wife of A3. The following are the ingredients for count 14:

- (a) Recruiting, or receiving or transporting the victim;
- 5 (b) By means of fraud or deception or abuse of power or position of vulnerability;
- (c) The purpose of exploitation; and
- (d) Participation of the accused.

The evidence as discussed in count 1 and 2 above satisfy the ingredients for this count. This count is therefore confirmed as against **Amid Hassan (A2), Kakanyero**

10 Robert (A3), Jamal Muhammad Alaru (A6) and Onen Chan Dennis (A7). I find that Mansur Guma (A1), Kasim Taban alias Baby (A4) and Taban Siraji Ayisuga (A5) have no connection with this victim Aol Prossy. The charges against them are therefore, not confirmed and are accordingly dismissed in respect of A1, A4 and A5.

15 Counts 3 and 7

These two counts relate to aggravated trafficking in children of the victims **Nazir Ateta** (11 years) and **Juma Hafisu** (8 years). The ingredients for the offences are the same as counts 1 and 2 above.

20 In an effort to prove these two counts, the prosecution disclosed the statements of **Abudulunaziri Manisuru** [PE 4(ID)], **Abdu Nazir Ateta** [PE17 (ID)], **Juma Manisuru** [PE 11(ID)], **Juma Hafisu** [PE 39 (ID)] and **Guma Mansur Aiswa** (A1) [PE 41 (a) (ID)] and [PE 41 (b) (ID)]. **Abudulunaziri Manisuru** stated that he is a son of **Manisuru**. His father informed him that he was going to study in Kampala 25 and his aunt named **Okello Jane** picked him and brought him to Kampala. They left Kampala in a bus together with other people and were taken to a place where they were intercepted from. The person who took them from Kampala is called **Hamid**

(A2). **Abdu Nazir Ateta** in his statement [PE 17 (ID)] stated that he is a son of **Mansur Guma** (A1). He further stated that one time, one **Amid** and his aunt whose name he doesn't know picked him and his brother called **Afisu Juma** in the presence of their father. Together with his brother, they were told that they were being taken 5 to study but they were not told the school and on their way, they were arrested by army men.

Juma Manisuru [PE 11 (ID)] stated that he is a son of **Manisuru** and on 8/2/2019, his father told him that he was going with **Hamid** (A2) who was taking him to school. 10 He moved with **Hamid** and other people and when they reached Kampala, they boarded a bus to a place only known by **Hamid****. They were later intercepted and **Hamid** disappeared. **Juma Hafisu** stated that he is a son of **Guma Manisuru** (A1) and his father handed him over together with his brother **Nazir Ateta** to **Hamid Hassan** (A2) to take them for studies. From the available evidence, **Abudulunaziri Manisuru** 15 and **Abdu Nazir Ateta** is one and the same while **Juma Manisuru** and **Juma Hafisu** is also one and the same and they are both sons of **Guma Mansur** (A1).

Guma Mansur (A1) statements [PE 41(a) (ID)] and [PE 41 (b) (ID)] in which he confirms that the two victims were his biological sons aged 11 years and 9 years 20 respectively at the time of the incident. He states that that he was staying in Bweyale and one **Amid Hassan** (A2) who was staying in Busia called him and told him that there was free education in Madina, Congo for Islamic studies and he offered the opportunity to his children. He stated that A2 told him that everything in DRC was free but he was only expected to find transport for the children. That A2 told him 25 that the children should be handed over to **Jamal Muhammad** (A6) who would deliver them to him in Kampala.

A1 further states that he consulted his wife and she also consented to the release of the victims. He took the victims and handed them over to **Kassim Taban** (A4) to give them to A6 as he was proceeding to the mosque. A4 was also sending his two children to A2 but it was A6 supposed to

take all the children to Kampala. The 5 children were taken and after some time, A2 called him and told him that they had been intercepted before reaching DRC but for him he managed to escape but the children were arrested. He was also later arrested but he denies having known that the children were being taken to join ADF or be used in illegal activities.

10 Driciru Rehema, the wife of A1 in her statement [PE 7 (ID)] also states that A1 informed her that his friend Amid Hassan was offering to take the victims to study from Busia both secular and Islamic studies. She stated that she did not support the idea but later advised A1 to get authorization from the Local Council authorities which he did and the children were taken.

Prosecution has submitted that all the accused participated in the recruiting, receiving, transporting the victims for the purpose of exploitation. However, Counsel for the accused persons submitted that there is no evidence connecting Kakanyero Robert (A3), Taban Siraji Ayisuga (A5) and Onen Chan Dennis (A7) to 20 these two victims. She contended that only A1, A2 and A6 were connected to the victims but A1, being the father of the victims was only convinced to release his children on a promise that they would get free education. She argued that at the worst, court should find that A1 was a negligent parent as opposed to being a trafficker.

From the above disclosed evidence, I agree with Counsel for the accused persons that there is no evidence connecting Kakanyero Robert (A3), Taban Siraji Ayisuga

(A5) and Onen Chan Dennis (A7) to these two victims. In regard to A1, I find that there is no evidence to show that he knew or had reason to believe that the children would be exploited. However, as observed by Counsel for the accused persons, I find that A1 was extremely negligent to release his 11-year-old and 8-year-old sons 5 to go to a place unknown to him. A2 who is said to have been the person who convinced A1 to release the children is silent about whether he informed A1 that the children were going to be recruited into ADF. In his two statements, he simply states that one Puni told him that Jamal (A6) was going to bring to him twelve (12) people for onward transmission to DRC.

For those reasons, I am unable to confirm counts 3 and 7 against A1. I also do not find evidence that Kassim Taban (A4) was aware that A1's children were being recruited for the purpose of exploitation. Counts 3 and 7 are therefore not confirmed in respect of Kassim Taban (A4). However, I find that the disclosed evidence 15 implicates **Amid Hassan** (A2) and **Jamal Mohammad Alaru** (A6) and counts 3 and 7 are accordingly confirmed for A2 and A6. Resultantly, counts 3 and 7 are confirmed for A2 and A6 and dismissed as against A1, A3, A4, A5 and A7.

Counts 4 and 5

20 Counts 4 and 5 relate to **Opio John** (2 years) and **Opio Joseph** (7 months). Counsel for the accused persons submitted that the prosecution did not make any submissions in respect of the two counts. She went ahead to argue that the two victims were never mentioned in the summary of the case. She invited the court not to confirm counts 4 and 5. From the statement of Okello Jane (victim in count 16), the two victims are 25 her children and she was with them at the time of their interception at the Mpondwe border post. However, in agreement with Counsel for the

accused, I find that they were indeed never mentioned in the summary of the case. Counts 4 and 5 therefore cannot be confirmed for those reasons and the same have been accordingly dismissed.

Counts 6 and 15

- 5 The above counts relate to **Jamal Tayimia** (7 months) and his mother **Namutosi Amina**. Prosecution disclosed the statement of Namutosi Amina [PE 29 (ID)] in which she stated that she is a wife to Jamal Muhammad (A6) and a mother to Jamal Tayimia (victim) who was aged 7 months at the time of the incident and another named Abdu Shahid. She further stated that A6 told her that they had journey to 10 make to DRC for Islamic study and instructed her to go first with the children and he would join them later. A6 brought them to Kampala in a taxi which had other people including the children of A1 and children of another man known to her. At Kampala, he handed them over to A2 and later they were intercepted at Mpondwe border post.

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Counsel for the accused has submitted that there is no evidence connecting Guma Mansur (A1), Kakanyero Robert (A3), Kassim Taban (A4), Tabani Siraji Ayisuga (A5) and Onen Chan Dennis (A7) to the victims in counts 6 and 15 and invited the court not to confirm those counts for those reasons. I agree with Counsel for the 20 accused persons in that regard. Consequently, charges for counts 6 and 15 are confirmed in respect of **Amid Hassan** (A2) and **Jamal Muhammad Alaru** (A6). They are not confirmed for A1, A3, A4, A5 and A7 and are accordingly dismissed in their respect.

25 Counts 8 and 9

These relate to **Anguyo Amim** (aged 11 years) and **Makutari Juma** (aged 9 years). The prosecution disclosed the witness statement of Makutari Juma [PE 36 (ID)] and

Anguyo Hamim [PE 38 (ID)]. Both victims state that they are sons of Kassim Tabani (A4) and they were living in Yumbe with their mother while their father lived in Bweyale. A4 sent for them and they were brought to Bweyale purportedly to be taken to school. At Bweyale, they joined the family of Gumar Mansur (A1). Their 5 father later handed them over to Jamal Muhammed (A6) together with A1's two sons. A6 brought them to Kampala in a taxi in which they found other passengers, some children and adults.

Kassim Taban alias Baby (A4) gave two statements [PE 31 (ID)] and [PE 50 (ID)] 10 in which he confirms to be the father of the two victims. He also confirms having handed them over to Jamal Muhammad Alaru (A6) for onward transmission to Amid Hassan (A2) who had promised to take them for free education either in Congo or Kenya. He insists he did not know that they would be recruited into ADF or be engaged in any other illegal activities.

receiving, transporting the victims for the purpose of exploitation. However, Counsel for the accused persons submitted that there is no evidence connecting Mansur Guma (A1), Kakanyero Robert (A3), Taban Siraji Ayisuga (A5) and Onen 20 Chan Dennis (A7) to these two victims. She contended that only A4, A2 and A6 were connected to the victims but A4, being the father of the victims was only convinced to release his children on a promise that they would get free education. She argued that at the worst, court should find that A4 was a negligent parent as opposed to being a trafficker.

Prosecution has submitted that all the accused participated in the recruiting,

From the above disclosed evidence, I agree with Counsel for the accused persons that there is no evidence connecting Mansur Guma (A1), Kakanyero Robert (A3),

Taban Siraji Ayisuga (A5) and Onen Chan Dennis (A7) to these two victims. As for A4, I find that there is no evidence to show that he knew or had reason to believe that the children would be exploited. However, as observed by Counsel for the accused persons, I find that A4 was extremely negligent to release his 11-year-old 5 and 9-year-old sons to go to a place unknown to him. A2 who is said to have been the person who convinced A4 to release the children is silent about whether he informed A4 that the children were going to be recruited into ADF. In his two statements, he simply states that one Puni told him that Jamal (A6) was going to bring to him twelve (12) people for onward transmission to DRC. For those reasons, I am unable to confirm counts 8 and 9 against A4. However, I find that the disclosed evidence implicates **Amid Hassan (A2)** and **Jamal Mohammad Alaru (A6)**. Therefore, counts 8 and 9 are accordingly confirmed for A2 and A6. Resultantly, counts 8 and 9 are confirmed for A2 and A6 and dismissed as against A1, A3, A4, A5 and A7.

Counts 11 and 12

These relate to the victims **Samadu Taban** (11 years) and **Khalid Taban** (12 years). Prosecution did not disclose the statements of the two victims. The prosecution disclosed two statements of Taban Siraji Ayisuga (A5) [PE 32 (ID)] and [PE 42 20 (ID)]. He stated that the two victims are his sons whom he handed over to his uncle Amid Hassan (A2) in 2017 on a promise that they were being taken to study at Bweyale. He heard from them once when they made a telephone call to him and he has not heard from them again. His statement is corroborated by that of his mother Nusura Mave [PE 22 (ID)]. It is also important to note that the two victims are not 25 among the children who were intercepted at Mpondwe. This incident happened way back in 2017. These counts could be joined together in this indictment pursuant to Section 23 (1) of the Trial on Indictments Act which provides that:

*"any offences, whether felonies or misdemeanors, may be charged together in the same indictment if the offences charged are founded on the same facts or form or are a part of a series of offences of the same or a similar character". [Emphasis is mine].

- 5 However, I find that the summary of the case is misleading because it shows that the two victims were among those intercepted at Mpondwe whereas not. This, therefore, means that these counts are not supported by the summary of the case. I also observe that whereas A5 states that the two victims were taken by A2 at the same time, the prosecution charged all the accused persons jointly in respect of count 11 and 10 charged only A5 for count 12. For those reasons, I am unable to confirm the charges in counts 11 and 12. Consequently, counts 11 and 12 have not been confirmed and are accordingly dismissed.

Count 16

15 This count relates to the victim, **Jane Okello**. The prosecution disclosed two statements from the victim PE1 (ID) and PE12 (ID). In the first statement, she stated that Hamid (A2) is her brother-in-law who contacted her offering to take her to school. On 8/2/2019, she left Bweyale with A2's son called Juma and they went up to Kampala where they found A2 with other people also going to the same 20 destination. In the second statement, the victim stated that her brother-in-law whose name she did not know offered to take her to Congo to see her mother. She also mobilized her children **Opio John** and **Opio Joseph** together with her sister's children **Nazir**, **Juma**, **Kassim**, and another whose name she couldn't remember and they came to Kampala where they met A2 who put them on the Link bus.

Counsel for the accused persons submitted that apart from A2, no other accused person is connected to this victim. She invited the court not to confirm the charges for those reasons.

5 From the victim's statement, she met the other victims in Kampala at the Link bus terminal. This would therefore exonerate the other accused persons apart from A2. Therefore, count 16 has been confirmed in respect of only A2. It is not confirmed for the rest of the accused persons and is accordingly dismissed in their favour.

10 Conclusion

Having considered all the evidence disclosed by the prosecution, I make the following orders:

- 1. Charges in count 1, 2 and 14 are confirmed in respect of **Amid Hassan** (A2), **Kakanyero Robert** (A3), **Jamal Muhammad Alaru** (A6) and **Onen Chan 15 Dennis** (A7). They are not confirmed in respect of **Guma Mansur** (A1), **Kassim Taban** alias **Baby** (A4), and **Taban Siraji Ayisuga** (A5). Counts 1, 2, and 14 are accordingly dismissed in respect of A1, A4, and A5;
- 2. Charges in counts 3 and 7 are confirmed for **Amid Hassan** A2 and **Jamal Muhammad Alaru** (A6) and dismissed against A1, A3, A4, A5, and A7;
- 20 3. Charges in counts 4 and 5 have not been confirmed and are accordingly dismissed;
- 4. Charges in counts 6 and 15 are confirmed in respect of **Amid Hassan** (A2) and **Jamal Muhammad Alaru** (A6). They are not confirmed for A1, A3, A4, A5 and A7 and are accordingly dismissed in their respect;

- 25 5. Charges in counts 8 and 9 are confirmed for **Amid Hassan (A2)** and **Jamal Muhammad Alaru (A6)** and dismissed against A1, A3, A4, A5 and A7;
- 6. Charges in counts 11 and 12 have not been confirmed and are accordingly dismissed;
- 7. Count 16 has been confirmed in respect of only **Amid Hassan (A2)**. It is not confirmed for the rest of the accused persons and is accordingly dismissed in 5 their favour;
- 8. Charges in counts 10 and 13 have not been confirmed because they are a repetition of counts 8 and 3 respectively;
- 9. No sufficient evidence was disclosed in this honorable court to establish substantial grounds to believe that **Mansur Guma (A1)**, **Kassim Taban** alias **10 Baby (A4)**, and **Taban Siraji Ayisuga (A5)** committed any of the offences they are charged with. They are accordingly discharged unless they are held
- on other lawful charges;
- 10. **Amid Hassan (A2)**, **Kakanyero Robert (A3)**, **Jamal Muhammad Alaru (A6)**, and **Onen Chan Dennis (A7)** shall be tried for their respective 15 confirmed charges;
- 11. The confirmed charges are accordingly forwarded for trial; and
- 12. Prosecution shall make the necessary amendments to the indictment reflecting the findings of this pre-trial before the commencement of the trial. I so order.

Dated in Kampala this 17th day of April 2023.

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Alice Komuhangi Khaukha

25 JUDGE

17/04/2023.

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