

UGANDA / JUDGMENT

Uganda v Muhumuza (Criminal Session Case 222 of 2006) [2024] UGHC 866 (23 September 2024)

[2024] UGHC 866

COURT

High Court of Uganda

BEFORE

Allan Nshimye, J

CASE / FILE NUMBER

Criminal Session Case 222 of 2006

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA HCT-CR-SC-222-2006

UGANDA Vs MUHUMUZA WALLEN

BEFORE: Hon. Justice Nshimye Allan Paul M.

10 RULING

BACKGROUND

The accused was arraigned before this Court on 22nd March 2024, in a criminal session. The learned Attorney Ariho Davis from the ODPP, then informed Court 15 that the accused suffered from a mental illness and was the subject of a Ministerial Order.

On court record, there is a warrant of confinement in a mental hospital issued by the Hon. Minister of Justice and Constitutional Affairs on 30th September 2022 20 under Section 48(3) (*currently Section 49(3) CAP 25*) of the Trial on Indictments Act. The warrant stated that the accused (Muhumuza Wallen) was medically examined on 26th of July 2010. He was found to be mentally unsound and consequently unable to defend himself.

- 25 The Honourable Minister issued an order that the accused (Muhumuza Wallen) be confined at Butabika Hospital as a criminal lunatic until any further order shall be made in the matter or in the manner provided by Section 48(4) *(currently Section 49(4) CAP 25)* of the Trial on Indictment Act.

- 30 Counsel for the accused sought an order to operationalize the Minister's order.

DETERMINATION

It is trite that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty as is provided in **ARTICLE 28 (3)(a) OF THE UGANDAN CONSTITUTION**.

The state of mind of a suspect is fundamental in criminal trials, that is why police subjects a suspect to a medical examination on Police Form 24 during investigations, to determine whether the suspect is of sound mind.

10 The cardinal principle is that a suspect must be of sound mind to plead to an indictment, this is because an accused must plead to charges that he or she understands. In cases where an accused is charged with a capital offence, he is expected to plead to an indictment as stipulated in **SECTION 61 OF THE TRIAL ON INDICTMENT ACT CAP 25**, which states;

"The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the court shall cause otherwise to order, and the indictment shall be read over to him or her by the chief registrar or other officer of the court, and explained if need be by that officer or interpreted* 20 *by the interpreter of the court; and the accused person shall be required to plead instantly to the indictment, unless, where the accused person is entitled to service of a copy of the indictment, he or she shall object to the want of such service, and the court shall find that he or she has not been duly served with a copy."*

The facts on court record in this case are that the Honourable Minister issued an order that the accused (Muhumuza Wallen) be confined at Butabika Hospital as a criminal lunatic until any further order shall be made in the matter or in the manner provided by Section 48(4) (*currently Section 49(4) CAP 25*) of the Trial on

30 Indictment Act. This means that the Minister's order rendered the accused a criminal lunatic, without trying him to prove him guilty.

The Constitutional Court of Uganda in deciding the case of **CENTRE FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT & ANOR. V ATTORNEY GENERAL 35 CONSTITUTIONAL PETITION NO. 64 OF 2011** declared that;

"Section 45(5) of the Trial on Indictments Act is unconstitutional in as far as it adjudges a person who is not proven guilty as a criminal by referring to him/her as a criminal lunatic contrary to Article 28(3) (a) of the* 5 *Constitution."*

I have based on the above decision of the Constitutional Court of Uganda, to conclude that I can not rely on the warrant of confinement to a mental hospital that was issued by the Hon. Minister of Justice and Constitutional Affairs on 30th 10 September 2022 under Section 48(3) (*currently Section 49(3) CAP 25*) of the Trial on Indictments Act, since it renders the accused a criminal lunatic, yet the Constitutional Court declared section 45(5) of the Trial on Indictments Act

unconstitutional. This is the same section that the Minister based on to declare the accused a criminal lunatic.

The Constitutional Court of Uganda in deciding the case of **CENTRE FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT & ANOR. V ATTORNEY GENERAL CONSTITUTIONAL PETITION NO. 64 OF 2011** also held that;

20 "The process of determining whether or not an accused person should be detained should be left to the trial court only. Such detention should be strictly for medical treatment. It is the court that should also determine when the accused is ready to stand trial or be released to the community, based on concrete medical evidence provided by a psychiatrist. The entire* 25 *procedure to declare a person unfit for trial, the duration and place of his detention and the time when he should be released should be determined by the court, after full inquiry based on medical evidence in full compliance with due process"* (**emphasis mine**)

30 It is my opinion after considering the decision in **CENTRE FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT & ANOR. V ATTORNEY GENERAL CONSTITUTIONAL PETITION NO. 64 OF 2011** that the Constitutional Court held that the courts of law have an obligation guided by law to determine the procedure to declare a person unfit for trial among other things.

I have considered the law and base on it to layout four salient procedural steps that a court of law can follow before declaring a person unfit to stand trial. These are;

- 5 1. **The court must determine the stage of the trial at which the accused mental status has come into question.** In this first procedural step, the court will have to consider two scenarios;
- a) An accused person who was suffering from a disease of the mind before taking plea, therefore making him/her unfit to take plea. The 10 applicable law to guide court under this scenario is **SECTION 11 OF THE PENAL CODE ACT CAP 25.**
- b) An Accused person who during the trial suffers from a disease of the mind making it impossible for him or her to make their defence. The applicable law to guide court under this scenario is **SECTION 46 (1) OF 15 THE TRIAL ON INDICTMENT ACT CAP 25.**
- 2. **The court shall then order for the Psychiatric examination of the accused by a psychiatric doctor or a senior mental health practitioner, if a psychiatrist is not available.** This is in line with the **SECTION 54 OF THE MENTAL HEALTH 20 ACT CAP 308** which provides that;

*"54 Determination of mental status"

(1)A determination of the mental health status of a person shall be carried out, where it is required for proceedings before a court of law or for any 25 *other official purpose.*

> *(2) a determination under subsection(1) shall only be carried out by a psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner"

- 30 It is advisable that the court order for examination of an accused clearly spell out that the authorised person carrying out the mental health examination determines;
- a) Mental status of the accused person.
- b) The ability of the accused to take plea.
- 35 c) The ability of the accused to understand legal proceedings.
- d) Whether the prison hospital can manage the accused's condition.
- **3. The court can make an order referring the accused to a facility that can care for him or her, if found to be suffering from a mental illness.** The court of 5 Law dealing with an accused person that has been found to be suffering from a mental illness shall find **ARTICLE 23(1)(f) OF THE UGANDAN CONSTITUTION** is instructive, since it states that;
"23 (1) No person shall be deprived of personal liberty except in any of the 10 *following cases-
> *(f) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community;"*
- **15 4. The procedure of release of the accused from the medical facility handling the treatment of his / her mental illness shall be stipulated in the court order that referred the sick accused person to a facility.** In this fourth procedural step, the court will have to consider two scenarios;
- 20 a) Where the accused was suffering with insanity when he or she allegedly committed the offence, then he or she can not be said to be criminally responsible as is provided by **SECTION 11 OF THE PENAL CODE ACT CAP 25** which states that;

25 *"11. Insanity*

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he or she is through any disease affecting his or her mind incapable of understanding what he or she is doing or of knowing that he or she ought not to do the act or 30 *make the omission; but a person may be criminally responsible for an act or omission, although his or her mind is affected by disease, if that disease does not in fact produce upon his or her mind one or other of the effects mentioned in this section in reference to that act or omission."*

In the case where the court determines that the accused was suffering with a disease of mind at the time he or she allegedly committed the offence, then the medical facility can be ordered to manage the patient and treat him or her with out reference back to the court. The facility 5 can release him or her after recovery when the facility believes he is not a threat to the society.

- b) Where the accused was of normal mental status when he or she is alleged to have committed the offence, but later developed a disease of the mind, then it follows that once the accused recovers, he or she ought to return to court for trial. In this scenario, the court ought to advise the officer in charge of the Mental health facility to do the following.
- i. The officer in charge of a mental health unit, shall- Compile the 15 discharge report; Request the prison to collect the prisoner; and make a report of the discharge to the court as is provided in **SECTION 69 OF MENTAL HEALTH ACT CAP 308**
- ii. The officer in charge / medical officer in charge of the mental hospital or facility shall forward a certificate to the Director of Public Prosecutions that the accused is capable of continuing with his or her trial as is provided in **SECTION 47 (1) OF THE TRIAL ON INDICTMENTS ACT CAP 25.**
- iii. The Director of Public Prosecutions shall if he or she so desires that the trial recommences follow the directives in **SECTION 47 25 AND 48 OF THE TRIAL ON INDICTMENTS ACT CAP 25.**

In the case at hand, this court mindful of its obligation to determine if the accused is unfit for trial as was held by the Constitutional court in **CENTRE FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT & ANOR. V ATTORNEY GENERAL 30 CONSTITUTIONAL PETITION NO. 64 OF 2011** and in pursuit of the steps suggested above, issued an order on 22nd March 2024, that a Psychiatric doctor of Uganda Prisons does examine the accused and give a report to this court in respect to his mental status, illness and ability to understand legal proceedings.

In a report dated 7th May 2024, the prisons psychiatrist doctor at Murchison Bay Hospital, Dr Hillary Irimaso stated that the accused was examined on 7th May 2024 in the presence of Dr Sonia Maria Tolley a Medical officer and Mr Rukundo Peter, a prisoner and peer educator as an interpreter.

Dr Hillary Irimaso revealed in his psychiatry medical report that the accused suffers;

- i. Severe intellectual disability, a neurodevelopmental condition which has no treatment and as such concluded that the accused will never be fit to plead or stand trial.
- ii. The accused may not have criminal responsibility.
- iii. The severity of the condition requires constant care of the accused's daily living which he may not be access in prison settings.
- 15 I find that the report of the psychiatrist doctor at Murchison Bay Hospital, Dr Hillary Irimaso, concluded that Muhumuza Wallen suffers a neurodevelopmental condition which according to the psychiatrist has no treatment and as such he will never be fit to plead or stand trial.

- 20 There is no indication from the court record that the accused suffered the disease of the mind after the commencement of the trial. I therefore base on the psychiatric doctor's report to make a special finding under **SECTION 49 (1) OF THE TRIAL ON INDICTMENTS ACT CAP 25**, that the accused Muhumuza Wallen is not guilty by reason of insanity.

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I also note that Muhumuza Wallen can not just be released to the society when a psychiatrist has found him to be suffering with a disease of the mind. Pursuant to the provisions in **ARTICLE 23(1) (f) OF THE UGANDAN CONSTITUTION**, it is therefore proper that this court orders that he is transferred to a medical facility

30 that can best handle his condition. In my opinion, the Butabika National Referral Mental Hospital can ably handle his treatment and management.

In conclusion, I order that;

1. The accused, Muhumuza Wallen is not guilty by reason of insanity
- 2. The Uganda Prisons Service hands over Muhumuza Wallen to the administration / officer in charge at Butabiika National Referral Mental Hospital as an involuntary patient under **SECTION 23 (1) and (2)(b) OF THE MENTAL HEALTH ACT CAP 308**
- 3. The Uganda Prisons Service shall hand over a copy of the report made by Dr $\text{\textit{S}}$ Hillary Irimaso on the mental status of Muhumuza Wallen to the administration / officer in charge at Butabiika National Referral Mental Hospital.
- 4. The administration at Butabiika National Referral Mental Hospital can release
- Muhumuza Wallen when he is no longer a threat to the community, in accordance to the procedures that govern the release of patients at Butabiika National Referral Mental Hospital.

NEAREZ NSHIMYE ALLAN PAUL M.

JUDGE 23-09-2024

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