

UGANDA / JUDGMENT

Uganda v Muwonge & 11 Others (HCT-00-ICD-CR-SC 1 of 2019) [2023] UGHCI CD 14 (17 May 2023) [2023] UGHCI CD 14

COURT

HC: International Crimes Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

HCT-00-ICD-CR-SC 1 of 2019

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (INTERNATIONAL CRIMES DIVISION)

HCT-00-ICD-SC-0001-2019

5 UGANDA PROSECUTOR

VERSUS

| | A1: JAMIL MUWONGE alias JAMA MOSES | |

|---|-----|-----|

| | A2: KAWEESI ANDREW alias ANDEY | |

| | A3. KAVUMA IBRAHIM | |

| 10 | A4. AHAMED SSEBUWUFU alias KAMADA | |

| | A5. MARIAM KASUJJA | |

| | A6. MUGOYA UTHMAN alias NAWANZU IBRAHIM | |

| | A7. KIMULI LUUTU alias MABIRA | ...
ACCUSED |

| | A8. JUMA SWABALU
SEKITI alias MAYUGE | |

| 15 | A9. SSEBOWA SULAIMAN
ISMAEL | |

| | A10. KAAYA DANIEL alias SHAFIC alias | |

|| FIFTY CENT alias ASWALD
HASSAN alias
MUSUBUZI ||

|| A11. SSEWANYANA ISMAIL alias ROBERT ||

|| A12. SULAIMAN SSENFUKA ||

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 conducted in the above case file (HCT-00-CD-CR-SC-0001-2019) between the dates of 11th October 2022 to 14th March 2023.

The accused persons are indicted for four (4) counts of Aggravated Trafficking in Children contrary to Sections 3 (1) (a) and 5 (a) of the Prevention of Trafficking in Persons Act, 2009, one (1) count of Terrorism contrary to Section 7(1) (b) and 2(j) of the Anti-Terrorism Act, 2002 as amended, one (1) count of Belonging to a 10 Terrorist Organisation contrary to Section 11(1) (a) and (3) of the Anti-Terrorism Act, 2002 as amended, one (1) count of rendering support to a Terrorist Organisation contrary to section 8 of the Anti-Terrorism Act, 2002 as amended, one (1) count of terrorist financing contrary to Section 9A (1)(a) of the Anti-Terrorism Act, 2002 as amended and two (2) alternative counts of terrorist financing contrary to Section 9A 15 (1) (b) and Section 9A (1) (c) and of the Anti-Terrorism Act, 2002 as amended respectively.

During the pre-trial, the charges were read and explained to all accused persons both in English and Luganda in open court but they were not allowed to plead to them 20 because they could only do so at their trial before the trial judge/ panel should this court confirm these charges.

Representation

Facts as disclosed by the Prosecution

The Allied Democratic Forces (ADF) is a terrorist organization operating both in Uganda and the Democratic Republic of Congo (DRC). On 2nd July 2018, one Jamil 5 Muwonge alias Jama Moses (A1) was arrested by security operatives in a Link bus UAJ 797H around Buloba police check point in Wakiso District. He was found with many bags of assorted items which included chemicals [A Search Certificate was admitted and marked PEX 31 (ID)]. On 9th September 2018 his rented room at Lwazi "A" village in Mutukula (Uganda- Tanzanian boarder) was searched and a number 10 of items which included money in different currencies namely Uganda Shillings, Tanzanian Shillings, Pounds, money transfer documents, sim cards were recovered and a Search Certificate was admitted and marked [PEX 32 (ID 32)]. On 10/9/2018, a Charge and Caution statement [PEX 17

(ID)] was obtained from A1 and he confessed being part of ADF having been introduced and recruited by his brother in law Jamir Matovu who is stationed in the DRC. He implicated Kaweesi Andrew alias Andey (A2) and Kavuma Ibrahim (A3). Kaweesi Andrew (A2) and Kavuma Ibrahim (A3) were also arrested.

The recovered chemicals were analyzed and a Forensic Analysis Report was 20 admitted [PEX 70 (ID)] which concluded that some of them are readily available materials that can be used by terrorists in combination with other compounds to produce IEDs (Improvised Explosive Devices) which can be used to destroy property, incapacitate individuals, harass masses or distract governments.

25 On 9/9/2018, the house of Kavuma Ibrahim (A3) was searched and a number of items which included sim cards, Arabic literature among others were recovered. [A Search Certificate was admitted and marked PEX 34(ID)] A Charge and Caution

statement was obtained from Kavuma Ibrahim (A3) [PEX 19 (ID)] and he confessed having been receiving money from some people in the ADF camp in the DRC, buying items and sending them to DRC. He also confessed transmitting funds to and from ADF members. He implicated Jamil Muwonge (A1) and Ahamed Ssebuwufu 5 alias Kamada (A4). An income and expenditure sheet had also been prepared on the instructions of Kavuma Ibrahim which indicated that he had received some money and how he had spent it. It indicated that some money in different currencies had been sent to DRC, Tanzania and some to some people in Uganda. The documents were admitted and marked PEX 50 (ID) and PEX 51 (ID).

Security operatives later arrested Ahamed Ssebuwufu (A4), Mariam Kasujja (A5), Mugoya Uthman alias Nawanzu Ibrahim (A6), Kimuli Luutu alias Mabira (A7), Juma Swabalu Sekiti alias Mayuge (A8), Ssebowwa Sulaiman Ismael (A9), Kaaya Daniel alias Shafic alias Fifty Cent alias Aswald Hassan alias Musubuzi (A10), 15 Ssewanyana Ismail alias Robert (A11) and Sulaiman Ssenfuka (A12).

A Charge and Caution statement was obtained from Kimuli Luutu alias Mabira (A7) [PEX 23 (ID)] in which he confessed being a member of ADF and having recruited some people into the Organisation. He also confessed having been staying with his 20 uncle Kavuma Ibrahim (A3) who gave him money to buy some items which he sent to the ADF in the DRC.

The house of Mariam Kasujja (A5) was searched and a number of items were recovered which included a copy of Amnesty Certificate in her name, and three 25 photocopies of National Identity Cards in the names of Okello Umar, Onama Ratib and Oyuru Juma. Mariam Kasujja (A5) in her Charge and Caution statement [PEX 21 (ID)] stated that her husband Badru Katerega used her phone to call someone and

that person later kept on sending money on her phone with instructions to send it to some people whom she did not know.

A Charge and Caution statement was also taken from Mugoya Uthman alias 5 Nawanzu Ibrahim (A6) (PEX 22 (ID)) and he confessed being a member of ADF. He also confessed having recruited many into ADF who were mainly members of his family who have since gone to the ADF camp in the DRC. His house was also searched and a number of items including Arabic literature, mobile phones, sim cards and a photograph of a man in military attire were recovered. [A Search 10 Certificate was admitted and marked PEX 37(ID)].

A Charge and Caution statement was also recorded from Juma Swabalu Sekiti alias Mayuge (A8) [PEX 24 (ID)] and he confessed having been involved in ADF activities particularly recruiting members and transmission of funds to ADF in the 15 DRC. In his confession, he also implicates Mugoya Uthman alias Nawanzu Ibrahim (A6) as an ADF recruiter. In his Charge and Caution statement, Ssebowa Sulaiman Ismael (A9) [PEX 25 (ID)] confessed to be a member of ADF and a recruiter of persons into the ADF. He also implicated Kaaya Daniel alias Shafic alias Fifty Cent alias Aswald Hassan alias Musubuzi with whom he was recruiting people to join the 20 ADF.

A Charge and Caution Statement was also recorded from Kaaya Daniel alias Shafic alias Fifty Cent alias Aswald Hassan alias Musubuzi (A10) [PEX 27 (ID)] and he confessed working with ADF and particularly recruiting people to join ADF and

25 transmitting funds for ADF activities.

Ssewanyana Ismail alias Robert (A11) recorded a Charge and Caution statement [PEX 28 (ID)] in which he confessed being a member of the ADF and being involved in ADF activities including recruitment of his own children into the ADF. He also confessed receiving and transporting supplies and money to the ADF. He implicated 5 Kaaya Daniel alias Shafic alias Fifty Cent alias Aswald Hassan alias Musubuzi (A10) from whom he got the supplies and the money.

The rented room of Ssewanyana Ismail alias Robert (A11) was searched and a number of items were recovered and they included a black drone UAVS 8807, mobile phones, sim cards, Arabic literature among others.

Sulaiman Ssenfuka (A12) in his Charge and Caution Statement [PEX 30 (ID)] admitted having been contacted by one Kakande to forge National Identity Cards but he did not know that the same were being used for recruitment into the ADF.

15 The call data records were processed and matrices generated for analysis and the analysis indicated that all the accused persons are known to each other and have been communicating with each other. Prosecution also disclosed a Technical Analysis Report on ADF Operatives and it was marked [PEX 66 (ID)].

20 Disclosure/List of exhibits presented by the Prosecution

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 25 witness statements, the statements of Police officers who recorded statements from the accused persons, plain and Charge and Caution statements of the accused persons, forensic reports among others. The physical exhibits were inspected by both

counsel for the prosecution and for the accused persons and furnished the court with a report.

Jurisdiction

5 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* 10 *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*

under any other penal enactment." [Emphasis Mine]

Some of the charges against the accused persons are brought under the Prevention 15 of Trafficking in Persons Act, 2009 while others are brought under the Anti-Terrorism Act, 2002 as Amended. These 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.

20

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 and confirmation of charges in criminal trials is a well-established procedure 25 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. 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 5 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:

**"Subject to the provisions of paragraph 2, within a reasonable time after the person's surrender*
10 *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 presence of the Prosecutor and the person charged, as well as his or her legal counsel."**
[Emphasis Mine]

15 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,*
20 *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 25 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 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 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 10 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 15 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: **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 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]

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
10 *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* 15
insufficient evidence;
- *(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* 20 *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" 25 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 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*).

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 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 10 evaluation of the evidence presented by the Prosecution in this case.

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.

15 I need to observe that both the prosecution and the defence were given scheduled timelines within which to file their written submissions but none of them filed the submissions. The decision on this matter will therefore be arrived at without the submissions of either party.

20 Resolution of the issue

I will handle counts 1, 2, 3, and 4 together.

COUNTS 1, 2, 3, AND 4: AGGRAVATED TRAFFICKING IN CHILDREN CONTRARY TO 25 SECTIONS 3 (1) (a) AND 5(a) OF THE PREVENTION OF TRAFFICKING IN PERSONS ACT.

Counts 1, 2, 3 and 4 relate to aggravated trafficking of **Mariam Wanyana, Sofia Wanyana, Shafic Ssewanyana and Swaibu Ssewanyana** respectively. These counts were preferred in an amended indictment which was filed in the court on 13th March 2023 and they are against only **Ssewanyana Ismail alias Robert (A11)**.

- 5 The ingredients of the offence of Aggravated Trafficking in Children are:
- (a) Recruiting, or transporting or transferring the victims;
- (b) The victim is a child under the age of 18 years;
- (c) By means of fraud or deception or abuse of power or position of vulnerability;
- (d) For the purpose of exploitation; and
- 10 (e) Participation of the accused.

Recruiting, or receiving or transporting the victims

It was the prosecution's disclosed evidence that all the four victims are biological children of Ssewanyana Ismail alias Robert (A11). Prosecution disclosed the 15 statement of the children's mother [PEX 29 (ID)] in which she stated that all the four children are her biological children. Shafik Ssewanyana was aged 11 years, Mariam Wanyana (10 years), Sophia Wanyana (7 years) and Swaibu Ssewanyana (1 year and 8 months). According to the children's mother, A11 took away the first three children claiming that he was taking them to a boarding school in Buwama and they 20 never returned home. Later after some time, he took away the last child claiming he was taking him to visit his sister and did not return the child.

Prosecution further disclosed the statement of Mariam Wanyana (one of the victims) and she confirmed that her father A11 took her away from home with her two 25 siblings namely Shafik and Sophia claiming that he was taking them to a boarding school. They spent a month in an unknown place in Uganda and were later taken to

a forest in the DRC. After a year, their father brought their young brother Swaibu Ssewanyana to the DRC.

In his charge and Caution statement, A11 confesses to have taken away his three 5 children from their home after deceiving their mother that they were going to a boarding school in Buwama. He handed them over to one Haruna who took them to the DRC. Later, he picked the last child Swaibu and deceived his mother that he was going with him to visit but transported him to the DRC in the ADF camps where he found his other three children.

From the above evidence as disclosed by the prosecution, it is evident that all the four victims were recruited and transported by their father A11.

I find that this ingredient has been proved to the required standard by the prosecution.

15 The victims being children under the age of 18 years

From the statements of A11, his wife and Mariam Wanyana (victim), all the children were aged below 18 years at the time of their recruitment. To be specific, Shafik Ssewanyana was aged 11 years, Mariam Wanyana (10 years), Sophia Wanyana (7 years) and Swaibu Ssewanyana (1 year and 8 months). This ingredient has also been 20 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 25 of power and position of vulnerability. They were clearly moved by their father (A11) purportedly to a boarding school and visiting a relative. In light of the above,

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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 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 10
means set forth in subsection (1) of this section.

(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

15 Section 2 (d) of the Prevention of Trafficking in Persons Act interprets exploitation 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 A11, he was fully aware that the victims were being recruited 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 25 Prevention of Trafficking in Persons Act. Furthermore, according to Mariam Wanyana, upon being taken to DRC, they were living in a forest and being taught Islam and how to fight for it. According to her, all the male children were given guns

and trained how to use them. She further stated that when she turned 14 years, she was handed over to a man for marriage and the man started having sexual intercourse with her as a "wife".

In light of the above, this ingredient has also been proved to the required standard.

The accused's participation

This has been exhaustively covered in the first ingredient. It is evident that all the four children were recruited, transported and or transferred by their father who also confessed to doing the same.

In light of the above therefore, I find that Ssewayana Ismail alias Robert (A11) is implicated in counts 1, 2, 3 and 4. Therefore, charges in count 1, 2, 3 and 4 are confirmed against Ssewanyana Ismail alias Robert (A11).

15 COUNT 5: TERRORISM CONTRARY TO SECTION 7 (1) (b) AND (2) (j) OF ANTI-TERRORISM ACT, 2002 AS AMENDED

The prosecution alleges that A1 Jamil Muwonge alias Jama Moses and others still 20 at large, in July 2018, in a Link Bus Park in Kampala District and Buloba Police Check Point in Wakiso District in Uganda, with intent to intimidate the public or a section of the public and for political or religious or social or economic aim indiscriminately and without due regard to the safety of others or property was unlawfully in possession of materials for making explosive or ammunition or bomb 25 to wit Magnesium oxide, Ammonium Nitrate, Lead Nitrate, Sulphur, Potassium Chlorate, Ferric Oxide, Aluminum, Cellulose, Gun Powder, Barium, Potassium, Starch, Glyphosate and Ammonium Iron III Citrate.

The following are the ingredients of terrorism;

- (a) Unlawful Possession of materials for making explosives or ammunition or bomb indiscriminately and without due regard to the safety of others or 5 property;
- (b) Intent to intimidate the public or a section of the public and for political or religious or social or economic aim; and
- (c) Participation of the accused person (A1).

10 Unlawful Possession of materials for making explosives or ammunition or bomb indiscriminately and without due regard to the safety of others or property.

Prosecution adduced the statement of Byansi Ronald, a bus driver of the Link bus to the effect that on 2/7/2018 at about 10:00 pm, the Link bus which he was driving 15 was intercepted at Buloba Police Check point and a passenger was removed and he had about 6 bags of about 5 kilograms each and about four (4) polythene bags [PEX2 (ID)]. Jamil Muwonge (AI) in his Charge and Caution Statement [PEX 17 (ID)] confessed having been arrested from the Link bus on his way to Bwera to deliver the above items to the ADF Camp in the DRC. He confessed being a member of the 20 ADF and also having ever been to the ADF camp in the DRC.

The recovered items were analyzed and a Forensic Analysis Report was admitted [PEX 70 (ID)] and concluded that some of them are readily available materials that can be used by terrorists in combination with other compounds to produce IEDs 25 (Improvised Explosive Devices) which can be used to destroy property, incapacitate individuals, harass masses or distract governments.

In light of the above, it is apparent that A1 carried materials used for making explosives in a public bus with so many other passengers without due regard to their safety and that of their property.

This ingredient has therefore been proved to the required standard.

Intent to intimidate the public or a section of the public and for political or religious or social or economic aim.

From the charge and caution of A1, he is a member of the ADF, a terrorist organisation which operates in different countries including Uganda and the DRC 10 whose agenda is to fight religious wars (Jihad) and ensure that everybody is converted to Islam and kill those who are opposed to the religion. He was delivering the materials to the ADF camp in the DRC well knowing that the same were going to be used to make explosives to terrorize the public or a section of the public. This ingredient has also been proved to the required standard.

Participation of the accused person (A1).

The statement of the bus driver and the Charge and caution statement of A1 point to the fact that it was Jamil Muwonge alias Jama Moses (A1) who was found in unlawful possession of the materials for making explosives.

20 In light of the above therefore, count 5 has been proved to the required standard and is accordingly confirmed against Jamil Muwonge alias Jama Moses (A1).

COUNT 6:**BELONGING TO A TERRORIST ORGANISATION CONTRARY TO 25 SECTION 11(1) (a) AND (3) OF THE ANTI-TERRORISM ACT, 2002 (AS AMENDED).**

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Prosecution alleges that A1. Jamil Muwonge alias Jama Moses A2. Kaweesi Andrew alias Andey, A3. Kavuma Ibrahim, A4. Ahamed Ssebuwufu alias Kamada, A5. Mariam Kasujja, A6. Mugoya Uthman alias Nawanzu Ibrahim, A7. Kimuli Luutu alias Mabira, A8. Juma Swabalu Sekiti alias Mayuge, A9. Ssebowo Sulaiman 5 Ismael, A10. Kaaya Daniel alias Shafic Alias Fifty Cent alias Musubuzi, A11. Ssewanyana Ismail alias Robert and A12. Sulaiman Ssenfuka and others still at large, between 2015 and 2018, in diverse areas of Kampala, Wakiso, Masaka, Rakai, Kyotera, Buikwe and Busoga Region all in Uganda belonged or professed to belong to the Allied Democratic Forces (ADF), which is a prescribed 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:

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

The existence of a terrorist organization.

A terrorist organization 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 organizations.

25 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 bearing the same name."

From the above provisions of the law, it is clear that the Allied Democratic Forces 5 (ADF) is a confirmed terrorist organisation in Uganda and upon perusal of the disclosures tendered in by the prosecution, they all mention or connect all the accused persons to ADF. I therefore find that there is sufficient evidence to prove this ingredient to the required standard.

10 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 statements of the accused persons, I find that they all confess to belong to the ADF save for Mariam Kasujja (A5) and Sulaiman Ssenfuka (A12). Though she does not 15 expressly admit to belong to the ADF, Mariam Kasujja in her Charge and Caution statement [PEX 219ID)] admits having used her phone to receive and send money to telephone numbers which belong to the ADF operatives. It is unbelievable that someone can offer her telephone number to be used to transact on mobile money with people she does not know and on many occasions. The only probable 20 explanation as to why she offered her telephone number to be used is that she belonged to the organisation and she clearly knew the source and the destination of the money which came through her telephone. In my view, her claim that she did not know the people but were only known to her husband Badru Katerega is not believable.

Ssenfuka Sulaiman (A12) in his charge and Caution Statement also does not expressly admit belonging to the ADF. He only admits to having been involved in

the forgery of the National Identity Cards. However, it should be noted that those forged National Identity Cards were being used for recruiting people into the ADF. He also cannot claim not to have been part of the operatives of the ADF when he was the one forging the National Identity Cards that were being used in the 5 recruitment. Besides, the analysis of the telephone matrix of the call data records of the accused persons indicate that all the accused persons are known to each other and have been communicating with each other and with other known ADF members.

In light of the above, this ingredient has also been proved to the required standard.

10 Consequently, therefore, I find that this evidence is sufficient enough to establish substantial grounds to believe that all the accused persons belong or profess to belong to a terrorist organization contrary to section 11 (1) (a) of the Anti-Terrorism Act, 2002. Resultantly, charges in count 6 are hereby confirmed against all the accused persons.

COUNT 7:

RENDERING SUPPORT TO A TERRORIST ORGANISATION CONTRARY TO SECTION 8 OF THE ANTI-TERRORISM ACT, 2002 AS AMENDED.

Prosecution alleges that A1 Jamil Muwonge alias Jama Moses A2. Kaweesi Andrew alias Andy, A3. Kavuma Ibrahim, A4. Ahamed Sebuwufu alias Kamada, A5. Mariam Kasujja, A6. Mugoya Uthman alias Nawanzu Ibrahim, A7. Kimuli Luutu alias Mabira, A8. Juma Swabalu Sekiti alias Mayuge, A9. Ssebowa Sulaiman 25 Ismael, A10. Kaaya Daniel alias Shafic Alias Fifty Cent alias Musubuzi, A11. Ssewanyana Ismail alias Robert and A12. Sulaiman Ssenfuka and others still at large, between 2015 and 2018, in diverse areas of Kampala, Wakiso, Masaka, Rakai,

Kyotera, Buikwe and Busoga Region all in Uganda rendered support to the Allied Defence Forces (ADF), 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.

5 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* 10 *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:

- a) rendering support to any person;
- 15 b) 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
- c) participation of the accused persons.

20 Rendering support to any person.

The prosecution intends to rely mainly on the charge and caution statements of the accused persons who confess to having been involved in recruiting people to join the ADF, receiving money from ADF operatives based in the DRC and other countries and buying supplies and sending them to the DRC. Prosecution also 25 adduced documents related to money transfer such as Western Union and documents showing income and expenditure. This amounts to rendering

support to the terrorist organization and I find that this ingredient has been proved to the required standard.

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.

Prosecution still relies mainly on the charge and caution statements of the accused persons to impute knowledge or reason to believe that their support would be used for acts of terrorism. In their statements, they clearly indicate that they were aware their support was to be used by the ADF to advance their agenda. In light of the 10 above therefore, this ingredient has been proved to the required standard.

Participation of the accused persons.

Upon perusal of the disclosures from the prosecution especially the accused's plain and charge and caution statements, I find that the accused persons confess rendering 15 support towards the ADF operations. The statements and the money transfer documents among others, provide sufficient evidence to prove their participation in the commission of the offence in this count to the required standard.

Consequently, therefore, I find that this evidence is sufficient enough to establish 20 substantial grounds to believe that all the accused persons rendered support to a terrorist organization contrary to section 8 of the Anti-Terrorism Act, 2002 as Amended. Resultantly, charges in count 7 are hereby confirmed against all the accused persons.

25 COUNT 8, ALTERNATIVE COUNTS 1 AND 2: TERRORIST FINANCING CONTRARY TO SECTION 9A (1) (a) (b) AND (c) OF THE ANTI-TERRORISM ACT, 2002 (AS AMENDED).

Prosecution alleges in count 8 that A1. Jamil Muwonge alias Jama Moses A2. Kaweesi Andrew alias Andey, A3. Kavuma Ibrahim, A6. Mugoya Uthman alias Nawanzu Ibrahim, A8. Juma Swabalu Sekiti alias Mayuge, and A10. Kaaya Daniel alias Shafic Alias Fifty Cent alias Musubuzi, willingly provided funds directly or 5 indirectly by cash transactions, with the intention that the funds would be used or in the knowledge that such funds would be used in full or in part by A4. Ahamed Ssebuwufu alias Kamada, A5. Mariam Kasujja, A7. Kimuli Luutu alias Mabira, A9. Ssebowwa Sulaiman Ismael, A11. Ssewanyana Ismail alias Robert and A12. Sulaiman Ssenfuka, suspected terrorists and or the Allied Democratic Forces (ADF).

In the 1ST ALTERNATIVE COUNT, the prosecution alleges that A1. Jamil Muwonge alias Jama Moses A2. Kaweesi Andrew alias Andey, A3. Kavuma Ibrahim, A6. Mugoya Uthman alias Nawanzu Ibrahim, A8. Juma Swabalu Sekiti alias Mayuge, and A10. Kaaya Daniel alias Shafic alias Fifty Cent alias Musubuzi, 15 willingly provided funds directly or indirectly by cash transactions, with the intention that the funds would be used or in the knowledge that such funds would be

used in full or in part by A4. Ahamed Ssebuwufu alias Kamada, A5. Mariam Kasujja, A7. Kimuli Luutu alias Mabira, A9. Ssebowa Sulaiman Ismael, A11. Ssewanyana Ismail alias Robert and A12. Sulaiman Ssenfuka, to travel to the 20 Democratic Republic of Congo (DRC) for the purpose of perpetrating, or planning or preparation of or participation in a terrorist act or providing or receiving of terrorist training against Uganda or any other state.

In the 2ND ALTERNATIVE COUNT, the prosecution alleges that A1. Jamil 25 Muwonge alias Jama Moses A2. Kaweesi Andrew alias Andey, A3. Kavuma Ibrahim, A6. Mugoya Uthman alias Nawanzu Ibrahim, A8. Juma Swabalu Sekiti alias Mayuge, and A10. Kaaya Daniel alias Shafic alias Fifty Cent alias Musubuzi,

willingly provided funds directly or indirectly by cash transactions, with the intention that the funds would be used or in the knowledge that such funds would be used in full or in part by A4. Ahamed Ssebuwufu alias Kamada, A5. Mariam Kasujja, A7. Kimuli Luutu alias Mabira, A9. Ssebowa Sulaiman Ismael, A11. 5 Ssewanyana Ismail alias Robert and A12. Sulaiman Ssenfuka to carry out a terrorist act.

The main ingredient in the above count and its alternatives is the willing provision of funds by the accused persons. Upon perusal of the evidence disclosed by the 10 prosecution I find that it does not support the claim that the accused persons willingly provided funds. What the evidence discloses is that the accused persons received money either from DRC, Denmark and the United Kingdom with instructions to procure items for use in the DRC or to send money to the recipients who were either in Uganda or the DRC. It is therefore not true that the accused persons were 15 financiers or funders of terrorist activities. On the contrary, they were used as conduits through which funds were transmitted. I find this to be rendering support towards the terrorist activities as opposed to terrorist financing. Even A6 Mugoya Uthman alias Nawanzu Ibrahim who admits having sent money to the Abdullah who is based in the DRC, he states that the money was obtained from the sale of the 20 properties of Abdullah. He was therefore not the financier but rather a conduit.

In light of the above, I find that the disclosed evidence falls short of proving count 8 and the two alternative counts to the required standards. I therefore decline to confirm them and accordingly dismiss them.

Conclusion

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

- 1. Charges in counts 1, 2, 3 and 4 are confirmed against A11 Ssewanyana Ismail 5 alias Robert;
- 2. Charges in count 5 are confirmed against A1 Jamil Muwonge alias Jama Moses;
- 3. Charges in counts 6 and 7 are confirmed against all the accused persons;

- 4. Charges in count 8 and the two alternative counts have not been confirmed 10 and are accordingly dismissed;
- 5. The confirmed charges are accordingly forwarded for trial; and
- 6. 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 May 2023.

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Alice Komuhangi Khaukha

20 JUDGE

17/05/2023.

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