

UGANDA / JUDGMENT

# Uganda v Rumanzi (Criminal Session Case 163 of 2013) [2024] UGHC 960 (1 October 2024)

[2024] UGHC 960

## COURT

High Court of Uganda

## BEFORE

Allan Nshimye, J

## CASE / FILE NUMBER

Criminal Session Case 163 of 2013

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## THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA HCT- CR-SC-163-2013

UGANDA ----- PROSECUTION

## VERSUS

RUMANZI DAVID ----- ACCUSED

BEFORE: Hon. Justice Nshimye Allan Paul M.

## RULING

## BACKGROUND

On 16 January 2018, this court ordered that the accused be taken for mental 15 medical examination. Dr Godfrey Zari Rukundo, the Head, Department of psychiatry, Mbarara Regional Referral Hospital signed a report dated 8 th February 2018 stating that Rumanzi David has a chronic Psychotic disorder that interferes with thinking, perception and judgement. He recommended that he needs psychiatric treatment.

On 19th May 2018, Dr Caroline Birungi, a Psychiatrist, from the Department of Psychiatry, Makerere University/ Mulago Hospital signed a report that concluded that the accused is not fit to stand trial at the moment and he needed to start on medication (Chlorpromazine and Benzhexol).

The case kept on being adjourned by the successive Judges, while awaiting a Minister's order.

On 8th April 2024, the case came up in a criminal session, and the State 30 Attorney informed court that the accused had been tested and found to suffer from mental illness.

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## 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 5 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.

The cardinal principle is that a suspect must be of sound mind to plead to an 10 indictment, this is because an accused must plead to charges that he understands. In cases where an accused is charged with a capital offence, he is expected to plead to an in 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\* 15 \*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 by the interpreter of the court; and the accused person shall be required to plead instantly to the indictment, unless, where the\* 20 \*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 Constitutional Court of Uganda in deciding **CENTRE FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT & ANOR. V ATTORNEY GENERAL CONSTITUTIONAL 25 PETITION NO. 64 OF 2011** held that;

"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,\* 30 \*based on concrete medical evidence provided by a psychiatrist. The entire 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**)

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 procedure to be followed to declare a person unfit to stand trial entails four salient steps;

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

20 \*"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 other official purpose.\*

\*(2) a determination under subsection(1) shall only be carried out by a\* 25 \*psychiatrist or where a psychiatrist is not available, by a senior mental health practitioner"\*

The court can base on **SECTION 54 OF THE MENTAL HEALTH ACT CAP 308** to have the accused examined to specifically determine.

- 30 a) Mental status of the accused person
- b) The ability of the accused to understand legal proceedings.
- c) Whether the prison hospital can manage the accused condition.
- 3. **The court can make an order referring the accused to a facility that can 35 care for him or her if found to be suffering from a mental illness. ARTICLE 23(1)(F) OF THE UGANDAN CONSTITUTION** is instructive, it states that;

"23 (1) No person shall be deprived of personal liberty except in any of the 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 5 of the care or treatment of that person or the protection of the community;"
- 4. **The release of the accused from the medical facility for treatment of his / her mental illness shall be stipulated in the court order that referred the**
- 10 **sick accused person to a facility.** The court will consider the following two scenarios;

- a) Where the accused was suffering with insanity when he or she committed the offence, then he or she can not be said to be criminally responsible as is provided by **SECTION 11 OF THE PENAL 15 CODE ACT CAP 25** which states that;

**\*"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\* 20 \*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 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\* 25 \*the effects mentioned in this section in reference to that act or omission."\*

In this case the court order to the medical facility can be made ordering the facility to manage the patient and treat him or her with 30 out reference back to the court. The facility can release him or her after when they believe he is not a threat to society.

- b) Where the accused was of normal mental status when he or she committed the offence, but later developed a disease of the mind, 35 then once he or she has recovered, the officer in charge of the Mental health facility will follow the procedure to be outlined in the court order transferring the accused to the mental institution.
- i. The officer in charge of a mental health unit, shall- Compile the 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 5 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. 10 iii.** The Director of Public Prosecutions shall if it is so desired
- follow the directives in **SECTION 47 AND 48 OF THE TRIAL ON INDICTMENTS ACT CAP 25.**
- The court record shows that Dr Godfrey Zari Rukundo, the Head, Department of Psychiatry, Mbarara Regional Referral Hospital signed a report dated 8th 15 February 2018 stating that Rumanzi David has a chronic Psychotic disorder that interferes with thinking, perception and judgement. He recommended that he needs psychiatric treatment.
- On 19 20 th May 2018, Dr Caroline Birungi, a Psychiatrist, Department of Department of psychiatry, Makerere University/ Mulago Hospital signed a report that concluded that the accused is not fit to stand trial at the moment and he needed to start on medication (Chlorpromazine and Benzhexol).

- 25 I find that the reports of the Psychiatric doctors on court record all confirm that the accused has a mental illness and recommend treatment. The court record shows that on 19/10/19 the accused took plea and pleaded not guilty. The two medical report don't say that he will never be able to stand trial but emphasis treatment, which means that he could possibly stand trial after recovery. It is
- 30 therefore the duty of this court to transfer him to medical facility that can best handle his condition. In my opinion, the Butabika National Referral Mental Hospital is appropriate.

In conclusion, having considered the law and evidence on record, I order that;

- 1. The accused, Rumanzi David be transferred to Butabiika National Referral Mental Hospital.
- 2. The Uganda Prisons Service shall hand over Rumanzi David to the \$5\$ administration / officer in charge at Butabiika National Referral Mental Hospital.
- 3. The Uganda Prisons Service shall hand over a copy of the report of Dr Godfrey Zari Rukundo dated 8<sup>th</sup> February 2018 and that of Dr Caroline Birungi dated 19<sup>th</sup> May 2018 that detail the mental status of Rumanzi David, 10 to the administration / officer in charge at Butabiika National Referral Mental Hospital.
- 4. When Rumanzi David recovers after his treatment, the officer in charge of the mental health unit, shall- Compile the discharge report; Request the prison to collect the prisoner; and make a report of the discharge to the
- 15 court as is provided in SECTION 69 OF MENTAL HEALTH ACT CAP 308
- 5. When Rumanzi David recovers after his treatment, the officer in charge / medical officer in charge of the Mental hospital or facility shall forward a certificate to the Director of Public Prosecutions confirming 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.

NSHIMYE ALLAN PAUL M. JUDGE 01.10.2024

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