

UGANDA / JUDGMENT

Uganda v Thembo (HCT-00-ICD-CR-SC 11 of 2018) [2024] UGHICID 8 (7 May 2024)

[2024] UGHICID 8

COURT

HC: International Crimes Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

HCT-00-ICD-CR-SC 11 of 2018

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(INTERNATIONAL CRIMES DIVISION) HCT-00-ICD-0011-2018 5 UGANDA
..... PROSECUTOR

VERSUS

THEMBO KITSUMBIRE ACCUSED

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA 10

RULING FOR CONFIRMATION OF CHARGES

Introduction

This Ruling is in respect of a pre-trial and confirmation of charges whose hearing 15 was conducted in the above case file, HCT-00-ICD-SC-0011-2018.

Thembo Kitsumbire (hereinafter referred to as **the Accused**) was indicted on one Count of Treason contrary to Section 23 (1) (a), (c) and (d) of the Penal Code Act, Cap. 120; one Count of Misprision of Treason contrary to Section 25 of the Penal 20 Code Act, Cap.120; and one Count of Terrorism contrary to Section 7 (10 (a) and (2) (b) of the Anti-Terrorism Act, 2002 (as amended).

Representation

The Prosecution was represented by Ms. Lillian Omara, Chief State Attorney and 25 Ms. Marion Ben-Bella, Senior State Attorney, both from the Office of the Director of Public Prosecutions while the Accused was represented by Mrs. Sylvia Namaweje Ebitu from Asimwe, Namaweje & Co. Advocates on state brief.

Facts as disclosed by the Prosecution

The Accused was the Prime Minister of the kingdom of Rwenzururu known as "Obusinga Bwa Rwenzururu" (OBR) under the kingship of Charles Wesley Mumbere (hereinafter referred to as "the king") who was installed in 2009. This was 5 years after the king had been involved in a rebellion against the Government for reasons that the Bakonjo were a marginalized group of people. His late father Isaiah Mukirane who desired to create a separate and independent Government known as the "Yiira State" had earlier in 1963 led an armed rebellion against the Tooro kingdom and the king sought to further the mission of his late father. It was envisaged that the Yiira State would cover the Districts of Kasese, Kabarole, Kyegegwa, Bundibugyo, Kyenjojo, Kamwenge and Ntoroko.

The installation came as a result of negotiations between him and the Government.

- Sometime in 2014, the Bamba who were under the OBR inaugurated their king and 15 created their own kingdom. This angered the king against the Bamba and the Central Government as he blamed the Central Government for letting the Bamba defect from the OBR. The king then in a bid to create the Yiira state embarked on a massive recruitment of the youth militia who underwent military training and were known as the Royal Guards. They were also given local names such as: '*Isyomango*' meaning 20 "the king's youth" and '*Kirumiramuthima*' meaning "the brave". Though disguised as Royal Guards, their mission was to fight the Central Government to create the Yiira State. Indeed, they were trained and had a very well-organised military command with the king as the Commander in Chief.
- 25 The king had been assigned UPDF soldiers to guard him and the palace as is done for all cultural leaders. The same were chased by the Royal Guards for reasons that they were spies for the Central Government and were leaking their plan to create the Yiira State. In 2016, upon the leaving of the UPDF soldiers, the Royal Guards who were armed with pangas, spears, knives, bows and arrows, catapults, stones, clubs, guns, and Improvised Explosive Devices (IED) launched attacks on Government installations, Police Stations and Posts and all those opposed to the creation of the Yiira State. Upon attacks, they would kill, maim, rob guns and other items, and 5 kidnap people some of whom they would take to the king's palace from where they would torture them to death. The attacks were indiscriminate in nature and this resulted in loss of lives and properties, grave injuries, and created too much fear in the public.
- 10 The Police managed to curb the uprising and the king, the Accused, and 215 others were arrested and charged with treason, misprision of treason, terrorism, murder, robbery, and attempted robbery, among others.

The king and the others admitted culpability and were granted amnesty by the 15 Government. The charges were then withdrawn against them by the Director of Public Prosecutions. The Accused who was the then Prime Minister of the OBR continued to deny culpability hence, this case against him alone.

Disclosure/List of exhibits presented by the Prosecution

20 The Prosecution made their disclosure and presented the documentary exhibits that were identified and duly marked by the Court as required under the Judicature (High Court) (International Crimes Division) Rules, 2016 and the High Court (International Crimes Division) Practice Directions, 2011. The exhibits comprise of: witness statements of the people who witnessed the incident, statements of Police 25 Officers who arrested and interrogated the Accused, statements of the Accused, Search Certificates, Exhibit Slips, Postmortem requests and Reports, Scene of Crime Reports, Media footages, correspondence letters, among others.

Jurisdiction

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

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

One of the charges against the Accused is brought under the Anti-Terrorism Act, 2002 (as amended). The said Act according to its long title was enacted to suppress acts of terrorism, to **provide for the punishment of persons who plan, instigate, support, finance or execute acts of terrorism; to prescribe terrorist**

15 organizations and to provide for the punishment of persons who are members of, or who profess in public to be members of, or who convene or attend meetings of or who support or finance or facilitate the activities of terrorist organizations; to provide for investigation of acts of terrorism and obtaining information in respect of such acts including authorizing of the interception of the 20 correspondence of and surveillance of persons suspected to be planning or to be involved in acts of terrorism; and to provide for other connected matters. [Emphasis Mine]

From the foregoing, it is clear that the charge brought against the Accused under the 25 Anti-Terrorism Act, 2002 (as amended) is an offence that is 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

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 (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.

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 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, 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..."

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 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.

- 15 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 the ICD Rules.

- 20

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 25 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

- 5 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.
- 10 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.**
- 15 [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
20 *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* 25 *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* 30 *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 5 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 Dyilo*, ICC-01/04/06-803-TEN 14-05-2007 1/157*)

10 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 15 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 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 committed each of the crimes he is charged with.

25 Count 1:

Treason contrary to Section 23 (1) (a), (c) and (d) of the Penal Code Act, Cap. 120.

The Prosecution alleges that:

"THEMBO KITSUMBIRE and others still at large between the months of March 2016 and November 2016 at diverse places within Kabarole and Kasese Districts contrived a plot to overturn the Government of Uganda by law established by force of arms and expressed such plot by utterances and overt act such as: attacks on

- 5 *various Police establishments, killing of Police Officers, robbing arms and ammunitions, or recruitment of individuals to join in an armed insurrection against the Government of Uganda, or providing and participating in military training of recruits in preparation of an armed insurrection to overthrow the Government, or acquisition of communication equipment such as walk-talkies, or participation in*
- 10 *and attending planning meetings in Uganda and abroad, or attempts to acquire arms and ammunition."*

Court's Consideration

Section 23 (1) of the Penal Code Act, Cap. 120 provides that:

- 15 *(1) Any person who-*
- *(a) levies war against the Republic of Uganda;*
- *(b) unlawfully causes or attempts to cause the death of the President or, with intent to maim or disfigure or disable, unlawfully wounds or does any harm to the person of the President, or aims at the person of the President any gun, offensive weapon, pistol or*
- 20 *any description of fire arm, whether it contains any explosive or destructive substance or not;*
- *(c) contrives any plot, act or matter and expresses or declares such plot, act or matter by any utterance or by any overt act in order, by force of arms, to overturn the Government as by law established;*
- 25 *(d) aids or abets another person in the commission of the foregoing acts, or becomes an accessory before or after the fact to any of the foregoing acts or conceals any of those acts, commits an offence and shall suffer death."*

From the above provision of the law, the elements of the offence are:

30 1) Levying war against the Republic of Uganda;

- 2) Contriving any plot, act or matter to overturn a lawfully established Government;
- 3) Expressing or declaring such plot, act or matter by utterance in order to overturn the Government by force of arms;
- 5 4) Expressing or declaring such plot, act or matter by any overt act in order to overturn the Government by force of arms;
- 5) Aiding or abetting another person in the commission of contriving any plot, act or matter; expressing or declaring such plot, act or matter by utterance or by any overt act to overturn the Government by force of arms;
- 10 6) Being an accessory before or after the fact to contriving any plot, act or matter; expressing or declaring such plot, act or matter by utterance or by any overt act to overturn the Government by force of arms;
- 7) Concealing the facts to contriving any plot, act or matter; expressing or declaring such plot, act or matter by utterance or by any overt act to overturn
- 15 the Government by force of arms; and
- 8) The Accused's participation in any of the above.

Counsel for the Accused agreed to the ingredients of the offence and did not contest the occurrence of the offence but heavily contested the participation of the Accused 20 in the commission of the offence. She argued that apart from the uncontested fact that the Accused was the Prime Minister of the Obusinga Bwa Rwenzururu (OBR), there was no evidence of a particular utterance or overt act done by the Accused that was an act of levying war against the Government of Uganda. While Citing the case of *Uganda versus Okot and 12 Others, Criminal Session Case No. 0477 of 2010* 25 *(2012) UGHC 97*, Counsel for the Accused argued that in a case of treason, the

utterances of an Accused Person at the meeting are key to the overt act. The crime lies in the words and mere presence is of no evidential value.

On the other hand, the Prosecution submitted that they had disclosed sufficient evidence to establish substantial grounds to believe that the Accused participated in and attended planning meetings as an overt act in furtherance of treason.

The Prosecution seeks to rely on the summary evidence of DS-4 and D-12 (Volume

- 5 XV of the disclosures). DS-4's evidence is to the effect that one Kapilong was kidnapped by the Obusinga Bwa Rwenzururu Royal Guards, taken to the palace, and tortured. He was not released until the District Internal Security Officer (DISO) had to engage the king and the Accused who was the Prime Minister of the kingdom to secure his release.
- 10 DS-12's evidence is to the effect that he and others met the Accused and the meeting was about Security and Development in the Rwenzururu kingdom. They were later joined by the king His Majesty Charles Wesley Mumbere who addressed the meeting and talked about *inter alia*;
- The killing of 2 UPDF soldiers by the Royal Guard at the Palace.
- 15 Having recruited Royal Guards who were now in charge of the security of the kingdom.
- The Royal Guards having been trained in military affairs to fight the UPDF and the Police within the territory.
- The marginalization of the Bayiira and the need to be liberated from and 20 within DRC and Uganda.
- Plans being in place to establish the Bayiira State even if the Government of Uganda is against it.
- Urged the youth to join the Royal Guards and their honorable Members of Parliament to support them financially to maintain the Royal Guards recruited.
- 25

It is my finding that the Prosecution disclosed evidence to the effect that the Accused, being the Prime Minister of the OBR, organized a meeting in which

witness DS-12 participated and the meeting was intended to discuss the Security and development of the kingdom. The king of the Rwenzururu joined the meeting later and made utterances that were in essence a call to the people to arise and wage war against the Government. He called for massive recruitment and training of the OBR

5 Royal Guards.

Counsel for the Accused has argued that the Accused is not culpable because the Prosecution did not adduce any evidence attributing any treasonable utterances to the Accused. However, from the evidence of DS-12, it was the Accused as the Prime 10 Minister who convened the meeting in which the king made the treasonable utterances. In my view, this case is distinguishable from the case of *Uganda versus Okot and 12 Others (*supra) which Counsel for the Accused seeks to rely on because, from the utterances of the king, the plot to overthrow the Government seemed to have been an agenda of the kingdom as opposed to an individual agenda of king 15 Charles Wesley Mumbere, and the Accused, being the Prime Minister of the kingdom, must have been aware of it since he is even the one who convened the meeting for the king to make those utterances.

It is my finding therefore, that by convening a planning meeting in which the king 20 made treasonable utterances, the Accused aided the king and is therefore equally culpable as a principal offender within the meaning of Section 19 of the Penal Code Act, Cap. 120.

It is also important to note that the Accused was charged with the king and 216 25 others. The king and the other Accused persons, save for Thembo Kitsumbire (Accused) admitted to the commission of the offense and sought Amnesty which was granted to them and a Nolle Prosequi entered in their favour. It is therefore, my finding that the Accused had a common intention with the king and the others who admitted culpability within the meaning of Section 20 of the Penal Code Act, Cap. 120. The Accused as the Prime Minister of the kingdom cannot be seen to attempt to disassociate himself from the actions of the kingdom. It would have been different if he reported the actions or utterances of the king to the Authorities.

In light of the above, it is my finding that the Prosecution disclosed sufficient evidence to establish substantial grounds to believe that the Accused participated in and attended planning meetings as an overt act in furtherance of treason.

Consequently, Count 1 is confirmed against the Accused.

Count 2:**Misprision of Treason contrary to Section 25 of the Penal Code Act, Cap. 120. The Prosecution alleges that:**

"*THEMBO KITSUMBIRE and others still at large between the month of March*

- 15 *2016 and November 2016 at diverse places within Kabarole and Kasese Districts knowing that CHARLES MUMBERE, BWAMBALE MALISABA BESWERI, MASEREKA NOORDIN SIIRA DAVID, and others intended to commit treason did not give information thereof with all reasonable dispatch to the minister, an administrative officer, a magistrate, or an officer in charge of a police station or use*
- 20 *all reasonable endeavors to prevent the commission of the offence of treason*."

Court's Consideration**Section 25 of the Penal Code Act Cap 120 provides that:**

"Any person who knowing that any person intends to commit treason does not give information
25 *thereof with all reasonable dispatch to the Minister, an administrative officer, a magistrate or an officer in charge of a police station, or use all reasonable endeavours to prevent the commission of the offence of treason commits the offence of misprision of treason and is liable on conviction to imprisonment for life."*

From the above legal provisions, the elements of the offence (Count 2) are:

- i) Knowledge by the Accused that the person(s)/ any of them mentioned in the particulars of the offence had the intention(s) to commit treason; and
- 5 ii) The Accused failed to report/ give information in (i) above to the Minister, an administrative officer, a magistrate or an officer in charge of a police station, or use all reasonable endeavors to prevent the commission of the offence of treason.
- 10 Counsel for the Accused submitted that Misprision of Treason/ Concealment of Treason is a minor and cognate offence to the offence of Treason and should have been preferred as an Alternative Count and not a separate Count.

I agree with Counsel that this offence ought to have been preferred as an Alternative 15 Count. Having said that, I will proceed to analyze the disclosed evidence to ascertain whether it is sufficient to establish substantial grounds to believe that the Accused committed the offence of Misprision of Treason.

Misprision of treason consists of knowledge that someone intends to commit the 20 offence of treason and failing to inform the relevant officials or failing to use all reasonable endeavors to prevent treason.

- (i) **Knowledge by the Accused that the person(s) or any of them mentioned in the particulars of the offence had the intention(s) to 25 commit treason.**

The disclosed evidence in Volume XV PE ID 750 - DS-1, PE ID 751- DS-2, PE ID 752- DS-3, PE ID 753-DS-4, PE ID 754 - DS-5, PE ID 755- DS-6, PE ID 756 -DS-7, PE ID 757 - DS -8, PE ID 158 -DS -9, PE ID 760 - DS -11, PE ID 761 -DS -12,

PE ID 762 - DS -13, PE ID 763 - DS-14, PE ID 765 -DS-16, among others reveal that the Accused, Thembo Kitsumbire knew that: King Charles Wesley Mumbere, Bwambale Malisaba Besweri, Masereka Noordin Siira David and other OBR loyalists and sympathizers intended to overthrow the Government of the Republic

5 of Uganda as by law established, by force of arms and establish a Yiira Republic.

The Accused, being the Prime Minister of the OBR also knew that there was massive recruitment of the Royal Guards by king Charles Wesley Mumbere and the Rwenzururu royal kingdom as per PE ID 595 - Handwritten document dated 6th 10 November 2016 to the Office of Buhika Royal Palace – Report on the prevailing situation with attached list of OBR with the respective ranks. The kingdom rejected the security that the Government had provided insisting on massive recruitment of the Royal Guards calling themselves *"Kirumira Muthima"* or *"Esyomango syo Obusinga"* to provide security for the Obusingwa Bwa Rwenzururu 15 (OBR)/Rwenzururu kingdom. The Royal Guards were armed in preparation for the attacks against the Government, the group had a military structure with chain of command. The Royal Guards were given military ranks by the king and individuals were often promoted to higher ranks. This was followed by several attacks on various Police establishment/stations on instructions and command of king Charles 20 Wesley Mumbere, his cabinet, and the kingdom loyalists. Many Police officers were killed and several severely injured and their arms and ammunition were robbed.

The king, Charles Wesley Mumbere, Bwambale Malisaba Besweri, Masereka Noordin Siira David, and other Kingdom loyalists recruited several Royal Guards in 25 the Obusingwa Bwa Rwenzururu (OBR) which was an armed insurrection against the Government of Uganda, they acquired communication equipment such as: walkie-talkies; provided and participated in military training and preparation of an insurrection to overthrow the Government; attended and participated in planning

meetings in Kasese, Bundibugyo, Kabarole in Uganda and in the Democratic Republic of Congo (DRC); and acquired and attempted to acquire arms and ammunition.

- 5 According to the disclosed evidence of DS-12, DS-1, DS-2, and DS-3, the Royal Guards were armed with weapons such as: machetes, knives, spears, stones, guns, Improvised Explosive Devices(IEDs), bows and arrows, etc. The three named above and others instructed and commanded the Royal Guards to attack and destroy government installations/Police Stations and other equipment, kill Police and

- 10 Security Officers as well as civilians opposed to the formation of the Yiira Republic, and rob guns and ammunition to fight the Government of Uganda.

Following the above command/instructions, the Royal Guards attacked several Police Stations/ Posts such as: Buhuhira, Kidodo, Kibiito, Kagando, Ibanda, 15 Bwesumbu, Hima, Kyaburungira and Mubuku, killed and severely wounded several Police Officers and civilians including: RA 163332 Lance Corporal Rwothngeyo Robert, Corporal Sentongo Moses, RA 149590 Lance Corporal Katuramu Hannington, RA 185599 Corporal Otobbe James, C. P Opolot Jacob, SPC Joel Mbusa, Mulhumbira James, Mulhumbira Johnson, No 53221 PC Kasimba Geofrey, 20 RA 162433 Cpl. Idro David, RA 171555 Lance Cpl. Barekye Joseph, No. RA 209834 Pvt Tumwesigye Edmund, Kule Mayambala, Baluku Godfrey alias Muhindo, Bamulange Ruth, Muhindo Johnson, Vincent Kapiroongo, PC Nsimaki Francisco, PC Byanki Benson, AIP Apiire Simon Peter, PC Ochema Selvario, PC Ojok Polycarp, Private Muranda Mohammed, Kyetunda Mubarak, Detective 25 Constable Kenneth Sempijja, Kitibito Wilson Wisely, RA No. 204483 Lance Corporal Obirit Solomon, Akatwijuka Gerald, SPC Kamabu and took away his gun, SPC Bahati, PC Ruzinde, PC Kaluuba Kassim, SPC Bwambale Jonas. PC Malinga Thomas, No. 10443 SPC Bwambale Eryeza, PC Awuchu Gaetano, PC Oyuk Henry,

Herekia Kwebira, PC Paryo Edward, Sergeant Baguma Peter, Kule Joseph, D/Cpl. Elai Richard, No.47917 PC Oganya Thomas, No.48997 PC Ogal Isaac, No.62343 PC Baluku Robert, SPC Masereka Supriano, No. 38542 D/C Chemonges), destroyed many properties(motor vehicle, government facilities, private homes, coffee and 5 bananas plantations), and robbed arms and ammunition during the armed insurrection against the Government of Uganda (See: Volume XV of the disclosed evidence by Prosecution and Volume XII).

The disclosed evidence of DS-12, DS-1, DS-2, DS-3, DS-4 among others show that 10 several planning meetings were held in the Palace, Coronation ground, and other places in Kasese District where the Accused Thembo Kitsumbire and king Charles Wesley Mumbere, made pronouncement and declaration of war against the established Government of Uganda and called for support from the youth to join the rebellion.

In October 2016, several planning meetings to implement the plots of overthrowing the Government were held in Kasese District where the Accused as the Prime Minister of the kingdom, king Charles Wesley Mumbere, Minister of Security for Rwenzururu Kingdom Bwambale Malisaba Bweseri, other politicians, Local 20 Counselors, Royal Guards, and kingdom members attended. The Accused was aware of the massive recruitment and arming of the Royal Guards to fight the UPDF and other security forces, the attacks of Police establishments, the killings of Police Officers and civilians, robbery of arms and ammunition which were committed in attempt(s) to overthrow the established Government of Uganda by force of arms.

25 The Accused was in charge of the Cultural Department of the Kingdom. He used his position and solicited for funds and support for the kingdom and the OBR Royal Guards.

As analysed above, on 22nd April 2016, at about 18:00 hours, the Accused directed DS – 12 to mobilise all the Councilors in Kasese District to support the OBR programs and to support and work with the Royal Guards whom he said were the ones in charge of the security in the Rwenzururu kingdom.

On 29th April 2016, the Accused attended a meeting at Bakwonyi Guest House, Ibanda Town Board in Bugoye Sub-County where King Charles Wesley Mumbere informed the meeting that:

- "The kingdom was at war with the Government and Royal Guards had killed 10 two UPDF officers at the palace."
- "He had recruited Royal Guards to be in charge of the Rwenzururu kingdom from Bundibugyo to Kasese with forty Royal Guards in every sub-county within Kasese, Bundibugyo, some parts of Ntoroko and Kabarole."
- "The Royal Guards were well trained to fight the UPDF and Uganda Police 15 deployed within his territory."
- "The Government had marginalized the Bayiira and the Bayiiras both in Uganda and the Democratic Republic of Congo (DRC) should be liberated."
- "The plan to establish the Yiira State for the Bayiira people."
- "Urged the youths to join the Royal Guards."
- 20 "Solicited for Financial support from politicians, the Hon. Members of Parliament from Kasese to maintain the recruited Royal Guards."
- "Etc"

The king made similar statements at different places and occasions including on his 50th coronation anniversary on the 19th October 2016 at Kilembe Mines Golf Course 25 in the presence of the Accused Thembo Kitsumbire, so the Accused had knowledge that the king made such a statement.

The Accused knew of the massive recruitment and arming of the Royal Guards within the kingdom and the Rwenzori areas generally, followed by attacks against several Police Stations including: Bwesumbu, Kyabalungira, Maliba, Bogaye, Kisinga, Mubuku, Maliba among others. Several Police Officers and civilians were killed, and properties destroyed and looted by the Royal Guards in those attacks.

A Search Certificate in Volume II shows that a search was conducted at the 5 Accused's office within the palace as a Prime Minister and arms similar to those used in the several attacks mentioned above were recovered. The Accused's office was guarded by the OBR Royal Guards in support of the Yiira Republic.

In light of the above, it is my finding that the Prosecution has disclosed sufficient 10 evidence to establish substantial grounds to believe that the Accused knew that King Charles Wesley Mumbere and others intended to commit treason and he did not give information about the same with all reasonable dispatch to the Minister, an Administrative Officer, a Magistrate or an Officer in Charge of a Police Station, or use all reasonable endeavors to prevent the commission of the offence.

Consequently, this Count is also confirmed but it shall be preferred as an alternative count as opposed to a separate count.

COUNT 3:

20 Terrorism contrary to Section 7(1) (a) and (2) (b) of the Anti-Terrorism Act 2002.

The Prosecution alleges that:

"THEMBO KITSUMBIRE and others still at large between the months of March 2016 and November 2016 in Kabarole and Kasese Districts with intent to intimidate

25 *the public or a section of the public and for political, or social or economic aim indiscriminately without due regard to the safety of others or property, directly involved themselves, or were complicit in the murder, or attempted murder, or* *kidnapping, or attacks of Police personnel, UPDF personnel, civilians, and attacks on various Police establishments."*

Court's Consideration

5 Section 7 of the Anti-Terrorism Act, 2002 (as amended) provides that:

- (1) *Subject to this Act, any person who engages in or carries out any act of terrorism commits an offence and shall, on conviction—*
- (a) *be liable to suffer death if the offence directly results in the death of any person.*
- 10 (2) *A person commits an act of terrorism who, for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out all or any of the following acts —*
- (b) *direct involvement or complicity in the murder, kidnapping, maiming or* 15 *attack, whether actual, attempted or threatened, on the person, official premises, private accommodation, ...[...]"*

From the above provisions of the law, the elements of the offence are:

- (a) Murder(s), attempted murder(s), Kidnap(s), and Attacks of a person(s);

- 20 (b) The above Murders/attempted Murders, Kidnap(s), and attacks were committed for purposes of influencing Government or intimidating the public or a section of the public;
- (c) For a religious, political, social or economic aim;
- (d) The Attacks, murders or attempted murders above were committed
- 25 indiscriminately without due regard to the safety of others or property; and (e) The Accused persons were directly involved or complicit in the attacks, murders or attempted murders.

Counsel for the Accused associated herself with the Prosecution regarding the ingredients of the offence. She also did not contest that the offence of terrorism was committed. Her only contestation is that the Prosecution did not disclose sufficient evidence to prove that the Accused participated in the commission of the offence.

On the other hand, Prosecution contended that the evidence disclosed fully implicated the Accused as having participated in the commission of the offence of terrorism for being complicit in all the acts of terrorism indicted in this Count as the Prime Minister of the OBR. They argued that complicity in a criminal act is the participation in a completed criminal act of an accomplice, a partner in the crime who aids or encourages (abets) other perpetrators of that crime, and who shared with them an intent to act to complete the crime.

A. Murder(s), Attempted Murder(s), Kidnap(s), and Attacks of a 15 person(s)

The Prosecution disclosed the following evidence as proof of Attacks, Murders/attempted murders, kidnaps of different persons and places, and robberies:

20 Attack on Buhuhira Police Post, attempted murders of No. RA 163332 Lance Corporal Rwothngeyo Robert, Corporal Sentongo Moses, RA 149590 Lance Corporal Katuramu Hannington and RA 185599 Corporal Otobbe James The disclosed evidence: PE ID 679 RA 163332 I/CPL Rwothngeyo Robert, PE ID

680 RA 149590 L/CPL Katuramu Hannington, PE ID 681 CPL Sentongo Moses, PE 25 ID 682 RA 185599 CPL Otobbe James, Scene of Crime Report in Volume X shows that, on the 10th Mach 2016, at around 17:00 hours about twenty OBR Royal Guards attacked Buhuhira Police Post under Hima Division to disarm Police to acquire guns for terrorizing the public. The attackers advanced towards the Police Post in numbers while brandishing machetes and batons but Police fired in the air and dispersed them.

At around 9:00 pm on the same day, one section of the security operatives while on duty patrolling to deter any violence was ambushed by the OBR Royal Guards at Kikonjo cell. The Royal Guards were armed with machetes, batons and had blocked the road ready to attack the people in the area. They advanced to the patrol car registration number H4DF 1173 double cabin of Hima barracks and stabbed the security personnel in the car indiscriminately. A scuffle ensued and the Accused 10 persons gravely assaulted and attempted to murder four UPDF soldiers, No.

RA 163332 Lance Corporal Rwothngeyo Robert, Corporal Sentongo Moses, RA 149590 Lance Corporal Katuramu Hannington and RA 185599 Corporal Otobbbe James in attempt to disarm them. The injured victims were first taken to a nearby clinic in Hima and they were later transferred to Kilembe Hospital for better treatment. Police 15 visited the scene of crime and recovered two knives and mobile phones.

Attacks, attempted murders of C. P Opolot Jacob and SPC Joel Mbusa and robbery of a firearm

The disclosed evidence PE ID 686 CP Opolot Jacob, PE ID 687 SPC Mbusa Joel, Scene of Crime Report in Volume X, and others shows that on the 11 20 th March 2016, Commissioner of Police Opolot Jacob on instructions of the Inspector General of Police led a team of Police Officers, UPDF and the press to Kasese region for a community sensitization programme. The team first held a sensitization meeting at Bihuhira- Kithoma Police Post where there was an attempted attack and later

25 proceeded to Kasenyi Trading Centre for further sensitization of the public and to assess the security concerns and possible deployment of forces in the area.

The Royal Guards and wild crowd brandishing machetes and batons attacked the team and pelted stones at them. C. P Opolot Jacob sustained a fracture of the leg. SPC Joel Mbusa was also attacked and left unconscious. One of the attackers grabbed SPC Joel Mbusa's firearm and attempted to fire at the security personnel.

- 5 The C. P Opolot Jacob and SPS Mbusa Joel were taken to Kilembe hospital for treatment and later transferred to Mulago hospital for further management. Shortly after, the Royal Guards and their sympathizers launched attacks against those opposed to their armed insurgency, destroyed their coffee and banana plantations, and torched their houses at Kyabarungira Sub County. The people in the surrounding
- 10 areas all fled their homes for fear of their lives.

Attacks and attempted murders of Mulhumbira James and Mulhumbira Johnson

The disclosed evidence PE ID800 DS - 23, PE ID 816 DS-39, PE ID 733 Ultra Sound

- Report for DS23 among others shows that on the 15 15 th March 2016 over ten Royal Guards attacked GISO Mulhumbira James and his brother Mulhumbira Johnson and attempted to murder them for opposing their violent activities and wedging war against the Government. Mulhumbira James and Mulhumbira Johnson were rescued by Police and taken to Kilembe hospital for treatment and were later transferred to
- 20 Mulago hospital for further management.

Attack of Kidodo Police Booth, murder of No 53221 PC Kasimba Geoffrey and robbery of firearm- AK 47 serial number 1984-S-AY2729-20253 with 30 rounds of ammunitions

25 PE ID664 CPL Twala Patrick, PE ID665 CPL PC Obwola Tonny, the Post Mortem and Scene of Crime Reports in Volume VII shows that on the 24th March 2016 at around 1:00 O'clock, the Royal Guards attacked Kidodo Police Booth under Kasese Police Station with an intention of killing the security personnel and robbing arms

and ammunition. As in the previous attacks, the Royal Guards were armed with batons and machetes particularly new knives and pangas kept under their waists. There were three Police Officers on duty at Kidodo Police: Corporal Twaha Patrick the in charge; No. 53221 PC Kasimba Geoffrey who was on duty as per the Station

- 5 Diary and PC Obwolo Tonny; No. 53221 PC Kasimba Geoffrey was attacked and cut to death. His AK 47 serial number 1984-S-AY2729-20253 with 30 rounds of ammunitions was robbed. Police investigations established that the AK 47 riffle serial number 1984-S-AY2729-20253 with 30 rounds of ammunitions that was robbed in the above attack was hidden at the palace of Obusinga Bwa Rwenzururu. 10 The same gun was recovered by Police from the palace of the kingdom in November
- 2016.

After the attack on Kidodo Police Booth, Police detectives visited the Crime Scene and took the body to Kilembe hospital for post mortem examination. The Post 15 Mortem Report on Police Form 48 in respect of No 53221 PC Kasimba Geoffrey reveals that the cause of death was hemorrhagic shock as a result of cut wounds.

Attacks, kidnap of No. RA 162433 Cpl. Idro David and murders of No. RA 171555 Lance Cpl. Barekye Joseph, No. RA 209834 Private Tumwesigye

20 Edmund, and Kule Mayambala

The disclosed evidence showsthat on 13th April 2016 Royal Guards of OBR attacked and kidnaped No. RA 162433 **CPL. IDRO DAVID** whom they Accused of spying on the kingdom but he escaped from the palace. Thereafter, about ten Royal Guards intercepted three people on a motorcycle **RA 171555 Lance Cpl. Barekye Joseph,**

25 No. RA 209834 Pvt Tumwesigye Edmund, both attached to Murongo army barracks and **Kule Mayambala,** the rider. They were all hacked to death. The Royal Guards were armed with guns, knives, pangas, batons and clubs among others. The cause of death was established to be hemorrhagic shock as a result of cut wounds inflicted on vital parts of their bodies.

Murders of Baluku Godfrey alias Muhindo, Bamulange Ruth and Muhindo 5 Johnson

The Prosecution also disclosed PE ID 779 DS- 2, Post Mortem report in Volume VII among others which shows that on the 18th June 2016, **Baluku Godfrey alias Muhindo** a former SPC and Royal Guard returned to the palace from pass-leave with one Bamulange Ruth on a motorcycle. Baluku Godfrey alias Muhindo was 10 Accused by his fellow Royal Guards for over staying on the pass leave and also being a spy of the Government. They were both arrested and tortured. Baluku Godfrey alias Muhindo was asked about the owner of the motorcycle he had come with and he revealed that it belonged to Muhindo Johnson. He pleaded with them to allow him call the owner of the motorcycle. They accepted, whereupon Muhindo 15 Johnson was called to come for his motorcycle. On arrival he too was arrested and the trio were tortured to death. Their bodies were wrapped in three separate

The following day Police visited the scenes and the bodies were later retrieved and 20 identified by witnesses who saw them alive at the palace being tortured by the Royal Guards. The canine led Police detectives to the gate of the palace. The bodies were taken for Post Mortem Examination in Kasese hospital. Post Mortem Examination revealed that the deceased persons died due to hemorrhagic shock as a result of cut wounds.

polythene sacks and thrown in different places in Kasese town.

Attack and Kidnap of Vincent Kapingongo

The disclosed evidence of 781 DS- 4 PE ID and DS -11 PE ID 788 among others shows that on the 23rd of August 2016 at about 12:00 pm, Vincent Kapingongo, the

former Deputy Minister for Security of the OBR was kidnapped from Kasese Town by the Royal Guards and taken into the palace, accused of being a spy and confessing to the President his involvement in the attacks of July 2014 on Bundibugyo. He was tortured and subjected to the Court Martial but was saved by the intervention of the

5 Security Officers in Kasese, who called king Charles Wesley Mumbere and the kingdom Prime Minister, **Thembo Kitsumbire** (Accused) and ordered the two to release Vincent Kapingongo.

Attack of Kibiito Police Station, murder of AIP Apiire Simon Peter, Attempted 10 murders of PC Nsimaki Francisco, PC Byanki Benson, PC Ochema Selvario and PC Ojok Polycarp

The disclosed evidence PE ID 727 PF 3 for Ojok Polycarp, PE ID 728, PF 3 for No. 59104 PC Byaki Benon PE ID 729, PF 3 for No. 58742 PC Nsimaki Fransisco PE ID 731, and others shows that on the 14th September 2016 the Royal Guards attacked

- 15 about ten Police Officers under the command of **ASP Olum Samuel Maurice**, O. C of Kibiito Police Station while conducting a community policing and sensitization as a result of tribal alienations of Bakonjo and Batooro at Bukara Trading Centre, Bukara parish, Kabonero Sub-County in Kabarole District. The Royal Guards were armed with battons, stones, panga, knives, catapults etc. **PC Nsimaki Francisco** and
- 20 **PC Byanki Benson** were grievously harmed. Thereafter, **ASP Olum Samuel Maurice** the O. C of the team called SP Musa Tibakirana, DPC Kabarole for reinforcement. But before the reinforcement team could arrive, a group of around 60 Esiyomango syo Obusinga (youth Royal Guards) divided into two groups armed with guns, stones, batons, pangas advanced towards the Police Officers from opposite
- 25 directions. Efforts by the Police to fire in the air to disperse them proved futile. Some of the Esiyomango syo Obusinga instead pounced on **AIP Apiire Simon Peter** lynching him to death. Two other Police Officers, **PC Ochema Selvario** and PC

Ojok Polycarp were gravely assaulted. The Police Forms 48 in respect of the deceased revealed the cause of death as hemorrhagic shock as a result of cut wounds.

Attack and murder of Private Muranda Mohammed and attempted murder of 5 Constable Kenneth Sempijja

The disclosed evidence PE ID 26 of D/C Ssempijja Keneth and others shows that on the 4th November 2016 at 9:00 pm Royal Guards attacked Private Muranda Mohammed, a UPDF soldier hacking him to death and injured Kyetunda Mubarak, a crime preventer. This was committed from Kyomuhendo's bar at Nyabuswa 10 Trading Centre in Karangura Sub-County in Kabarole District. Private Muranda was Accused of condemning the acts of the Royal Guards - Kirumiramuthima who were operating from and had caused insecurity in the area. As a team of Police Officers led by the Officer in Charge of Criminal Investigations of Kabarole District responded to the attack, they were also attacked using an Improvised Explosive 15 Device (IED) injuring Detective Constable Kenneth Sempijja, the Scenes of Crime Officer. The deceased's body was recovered and taken to Buhinga Referral Hospital

for Post Mortem. The Report revealed the cause of death to be hemorrhagic shock. The injured was also rushed for treatment and his injuries were classified as serious.

20 Kidnap of Kitibito Wilson Wisely

The disclosed evidence shows that on 22nd November 2016, the LC1 Chairperson of Kasundi Village in Kabarole District Kitibito Wilson Wisely was kidnapped by the Royal Guards - Isiyomango syo obusinga bwa Rwenzururu because he was opposed to the idea of an independent Yiira Republic and he had refused to join them. He had

25 also witnessed the killing of Private Muranda Muhammed a UPDF officer and the group had been looking for him for some time to kill him.

The attack and attempted murder of RA No. 204483 Lance Corporal Obirit Solomon

The disclosed evidence shows that on 26th November 2016 at about 8:00 am, a team of Police and Army Officers were on patrol in Kasese town. As they passed near the

- 5 office of the Prime Minister of the Obusinga Bwa Rwenzuru Thembo Kitsumbire (Accused) at Mukirane Road, they were attacked by a group of Royal Guards who were stationed at the Office of the Prime Minister. The Royal Guards were armed with knives, pangas, petrol bombs, spears and during the attack RA No. 204483 Lance Corporal Obirit Solomon was stabbed in the thigh by one of the Royal Guards.
- 10 He was rescued by the reinforcement team from Kasese Police Station. The two female Royal Guards were arrested and taken to Police. The Police conducted a search at the Office of the Prime Minister and recovered 8 bottles of explosives, military shoes, axes, spears, pangas, knives, bows and arrows.

15 The attack, kidnap and murder of Akatwijuka Gerald

The disclosed evidence PE ID43 - 44 statements of Thaghembwa Joram, PE ID523- 525 statements of Mumbere Samson, a brief written by the Secretary Thagehmbwa Joram on behalf of Mumbere Samson the Intelligence Officer of Obusinga Bwa Rwenzururu addressed to Charles Wesley Mumbere as the Commander in Chief, 20 informing him of the deceased's arrest/kidnap by OBR, and others show that on the 26th November 2016 at around 11:00 am Akatwijuka Gerald was kidnapped and murdered by a group of Royal Guards of Obusinga Bwa Rwenzururu as he was going to the shops to buy salt. The deceased was a munyankole who originated from Isingiro District and was a domestic worker for Samaratunga Nawrunna Palliya (a

25 Sri Lanka engineer) and Raviwarna Katugampola (Australian Engineer) who were in charge of constructing Rwimi Hydro Power Plant. The deceased lived with his bosses at Muyenga Cell Central Division in Kasese District opposite the palace of Obusinga Bwa Rwenzururu. The Royal Guards treated everyone who was not supporting them as spies for the Government and therefore would kidnap and murder them. Akatwijuka Gerald was one of the Victims of such.

The deceased body was recovered from the palace of Obusinga Bwa Rwenzururu 5 and taken to Kasese Municipal Council Health Centre III mortuary for examination. It had a sisal string tied around the neck. The report confirmed that the deceased died from strangulation.

The attacks, murders of Cpl. Anywar, SPC Kamabu, PC Ruzinde, PC Kaluuba 10 Kassim, SPC Bwambale Jonas and the attempted murders of ASP Lubega, SPC Thembo and SPC Bahati

The disclosed evidence show that on the 26th November 2016 at about 4:00 pm the Royal Guards of Obusinga Bwa Rwenzururu attacked SPC Bahati Joseph was at Kagando Police Post together with Cpl. Anywar Patrick, SPC Thembo Emmanuel, 15 SPC Kamabu Christopher and SPC Ruzinde Salim. The Royal Guards were armed with pangas, knives and spears, they cut and killed Cpl. Anywar and SPC Kamabu and took away their guns. They tied up SPC Bahati.

A rescue team from Kasese was called in and the Royal Guards dispersed. The rescue 20 team also recovered the body of an officer in uniform who was later identified as PC Ruzinde from Kagando hospital near the Police Post. While there they were attacked by a number of Royal Guards who were not putting on shirts and decked in herbs and shorts while armed with guns, pangas, spears and knives. The guards threw spears and shot at them, and even though the Police retaliated, the guards continued 25 attacking them till they withdrew.

During the attack on the rescue team, PC Kaluuba Kassim was killed at the scene and a spear head remained in his body while SPC Bwambale Jonas sustained severe

injuries, as a result of which he died at Bwera Hospital. The Royal Guards also burnt the Police Patrol Vehicle No. UP 2958 which had been used by the rescue team. The rest of the team was able to escape with ASP Lubega, SPC Thembo and SPC Bahati sustaining some injuries classified as grievous harm, harm and dangerous harm, 5 respectively. Several Royal Guards were identified and arrested for the above attacks.

Attack of Maliba police post, murder of PC Malinga Thomas and Attempted Murder of No. 10443 SPC Bwambale Eryeza

- The disclosed evidence show that on the 26 10 th November 2016 at 16:00hrs, the Royal Guards of OBR attacked Maliba Police Post. The seven Police Officers at the Post could hear the gun shots from the direction of Kasese Town and see many civilians running away for safety. As the officers were taking positions, a group of Royal Guards came to the Police Post and the Officer in Charge of the Police Post requested
- 15 them to identify themselves. They had concealed knives, pangas on their bodies and had IEDs. In a short while, more Royal Guards carrying pangas and knives came following the first group and attacked the Police Post. There was a confrontation, a result of which PC Malinga Thomas was cut on the head using a knife and a panga by one of the Royal Guards.

Another Police Officer No. 10443 SPC Bwambale Eryeza was cut with a panga and he sustained serious injuries on his arms. The Police Officers managed to overpower the attackers and they all took off. PC Malinga and SPC Bwambale were rushed to Kilembe Mines Hospital for treatment but PC Malinga Thomas died. A post mortem 25 was conducted on the body of the deceased and the injured was treated on PF 3. The following exhibits were recovered from the scene; knives with wooden handles, a panga, IEDs and sticks (charms) a gun with its magazine of 30 rounds.

Attack of Bwesumbu Police Station, Murders of PC Awuchu Gaetano and PC Oyuk Henry, Herekia Kwebira, PC Paryo Edward and the Attempted Murder of Sergeant Baguma Peter

The disclosed evidence PE ID780 DS – 3 and others reveal that on the 26th of 5 November 2016 at around 3:00 pm a group of approximately 150 Royal Guards of Obusinga Bwa Rwenzururu attacked Bwesumbu Police Station while armed with guns, spears, pangas and knives. Police Officers under the command of Sergeant Baguma Peter fired in the air to disperse them but they instead advanced further surrounding the whole Police Post. They killed PC Awuchu Gaetano and PC Oyuk

10 Henry. The Police retaliated and the attackers run away.

An hour later, another group of around 200 Royal Guards returned this time round singing and chanting war songs while armed with sharp knives, pangas, spears, guns, batons among others attacked the Police Station again killing Crime Preventer Herekia Kwebira and **PC Paryo Edward**. **Sergeant Baguma Peter** was gravely 15 injured. The remaining Police Officers managed to repulse the Royal Guards.

The Royal Guards returned and attacked the Police Station a third time and robbed three guns. The injured was taken for medical attention, while the bodies of the deceased were taken for Post Mortem Examination. Two of the robbed guns were later recovered together with cartridges, knives, pangas, and batons, suspected blood 20 samples.

The attack of Maliba Police Station and Murders of Sgt. Kule Joseph and D/Cpl. Elai Richard

The disclosed evidence reveals that on the 26th November 2016 at about 2:30 pm 25 about 60-80 Royal Guards armed with pangas, spears, catapults, magic sticks and machetes attacked Maliba Police Station demanding for guns and hacked to death the O. C Station Sgt. Kule Joseph and the in charge CID D/Cpl. Elai Richard. Several guns and rounds of ammunitions were robbed by the Royal Guards. The bodies of the two slain Police Officers were taken to Kasese Municipal Health Centre III mortuary for post-mortem examination.

5 Attack of Kyabarungira Police Station and the Murders of No.47917 PC Oganya Thomas, No.48997 PC Ogal Isaac and No.62343 PC Baluku Robert The disclosed evidence shows that on 26th November 2016 at about 5:00 pm, Kyabarungira Police Station was attacked by about 200 Royal Guards of OBR armed with pangas, knives, machetes, stones and magic sticks. They cut to

death 3 Police 10 Officers who were No.47917 PC Oganya Thomas, No.48997 PC Ogal Isaac and No.62343 PC Baluku Robert. All their guns 3 in number were robbed by the Royal Guards. The bodies of the slain Officers were taken to hospital for post-mortem examination.

15 Attack of Mubuku Police Station Murder of SPC Masereka Supriano and Attempted Murder of No. 38542 D/C Chemonges Isaac

The disclosed evidence shows that on the 26th day of November, 2016 at around 1:00 pm, the in charge of Mubuku Police Station received information about a planned attack on the Police Station by the Royal Guards calling themselves, the 20 "Kirumiramutima" group. He notified all the Officers under his command to be alert and on standby. At about 4:00 pm, a group of Royal Guards armed with pangas, knives, spears, magic stick, catapults, clubs and other weapons attacked the Police Station. The said Royal Guards stabbed SPC Masereka Supriano several times on the neck, stomach and the ribs thereby killing him instantly. No. 38542 D/C

25 Chemonges Isaac was also seriously injured in the attack. A blood stained knife, a catapult and a head gear were recovered from the Scene of Crime. A Post Mortem Examination was carried out on the body of SPC Masereka Supiriano while No. 38542 D/C Chemonges Isaac was medically examined on Police Form 3.

B. Attacks, Murders/attempted Murders and Kidnaps above were committed for purposes of influencing Government or intimidating the public or a section of the public

5 As already analysed and discussed above, the disclosed evidence by Prosecution PE ID750 DR -1 to PE ID 819 – DS -42, PE ID 590 to PE ID 628, and many others reveals that all the attacks, murders, attempted murders, kidnaps and robberies were carried out by the Royal Guards of OBR with intent to influence the Government or intimidate the public or a section of the public.

The OBR institution/Rwenzururu Kingdom demanded to be recognized by the Ugandan Government as an independent state of Yiira Republic. OBR institution used violence to discredit or undermine the Government and ultimately force the government to succumb to the kingdom's demands.

All the attacks were characterized with violence with loss of lives, several people were severely injured, destruction of properties (both public and private) were all meant to intimidate the public or a section of the public, being the general community of Kasese and Kabarole. The fact of several murders and attempted 20 murders, or violence in various parts of Kasese and Kabarole Districts would naturally instill fear among members of the public.

The disclosed evidence shows that on the 10th day of Mach 2016, various Local Council officials in Hima Division- Bwambale Jane, Temwekwase William, 25 Rwakabane John, Safaku, GISO Tinka Deo informed the Police of intended violent attacks by the Royal Guards of OBR against the communities and the supporters of Katura John Musana. Some families especially women and children were already seen fleeing the area.

Similarly, the disclosed evidence by the Prosecution shows that the Royal Guards terrorized and instilled fear in the communities where they attacked Police Stations. They raided and destroyed the coffee and banana plantations of those opposed to 5 their activities, burned their houses and fled to other areas/homes for fear of their lives.

The OBR (Kirumiramuthima) established a military camp at the foothills of Mt. Rwenzori at a place called Kamabale, where they were operating from. They would 10 attack the nearby villages and rob people of their properties, terrorize and kidnap them. They were usually armed with pangas, knives, guns, and IEDs. As such, there was widespread fear to the extent that a school and a health center were closed and many residents abandoned their homes.

15 C. For political, social or economic aim

As analysed and discussed above, the disclosed evidence by the Prosecution shows that the aim of the attacks, murder/attempted murder and kidnaps and robberies were political, social and economic. Politically, the OBR institution/Rwenzururu kingdom wanted to secede from the Republic of Uganda and create their independent state, 20 the Yiira Republic. The kingdom was spreading a propaganda message of being underdeveloped socially and economically.

D. The attacks, murders, attempted murders and kidnaps were committed indiscriminately without due regard to the safety of others or property.

25 As already discussed above, the disclosed evidence reveals that the attacks in the various incidents were characterized by random shootings, stabbings, hackings and beating by several Royal Guards using several deadly weapons (Guns, IEDs,

machetes, knives, stones etc.) in public places resulting in deaths and injuries of multiple victims; and destruction of properties.

E. The Accused was directly involved or complicit in the attacks, murders 5 and attempted murders above.

The disclosed evidence reveals that the Accused person was the Prime Minister of the Rwenzururu kingdom and was at all material times complicit in all the attacks, murders, attempted murders, Kidnaps, and robberies committed by the OBR Royal Guards. The disclosed evidence shows that, the GISO of Kasese District ordered the 10 Accused who was the Ag. Prime Minister of the Kingdom and King Charles Wesley Mumbere to release DS-4 who was kidnapped and tortured by the OBR Royal Guards.

This Court has also already made a finding that the Accused organized for a meeting 15 and urged the youth and the general public to support the Royal Guards yet he knew what the Royal Guards were recruited and trained for and the Royal Guards were already attacking, kidnapping and killing people, and destroying properties.

In addition, the disclosed evidence by the Prosecution shows that the Accused's 20 office was guarded by the same OBR Royal Guards who were attacking and murdering Police and other Security Officers. A case in point was on 26th November 2016 at about 8:00 am, a team of Police and Army Officers were on patrol in Kasese Town. As they passed near the Office of the Prime Minister of the Obusinga Bwa Rwenzuru, Thembo Kitsumbire at Mukirane Road, they were attacked by a group of 25 Royal Guards stationed at the Office of the Prime Minister (the Accused). The Royal Guards were armed with knives, pangas, petrol bombs, spears and during the attack RA No. 204483 Lance Corporal Obirit Solomon was stabbed in the thigh by one of the Royal Guards. He was rescued by the reinforcement team from Kasese Police Station. The Police searched the Office of the Prime Minister (the Accused) and recovered 8 bottles of explosives, military shoes, axes, spears, pangas, knives, bows and arrows.

- 5 In light of the above, as already observed in the previous Counts, the Accused aided the commission of the offence of terrorism thereby making him is a principal offender within the meaning of Section 19 (1) and (2) of the Penal Code Act, Cap. 120.
- 10 In *Sgt Baluku Samuel and PC Walusa Joshua versus Uganda, Criminal Appeal No. 21 of 2014 (SC)*, the Court held that Section 19 (1) of the Penal Code, Cap. 120 defines a principal offender to include persons who aid or abet in the commission of crime. Aiding a crime means intentionally helping someone else to commit a crime. The crime must have been committed and the assistance or help must have enabled the
- 15 offense to be committed. This means the aider should have known that the person being helped is trying to commit a crime, and the aider voluntarily acted in a way that helped the person to commit it. The physical presence at the Scene of the Crime is not a requirement but it may be treated as a factor in determining whether you were aiding in the offense.

Consequently, it is my finding that the evidence disclosed by the Prosecution shows reasonable grounds to believe that the Accused committed the crimes as indicted.

However, the offence of Misprision of Treason which was indicted as a separate 25 count in Count 2 should be preferred as an Alternative Count.

Conclusion

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

- 1. Charges in Counts 1 and 3 are hereby confirmed against **the Accused,**
- 5 **Thembo Kitsumbire.**

- 2. Charges in Count 2 are also confirmed against the Accused but shall be preferred as an alternative to Count 1.
- 3. The Prosecution is directed to make the necessary amendment to the Indictment.
- 10 4. The Accused person is accordingly referred for trial on the confirmed charges. I so order.
- **Dated at Kampala this 7th 15 day of May 2024.**

.....

Alice Komuhangi Khaukha

20 JUDGE

7/05/2024

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcid/2024/8/eng@2024-05-07>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/uganda-v-thembo-hct-00-icd-cr-sc-11-of-2018-2024-ughcid-8-7-may-2024-unknown-topic-unknown-court-2024--6a3ea4dc3b1caa91297e947e>

Prepared on 14 October 2026 · Esheria