

UGANDA / JUDGMENT

Walusimbi & 5 Others v Attorney General (Miscellaneous Application 18 of 2024) [2025] UGHCI CD 2 (20 March 2025)

[2025] UGHCI CD 2

COURT

HC: International Crimes Division (Uganda)

BEFORE

Wabwire, J

CASE / FILE NUMBER

Miscellaneous Application 18 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(INTERNATIONAL CRIMES DIVISION) MISCELLANEOUS APPLICATION NO. 0018 OF
2024 (ARISING FROM BUGANDA ROAD CRIMINAL CASE NO. 0003/2022)

- 1. WALUSIMBI MUSA
- 2. KYEYUNE ISMA
- 3. MUBIRU ISMA

$\left(\begin{array}{c} \cdot \\ \cdot \end{array} \right)$

- 4. KABANDA MUSA
- 5. MWEBE MUHAMMAD ALI
- 6. KABONGE UMARU AJOBE

VERSUS

ATTORNEY GENERAL.....

BEFORE: HON. JUSTICE RICHARD WEJULI WABWIRE RULING**INTRODUCTION** S

The Applicants filed an Application for enforcement of human rights under Articles 20, 23, 24, 28, 44, 50(1) of the 1995 Constitution of the Republic of Uganda, 1995 as amended, Sections 3, 4, 6, 8, 9, 11 and 15 of the Human Rights (Enforcement) Act, 2019, Sections 2, 8, 11, 14, 15, 23 and the 2nd Schedule of the Prevention and Prohibition of Torture Act, 2012 and Rules 6, 7(1), 8 and 11 of

the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019 and S.14 of the Judicature Act praying for; \$10\$

> a) A declaration that the Applicant's right to freedom from torture and cruel, inhuman or degrading treatment or punishment was infringed threatened. upon \$\\alpha\$ r b) A declaration that the Applicants' right to a fair, speedy and public

hearing was and is being infringed upon and threatened.

- c) A declaration that the Applicant's right to personal liberty was infringed upon and threatened.
- d) A declaration that the Applicant's trial is a nullity for the infringement on their non-derogable and other rights and freedoms.
- e) An order acquitting the Applicants, discharging and unconditionally releasing them immediately.
- f) An order directing the Respondent to facilitate and pay for the Applicants' treatment and rehabilitation at the ACTRTV or any other similar facility.
- g) An order that the Respondent jointly and severally pay the Applicants compensation for the above human rights violation.
- h) An order for interest on the compensation above at a rate of \$25\%\$ per annum from the time the 1st respective violations happened till payment in full.
- i) An order that the Respondent jointly and severally pay the Applicants the costs of this cause.

The grounds in support of the Application as contained in the Notice of Motion and Applicants' Affidavits in support are briefly that;

- 1. The Applicants were jointly charged with the offences of terrorist financing and belonging or professing to belong to a terrorist organization.
- 2. They were arrested and kept in illegal detention for more than the stipulated time under the law.

\$25\$

- 3. During their detention, the Applicants were subjected to cruel, inhumane degrading and torturous treatment which included but was not limited to beatings, thumping, and beating with wires, whereby they sustained physical injuries on their limbs, suffered physiological torture, trauma and physical pain.
- 4. They were never informed of the offences and the nature of the offences for which they were arrested.
- 5. They were denied access to their family members and lawyers.
- 6. They were tortured into admitting to belonging to a terrorist group and signing plain bank documents and documents which had been written without their knowledge.
- 7. The Applicants now know that those documents are the charge and caution statements attributed to them and disclosed by the Respondent.
- 8. The Applicants state that they have never voluntarily made any statements confessing to charges brought against them.
- 9. It is in the interest of safeguarding their right to fair hearing, freedom from torture, cruel and degrading treatment and substantive justice that the Application should be allowed.

The Respondent opposed the Application through an Affidavit in reply deposed by Detective Inspector of Police and the Investigating Officer in Criminal case no. \$0003/2022\$, Odyek Benedict opposing the Application as follows;

- a) That there was intelligence led information regarding the Applicants' planned activities intended to harm the public and the detention of the Applicants was in good faith.
- b) That the Applicants were detained at Kireka Police Detention facility, a wellknown gazetted detention facility with well-ventilated and lit cells and a functioning toilet.
- c) That at the facility, two meals are provided daily and no one is denied access to the detainees.
- d) That the instant Application is misconceived, bad in law and an abuse of Court process and should be struck out.

REPRESENTATION

M/s Kratos Advocates and M/s Kabega, Bogezi & Bukenya Advocates represented 70 the Applicants while the Respondent was represented by the Attorney General. Both parties filed written submissions.

In their submissions four issues were raised for Court's determination to wit;

1. Whether the Applicants' non-derogable right to freedom from torture, cruel, inhuman and degrading treatment was violated by the Respondent.

- Whether the Applicant's right to personal liberty under Article 23(2), 3, 4 and 5 were violated by the Respondent.
- Whether the Applicants' right to a fair, speedy and public hearing was violated by the Respondent.
- What remedies are available to the parties? iv. 80

COURT'S DETERMINATION

I have thoroughly examined the pleadings, evidence, submissions, and authorities cited in this matter. While I will refer to them as necessary, I shall not reproduce the submissions verbatim. I address the issues in the order set out above.

ISSUE 1: WHETHER THE APPLICANTS' NON-DEROGABLE RIGHT INHUMAN FREEDOM FROM TORTURE, CRUEL, TO AND DEGRADING TREATMENT WAS VIOLATED BY THE RESPONDENT

Article 20(1) of the **1995 Constitution of the Republic of Uganda** provides that fundamental rights and freedoms of the individual are inherent and not granted by the state. Article 20(2) thereof obliges all organs and agencies of Government and all persons to respect, uphold and promote the rights and freedoms of the individuals and groups.

In the case of The Center for Health, Human Rights and Development

- (CEHURD) & ORS v Executive Director Mulago National Referral Hospital 95 and Attorney General HCCS No.212 of 2013, Court observed that all human rights impose a combination of negative and positive duties on the state, to wit, the duty to respect, protect, promote and fulfil.
- The right to freedom from torture, cruel, inhuman and degrading treatment is guaranteed under Article 24 of the 1995 Constitution of the Republic of Uganda 100 which provides that no person shall be subjected to any form of torture or cruel, inhumane or degrading treatment or punishment.

Torture is further prohibited by the **Prevention and Prohibition of Torture Act Cap.130** which provides under Section 3(1) that there shall be no derogation from the enjoyment of the right to freedom from torture. Section 4 the **Prevention and**

Prohibition of Torture Act Cap.130 makes it a criminal offence for any person to engage in acts of torture.

Several international Instruments in equal measure prohibit torture of persons. Article 5 of the Universal Declaration of Human Rights states and Article 7 of the International Convention on Civil and Political Rights provide that no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

The Convention against torture and other cruel, inhuman, Degrading Treatment or Punishment imposes obligations on states to take measures including legislative, administrative, judicial or other measures to prevent acts of 115 torture.

Under Article 44(a) of the 1995 Constitution of the Republic of Uganda, the right to freedom from torture, cruel, inhuman and degrading treatment is listed among the non derogable rights.

Both counsel do not dispute the foregoing being the position of the law and I will 120 not belabor the point.

The Prevention and Prohibition of Torture Act Cap.130 defines torture to mean;

"Any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as—

- (a) Obtaining information or a confession from the person or any other person;
- (b) Punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or
- (c) Intimidating or coercing the person or any other person to do, or to refrain from doing, any act."

Section 2(2) further defined severe pain or suffering to mean;

"(a) the intentional infliction or threatened infliction of physical pain or suffering;

- (b) the administration or Application, or threatened administration or Application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (c) the threat of imminent death; or
- (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or Application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality"

Torture is considered a very serious human rights violation and a barbaric act. The Court in *Mackay v Attorney General and 3 Others* High Court Misc. Cause *No.12 of 2018* observed that;

"Torture is considered so barbaric and incompatible with civilized society that it cannot be tolerated. Torturers are seen as the 'enemy of mankind'.

To prove their case in respect to infringement of their right to freedom from torture, cruel, inhuman and degrading treatment, the Applicants rely on their respective Affidavits which are similar in material and which I will not reproduce.

The Applicants state in their respective Affidavits that they were subjected to both 150 mental and physical torture. The Applicants state that they were not informed of the reason for their arrest, were rounded up and put in a waiting "drone" car, handcuffed from behind, beaten and kicked, made to see a man being beaten to death, denied food, tied on an electric pole in scorching sun for over 8 hours, stripped naked in front of people, put in a tank of very cold water, taken in a dark 155 room, interrogated for many hours, forced to eat pork pieces yet they are Muslims, had metals in form of thorns tied in between their fingers, put in rooms with very smelly waters among other acts.

The 4th Applicant specifically states that the Respondent's agents made threats to kill his wife and harm his baby. The 2nd Applicant specifically states that he was shot in 160 the elbow.

In response, the Respondent asserts through affidavit evidence that the detention facilities were well-ventilated, had adequate lighting, functioning toilets, and that detainees were provided with two meals a day. It is further stated that the Applicants were in good physical and mental health during their detention. To support this, the 165 Respondent has attached medical examination reports as Annexures "A1" to "A6". Additionally, the 2nd Applicant's injury is explained as a result of resisting arrest, corroborated by a police statement from his wife, Arach Proscovia (Annexure "B").

Under Section 101 of the Evidence Act, Cap. 6, the burden of proof lies with the party who asserts a fact—in this case, the Applicants—who must satisfy the Court, 170 on a balance of probabilities, that they were tortured. This principle was reaffirmed in *Twine Emmanuel v Attorney General* (Misc. Cause No. 03 of 2024) where

the Court held that a claimant must prove that the alleged violation of rights actually occurred.

This case ultimately presents a conflict of affidavit evidence: While the Applicants 175 assert they were subjected to torture, the Respondent denies the allegations and relies on medical reports and third-party statements to corroborate their position.

The onus therefore remains on the Applicants to prove their claims to the Court's satisfaction.

This evidence of the Respondent was never rebutted by the Applicants who had an 180 opportunity to file an Affidavit in rejoinder, but they chose not to.

The Supreme Court of Uganda's decision in *Amama Mbabazi vs Museveni* (Presidential Petition No. 1 of 2016) provides authoritative guidance on the consequences of failing to rebut specific allegations. In that case, the petitioner alleged irregularities in the 2016 presidential election, including, that presiding 185 officers denied his Agents access to Declaration of Results Forms. The Electoral Commission responded with general explanations of electoral procedures but did not specifically deny or provide evidence contradicting the petitioner's affidavits. The Supreme Court held that, in the absence of targeted rebuttal, such allegations "must stand," as the failure to contest them with precision amounted to an 190 admission under Uganda's procedural rules.

The **Mbabazi** precedent (supra) underscores the importance of evidentiary diligence, particularly in disputes implicating fundamental rights, such as the Applicant's claimed torture.

Applying this principle to the instant case, the Respondent's un rebutted evidence of 195 medical records attesting to the fact that the Applicants were never tortured and were found to be in good mental and physical condition and the statement made by a one Arach Proscovia, the 2nd Applicant's wife are in a strict sense taken as established fact.

- I therefore accept Annexure "A1", "A2", "A3", "A4", "A5" and "A6" to the 200 Affidavit in reply showing that the Applicants were in good mental and physical health as well as Annexure "B" to the Affidavit in reply, which is a statement of the 2nd Applicant's wife, as being true.
- It is submitted by Counsel for the Applicants that the prolonged detention before producing the Applicants in Court was to allow time for the torture wounds and 205 injuries to heal and thereby conceal physical and visible evidence of torture. It is not stated anywhere in the Affidavits that at the time of producing the Applicants in Court, the wounds if any, had healed. This submission, made without evidentiary backing, is speculative. Evidence is a premise for material inference, not lawyer's assertions. The principle of due process requires decisions to be based on reliable 210 evidence, not speculation.

Counsel's statement constitutes inadmissible evidence from the bar, and is accordingly rejected.

- The lack of evidence about healing of wounds notwithstanding, some Applicants claim that their fingernails were removed. From the chronology of events in the Affidavit in reply, the picture painted is that the removal of fingernails happened a few days before appearance in Court. At that point, the medical examination would have revealed the missing fingernails but the medical forms adduced by the Respondent, which stand unchallenged do not reveal any wound or sign of injury.
- It is also argued by the Respondent that the Affidavits of the Applicants contain 220 hearsay and falsehoods. The Court was however not directed to the part of the Applicants' evidence that is hearsay. From my reading of the Affidavits, the Applicants narrate the story from a first person view, and I find that there is no hearsay in that regard.
- However, regarding falsehoods in the Affidavits of the Applicants, the Court's 225 attention was drawn to the 1st Applicant's Affidavit which states that he was arrested on 1st February 2022 and yet in the Affidavit in support of his Bail Application, he

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states that he was arrested in September 2022. The Bail Application in question together with its Affidavit in support is annexed as "E" to the Affidavits in support

of the Application. 230

I have examined the Affidavit in support of this Application as well as the Affidavit in support of the Bail Application under M. A No.64 of 2023 and confirmed that the said contradiction exists.

The Applicants' Counsel maintains that the contradiction in time of arrest was a result of the 1st Applicant's Counsel and not the 1st Applicant.

With greatest respect, this argument is not convincing at all, as both Affidavits providing different times of arrest were sworn by the 1st Applicant and not the lawyer. The difference between February and September is equally not a negligible one.

Despite the inconsistency in the 1st Applicant's stated date of arrest, it is well-established that, in the interest of justice, Courts may invoke the doctrine of severance to disregard contradictory portions of an affidavit while relying on the remaining credible parts. See Rtd. Col. Dr. Kiiza Besigye v Electoral Commission & Yoweri Kaguta Museveni, Presidential Election Petition No.

1 of 2006. Accordingly, the Court will exclude the contradictory content and consider the uncontested portions of the 1st Applicant's affidavit.

The 2nd Applicant's affidavit was similarly challenged for containing alleged falsehoods, specifically, the claim that he was shot in the elbow during detention. The Respondent contends that the injury occurred while the 2nd Applicant was resisting arrest. This assertion is supported by the 2nd Applicant's wife, Arach Proscovia, in her statement annexed as "B" to the Respondent's affidavit in reply.

Arach Proscovia's statement remains unchallenged, and I find it credible in explaining how the 2nd Applicant sustained the injury, contrary to the account provided in the affidavit in support of the application. The evidence indicates that

- the injury was sustained as a result of lawful efforts by the police to subdue the 2nd Applicant when he resisted arrest. It is well established that law enforcement officers are permitted to use reasonable force in effecting an arrest where a suspect resists or attempts to evade arrest.
- In determining whether the force used was proportionate, regard must be had to the specific circumstances under which it was applied. In this case, the 2nd Applicant actively resisted arrest, prompting the use of force necessary to prevent escape or further resistance. The application of force, resulting in a gunshot wound to the elbow, though serious, appears to have been targeted to neutralize the resistance rather than to inflict unnecessary harm. As such, it meets the threshold of $\$ \bigcap \$$ proportionality in the context of arrest enforcement. Where the use of force is reasonable, necessary, and not excessive in the circumstances, it does not amount to torture. I therefore find that the shooting cannot be deemed to constitute torture within the meaning of the law.
- The Applicants argued that the Respondent have evasively denied the torture allegations and that they did not deny all the depositions under the respective 270 paragraphs.

- Counsel for the Applicants invited this Court to rely on the Supreme Court decision in *Amama Mbabazi v Museveni & 20 Others* (supra), in support of the argument that the Respondent's failure to refute each averment of torture amounts to an admission, and thus the allegations must stand as uncontroverted. While the 275 principle stated therein, that unchallenged affidavit evidence may be deemed admitted, reflects settled law, this Court finds the factual matrix of the present case materially distinguishable from the **Mbabazi** case in both procedural and evidentiary terms.
- In **Mbabazi**, the petitioner placed before the Supreme Court specific, detailed 280 affidavits alleging electoral irregularities and violations of the law. The Respondents, including the Electoral Commission, offered only general denials and explanations

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of standard procedure without directly responding to the individual allegations or filing contradicting evidence. The Supreme Court found that in the absence of rebuttal or denial with specificity, the petitioner's averments were taken as admitted and established on the record.

By contrast, in the present case, the Respondent did not rest on general denials or procedural explanations. Instead, the Respondent filed an Affidavit in reply supported by documentary medical evidence, Annextures "A1" to "A6", which

indicate that the Applicants were medically examined and found to be in good 290 physical and mental condition during the time of detention.

Furthermore, Annexature "B", a statement by the 2nd Applicant's wife, gives an alternative and plausible explanation for the 2nd Applicant's injuries, namely, that he was shot while resisting arrest, not during detention as claimed by the Applicants.

Crucially, the Applicants had the opportunity to file affidavits in rejoinder to respond 295 to the Respondent's evidence, including the medical reports and third-party statement, but they did not do so.

The Court is thus faced with unrebutted evidence from the Respondent, supported by documentation, which directly contradicts the Applicants' claims of torture. This distinguishes the instant case from *Amama Mbabazi* (supra), where the Respondents failed to file any rebutting evidence at all.

Moreover, while the Applicants have relied solely on their affidavits to assert serious claims of torture, including highly specific and grave allegations, the Respondent's detailed and unchallenged medical evidence stands in stark contrast to the uncorroborated narrative of the Applicants.

Therefore, the principle in **Amama Mbabazi* v *Museveni** (supra) is inapplicable in this context. In the instant case, the Respondent did in fact respond, deny, and adduce positive evidence in contradiction, which was left unchallenged by the Applicants. The evidentiary balance thus tilts in favour of the Respondent.

Accordingly, the threshold for proof on a balance of probabilities has not been met, 310 and Issue 1 must be answered in the negative.

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WHETHER THE RESPONDENT VIOLATED THE ISSUE 2: APPLICANTS' RIGHT TO A FAIR HEARING 315

The right to a fair hearing is guaranteed under Article 28 of the 1995 Constitution of the Republic of Uganda.

Article 28(1) provides that in the determination of Civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial Court or tribunal established by law.

Just like the right to freedom from torture, cruel, inhuman and degrading treatment, the right to fair hearing is a non derogable right under Article 44(c) of the 1995 Constitution of the Republic of Uganda.

- To prove the case of violation of their right to a fair, speedy and public hearing, the Applicants contend that they spent a number of months in illegal detention, were 325 never informed of the offences at the time of arrest, were never allowed access to a lawyer, were interrogated on camera for about five hours, were coerced to sign documents, that it took 19 months for them to be committed and that their Bail Application moved around different Courts.
- Whereas this issue concerned the right to a fair hearing, the Applicants' Counsel 330 delved into issues relating to the right to liberty, for instance the time taken to produce the Applicants in Court after an arrest and the reference to Article 23 among others.

I will only consider the submissions and averments relating to the right to a fair hearing. 335

The right to a fair and speedy trial is a fundamental tenet of due process and is constitutionally guaranteed. However, while this right is clearly established in principle, the law does not prescribe a specific or rigid timeline within which a trial must be concluded or otherwise automatically be deemed inordinate or oppressive.

- Instead, the question of whether a trial is "speedy" must be determined based, to a 340 great extent, on the circumstances of each particular case with relevant factors including but not limited to:

- the complexity and nature of the investigations involved, \$1)\$
- the seriousness of the charges, \$2)\$
- the conduct of the prosecution and defence, \$3)\$
- the availability of judicial and logistical resources, and \$4)\$
- whether any delays are attributable to systemic or natural constraints or \$5)\$ deliberate acts by either party.

Courts are therefore entitled to consider whether the delay is excessive in light of prevailing institutional realities and the conduct of both parties. 350

In the instant case, the Applicants have invoked their right to a speedy trial but have not substantiated their claim by demonstrating how much time a reasonably expeditious trial should take under circumstances such as theirs, nor have they shown that the delay, if any, is unjustified, inordinate, or prejudicial.

Moreover, no evidence has been placed before the Court to show that the 355 prosecution has acted with negligence or improper purpose, or that the delay has resulted in any actual prejudice to the Applicants' ability to prepare their defence.

While therefore the right to a speedy trial is indeed fundamental, it cannot be interpreted in absolute terms divorced from context.

In the absence of demonstrated prejudice or any clear statutory breach, the 360 Applicants' claim under this head is without merit.

I am equally persuaded by the Respondent's submissions that there is no contention from the Applicants challenging the independence or impartiality of the trial court.

As such, the issue of a denial of a fair trial does not arise from the Applicants' pleadings.

The Applicants allege that they were compelled to sign documents involuntarily, were forcefully interrogated on video, and fear that such documents may be used against them in the impending prosecution. Notably, these documents have not yet been adduced in any proceedings, and the claim remains speculative.

In the event that an attempt is made to rely on any such document, whether a 370 confession or otherwise, the accused has the right to object to its admissibility. In such circumstances, the trial court is obliged to conduct a trial within a trial to determine whether the document was executed voluntarily.

I must emphasize that any evidence obtained through torture is inadmissible under

Ugandan law. Section 14 of the Prevention and Prohibition of Torture Act, 375 *Cap. 130*, expressly prohibits the use of evidence procured through torture. Accordingly, if during the trial within a trial, an accused person demonstrates that any evidence was obtained through torture, such evidence shall be excluded.

Notably, the objection to admissibility must be raised at the point when the prosecution seeks to tender the evidence, not beforehand, as the prosecution may not necessarily intend to rely on the contested material.

The Applicants have also raised a complaint regarding delays in the processing of their Bail Application. However, documents annexed to the supporting affidavits reveal that the Bail Application was initially filed in the wrong court, the Criminal Division instead of the ICD, thereby contributing to the delay.

While it is acknowledged that there may have been some administrative delays on the part of the Court, the Applicants have not demonstrated how such delays occasioned a violation of their right to a fair hearing.

In view of the foregoing, I find that the Applicants have not established, on a balance of probabilities, that their right to a fair hearing was infringed or violated.

Issue 2 is accordingly answered in the negative.

ISSUE 3: WHETHER THE APPLICANTS' RIGHT TO PERSONAL LIBERTY WAS VIOLATED BY THE RESPONDENT

The right to personal liberty is guaranteed under Article 23 of the Constitution of

- *the Republic of Uganda 1995* which provides that no person shall be deprived of 395 personal liberty.
- The same Constitution creates exceptions to deprivation of a person's liberty and these include for purposes of bringing that person before a Court upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda. 400

Such a person must be detained in a place authorized by law, informed of the reason for arrest, and if not earlier released be brought to Court not later than forty-eight hours, grant reasonable access of the person's next of kin, lawyer and personal doctor and be allowed to access medical treatment.

The contention by the Applicants is that they were detained at the Chieftaincy of 405 Military Intelligence (CMI) detention facility in Mbuya which is not an authorized detention facility.

Whereas the Affidavit in reply states that the Applicants were detained at Kireka Police Detention facility, it is not denied that the Applicants were detained at the

Chieftaincy of Military Intelligence (CMI) detention facility in Mbuya and neither 410 does the Affidavit in reply state that the Applicants were only detained at Kireka Police Detention facility.

The Applicants' evidence that they were detained at the Chieftaincy of Military Intelligence (CMI) detention facility in Mbuya stands uncontroverted. The question

to be asked is whether the Chieftaincy of Military Intelligence (CMI) detention 415 facility in Mbuya is an authorized detention facility.

Counsel for the Applicants referred Court to the decision of **Uganda v Jamal Kiyemba** alias Abdullah alias Tonny Kiyemba HCT-00-ICD-SC-001-2023 where Court held that the CMI detention facility is not a place authorized by law.

On the other hand, the Respondent's counsel did not address Court on whether the 420 Chieftaincy of Military Intelligence (CMI) detention facility in Mbuya is an authorized place of detention.

Premised on the foregoing, I find that the detention of the Applicants at the Chieftaincy of Military Intelligence (CMI) detention facility in Mbuya, a place not authorized by law for detention contravened article 23(2) of The Constitution of the Republic of Uganda.

The Applicants further assert that they were not informed of the reasons for their arrest and were denied access to their next of kin, legal counsel, and medical attention. While the Respondent claims that no one was denied access to the

- Applicants at Kireka Police Detention Facility, there is a conspicuous silence 430 regarding the Applicants' detention at the Chieftaincy of Military Intelligence (CMI) facility in Mbuya. The Respondent has not provided any substantive rebuttal or evidence to refute the Applicants' claims of being held incommunicado at that facility.
- On a balance of probabilities, I find that the Applicants have successfully 435 demonstrated that they were denied access to their lawyers, next of kin, and medical attention during their detention by the Respondent's agents. Such conduct amounts to a blatant violation of Article 23(5) of the Constitution of the Republic of Uganda, which guarantees the right of a detained person to be informed promptly of the
- reasons for their detention and to communicate with next of kin, legal counsel, and 440 a medical practitioner of their choice.

The denial of these fundamental safeguards undermines the rule of law and the protections accorded to all persons under the Constitution. It reflects a serious and unjustifiable disregard for due process and the dignity of the individual. Detaining a person without access to legal representation, family, or medical care not only exacerbates the trauma of arrest but also facilitates the risk of abuse, including torture and inhuman treatment. Such actions are reprehensible and must be unequivocally condemned.

- Finally, the Applicants contend that they were not brought to court within the constitutionally mandated forty-eight hours and, in some cases, were detained for over eight months before being presented before a court of law. This claim is not denied by the Respondent, who acknowledges that the Applicants were detained between December 2021 and May 2022, and only produced in court in September 2022.
- It is a well-established legal principle that facts admitted need not be proved. Section 455 57 of the Evidence Act, Cap. 8, makes it clear that once a fact is admitted, it is not subject to further proof. Therefore, the Respondent's acknowledgment that the Applicants were detained for prolonged periods without being brought to court is taken as a factual admission.
- The right to liberty is protected under Article 23 of the Constitution, but it is subject 460 to limitations in certain circumstances, such as when detention is authorized by a court order. However, such limitations must be demonstrably justifiable in a free and democratic society. In this case, the Respondent has not provided a valid justification for the prolonged detention of the Applicants, especially in light of the constitutional requirement to bring detainees before a court within forty-eight hours. 465

It is my view that the delay in bringing the Applicants to court for periods ranging from several months to over eight months cannot be justified under any reasonable grounds. The right to liberty is a fundamental right, and the Applicants' prolonged

detention without being afforded an opportunity to challenge their detention in court represents a serious violation of their constitutional rights.

In light of the foregoing, I find that the Applicants' right to access legal counsel, next of kin, and medical attention was violated while in detention by the Respondent's agents and further that the Respondent's failure to produce the Applicants in court within forty-eight hours constitutes a breach of their right to liberty under Article 23(4) of the 1995 Constitution.

Issue 3 is therefore answered in the affirmative.

ISSUE 4: WHAT REMEDIES ARE AVAILABLE TO THE PARTIES?

The Applicants prayed for declarations that their rights to freedom from torture and cruel, inhuman or degrading treatment or punishment, the right to a fair, speedy and 480 public hearing and the right to personal liberty were infringed upon and/or threatened.

Having found that the Applicants have not discharged the burden to prove that their rights to freedom from torture and cruel, inhuman or degrading treatment or punishment and the right to a fair, speedy and public hearing have been violated, I 485 decline to make declarations to that effect.

I however declare that the Applicants' right to personal liberty was infringed upon.

The Applicants also prayed for a declaration that the trial is a nullity for infringement on their non-derogable and other rights.

Section 11(2) of the Human Rights (Enforcement) Act Cap.12 empowers Court to 490 declare the trial a nullity and acquit the accused person where there has been a finding that any of the accused person's rights and freedom have been infringed upon. The Court can only nullify a trial where it is proved that non derogable rights have been infringed upon.

The Applicants claimed violation of their rights, to wit, freedom from torture and 495 cruel, inhuman or degrading treatment or punishment and the right to a fair, speedy and public hearing and the right to personal liberty. Only two of these rights fall within the category of non derogable rights, to wit, freedom from torture and cruel, inhuman or degrading treatment or punishment and the right to a fair, speedy and public hearing are non derogable rights. 500

I have already found that the Applicants have failed to prove violation of the said non derogable rights and I decline to make a declaration that the trial is a nullity.

Accordingly, I also decline to make an order acquitting and discharging the Applicants.

This Court therefore also finds no justification to make an order directing the 505 Respondent to facilitate and/or pay for the Applicants' treatment and Rehabilitation as this would be an order without basis.

I have found that the Applicant's right to personal liberty was infringed upon. The Applicants prayed for UGX 500,000,000 each as compensation.

- The Respondent on the other hand referred Court to the case of *Adiandu John v 510 Attorney General and IGP HCMC No.146 of 2022* where Court awarded UGX 10,000,000 (Ten Million only) as general damages for prolonged detention of the Applicant. In the case, the Applicant, a former police officer, was detained for a total of 14 days without being formally charged or brought before a court.
- The court emphasized that, although unlawful detention inherently causes harm, the 515 Applicant needed to demonstrate actual damage beyond the mere fact of detention to justify an award beyond nominal damages. Despite the lack of specific evidence detailing the emotional or psychological impact, the court noted that the Applicant's detention significantly exceeded the 48-hour constitutional limit, constituting a gross abuse of his right to personal liberty. Consequently, the court deemed UGX 520 10,000,000 an appropriate sum for general damages.

This case underscores the recognition of the serious infringement on personal liberty resulting from prolonged unlawful detention and highlights the importance of adhering to constitutional safeguards.

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Having considered the circumstances, I find that the sum of UGX 10,000,000 to 525 each Applicant is sufficient to compensate the Applicants for the unreasonably long detention by agents of the Respondent and I accordingly award that sum to each of the Applicants.

Regarding costs, the general rule is that costs should follow the event, and a successful party should not be deprived of costs except for good cause. See Section 530 27 of the Civil Procedure Act.

Having partly succeeded, the Applicants are awarded half of the costs of this Application.

Final Declaration and Orders;

- 1. I declare that the Respondent violated the Applicants' right to personal liberty, and order that;
- 2. The Respondent shall pay to each Applicant damages in compensation, in the sum of UGX 10,000,000 (Uganda Shillings Seventy Million) for violation of their right to personal liberty.
- 3. The Respondent shall pay the Applicants half of the taxed costs of this Application.
- 4. Interest shall accrue on 2 above at the rate of 6% per annum from the date of this Ruling until payment in full.

Delivered at Kampala thisth day of March 2025.

545 Richard Wejuli Wabwire **JUDGE**

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