

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. CAUSE NO.163 OF 2013

OKUMU BRIAN ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

ATTORNEY GENERAL::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING:

I have perused the following applications:- 16/13, 205/13, 50/13, 170/13, 20/13, 69/13, 195/13, 107/13, 78/13, 139/13, 111/13, 112/13, 197/13, 140/13, 23/13, 194/13, 79/13, 10/13, 18/13, 33/13, 204/13, 207/13, 34/13, 26/13, 76/13, 53/13, 77/13, 211/13, 183/13, 164/13, 143/13, 186/13, 162/13, 159/13, 157/13, 146/13, 141/13, 137/13, 115/13, 57/13, 58/13 and 61/13, the submissions by respective counsel and the returns and found that something common runs across the information in the Returns filed by the respondent and that is, that the applicants were either charged with armed robbery and or murder using fire arms a monopoly of the defence forces or being in possession of fire arms, a monopoly of the defence forces. Some of them are convicts while others were still on remand.

From the multiplicity of rulings I have been making I have held the view and still hold the same view that such applicants are in lawful custody since the General Court Martial has jurisdiction to try them in view of the provisions of S. 119 of the UPDF Act. The

whereabouts of all the applicants is known since they are being kept in gazetted detention centers. The General Court Martial derives its jurisdiction from S. 197 (ii) and S. 119 (i), (h), (g) of the UPDF Act. If a civilian brings himself/ herself under the jurisdiction of the General Court Martial, he/she can be tried even if he/she is a civilian. This can occur when they use or are found in possession of weapons, the monopoly of the Defence Forces. (**Hadijah Namugerwa** case refers)

It should be noted that a right of habeas corpus is not automatic and that whoever applies for it is given the order. The applicants have to prove the purpose for the application i.e production of a person in an unlawful detention to courts of law. Habeas corpus is not meant to challenge the proceedings from which the applications originate. Constitutionality of such proceedings can only be determined on reference to the Constitutional Court since S 119 (i) (g) and (h) of the UPDF Act has never been declared unconstitutional.

Whether the weapons are a monopoly of the defence forces is a matter of evidence which cannot be determined by this court in these proceedings. It is a triable issue. Whereas S. 119 (i) (g) and (h) does not create an offence, it is an unusual section which brings civilians under the ambit of the General Court Martial if found in possession of not only fire arms but ammunitions the monopoly of the defence forces. That law has never been repealed and is still effective and in force regardless of the misgivings of the Human Rights advocates. All the applicants listed above in the above applications are in lawful custody and are not entitled to the prayers sought respectively. Those still entitled may apply for bail before the court. Therefore the applications as listed have no merit and they will be dismissed respectively.

Stephen Musota

J U D G E

03.07.2014