



**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION**



(Coram: Yohane B. Masara, PJ; Charles O. Nyawello, DPJ; Charles A. Nyachae, Richard Muhumuza & Richard Wabwire Wejuli, JJ)

APPLICATION NOS. 4 & 5 OF 2022
(Arising from Reference No.11 of 2022)

MALE H. MABIRIZI K. KIWANUKA APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDARESPONDENT**

29TH NOVEMBER 2023

REASONED RULING OF THE COURT

A. INTRODUCTION

1. On 22nd November 2023, this Court delivered an *ex-tempore* ruling and postponed reasons. This is a reasoned Ruling of the decision rendered.
2. On 10th March 2022, Mr Male H. Mbirizi K. Kiwanuka (“the Applicant”) filed **Reference No. 11 of 2022** in this Court. The Reference was preferred under Articles 23(1), 27(1) & 30(1) of The Treaty for the Establishment of The East African Community (“the Treaty”), Articles 2(4), 3, 4, 5(2)(e), 5(3)(b), 16, 17, 20, 21, 24-28, 33 & 54(2) of The Protocol on the Establishment of the East African Community Common Market (“the Protocol”) and Rule 25(1) & (4) of The East African Court of Justice Rules of the Court, 2019 (“the Rules”).
3. The Reference was brought against the Attorney General of the Republic of Uganda (“the Respondent”) challenging, among others, the decisions of the High Court of Uganda which found the Applicant guilty of contempt of court and sentenced him to pay a fine of Ugx 300,000,000/= . On failure to pay the fine, he was sentenced to serve a prison term of 18 months.
4. On the same day of filing **Reference No. 11 of 2022**, the Applicant filed in Court **Application No. 4 of 2022** and **Application No.5 of 2022** arising from the said Reference, seeking interim orders for his temporary release. The two Applications were made under the Treaty and the Rules, but the Applicant did not specify the relevant Articles and or Rules relied on. This ruling is with respect to the said Applications.

5. The Applicant is a natural person, a citizen and a resident of the Republic of Uganda. His address of service for purposes of the Reference is: *c/o Plot 35, Kampala Road, Post Office Building, 5th Floor, Room 501A, Kampala, Uganda*, but at the date of filing the Applications, his address was: *c/o Uganda Prisons, Kitalya Min Max Prison, Namayumba Sub County, Wakiso District*.
6. The Respondent is the Attorney General of the Republic of Uganda, sued in his capacity as the Principal Legal Adviser of the Republic of Uganda, a Partner State of the East African Community. His address of service is: *c/o Ministry of Justice and Constitutional Affairs, Plot 7, Parliamentary Avenue, Bauman House, P.O Box 7183, Kampala-Uganda*.
7. In **Application No. 4 of 2022**, the Applicant seeks for an Interim Order to be issued for his interim release from Uganda's Kitalya Mini Max Prison or any other prison where he may be transferred to until final determination of **Reference No. 11 of 2022**, which challenges the said imprisonment and, that the Respondent be responsible for the costs of the Application.
8. In **Application No. 5 of 2022**, on the other hand, the Applicant seeks an *ex parte* Interim Order for his interim release from Uganda's Kitalya Min Max Prison or any other prison he may be transferred to until final determination of **Application No. 4 of 2022**.
9. When the two Applications came up for hearing, the Court directed that the matter proceeds *inter-partes* which is the subject of **Application No. 4 of 2022**. That decision was made because all parties had

appeared in Court and there was no basis for the Court to consider the matter *ex parte*. Thus, **Application No. 5 of 2022** was rendered moot. It automatically collapsed. This ruling is, therefore, with respect to **Application No. 4 of 2022**.

10. The Application is supported by the Affidavit in Support of the Notice of Motion dated 10th March 2022, an Affidavit in Rejoinder dated 16th September and a Supplementary Affidavit dated 1st November 2022, all deponed by Male H. Mbirizi K. Kiwanuka, the Applicant.
11. The Respondent opposed the Application by filing an Affidavit in Reply dated 17th August 2022 and a Supplementary Affidavit in Reply dated 9th November 2022, both deponed by Emelda Adongo, learned State Attorney.

B. REPRESENTATION

12. At the hearing, the Applicant appeared in person, while Ms Goretti Arinaitwe and Mr Hilary Ebila, both learned Senior State Attorneys, appeared for the Respondent.

C. APPLICANT'S GROUNDS FOR THE APPLICATION

13. The grounds upon which the Application is based are contained in the Notice of Motion filed on 10th March 2022. They are:
 - a) **That the Applicant has filed a Reference before this Court challenging among others his imprisonment for 18 months by High Court Civil Division;**
 - b) **That the Reference raises serious matters for consideration;**

- c) That the Applicant will suffer irreparable damage if the Application is not granted;
- d) That there is a real threat that the Respondent will keep the Applicant in prison even in pendency of the Reference;
- e) That the Reference will be rendered nugatory if the Application is not granted; and
- f) That it is in the interest of justice that the Application is allowed.

14. In the Affidavit supporting the Notice of Motion, the Applicant outlines a series of events that transpired, raising concerns about the legality and procedural adherence in the issuance of arrest and imprisonment warrants.

15. The Applicant submits that on the 15th February 2022, the Assistant Registrar, High Court Civil Division, purportedly issued both a warrant of arrest and a warrant of committal to prison, without initiating any execution proceedings, which act was unlawful.

16. The Applicant emphasized that it is against the law to issue a warrant of arrest without prior execution proceedings. That, similarly, issuing a warrant of committal to prison without the alleged offender appearing before the court is illegal.

17. The Applicant states further that in response to these actions, the Applicant filed **Miscellaneous Applications No. 90 & 91 of 2022** at the High Court of Uganda on 17th February 2022, seeking a stay of execution of the imprisonment orders.

18. That despite filing of the said Applications, on 21st February 2022, the Applicant was arrested and was incarcerated, notwithstanding an ongoing appeal against the decision in **Miscellaneous Application No. 843 of 2021.**
19. The Applicant contends that the whole process leading to his arrest, detention and imprisonment violated both the Ugandan laws and the Treaty.
20. Further, that the actions taken against him amount to political persecution and that, individuals representing the Respondent neglected and violated publicly declared laws in making the contested decisions.
21. Furthermore, the Applicant argues that these actions contravene Articles 6(d) and 7(2) of the Treaty, which underscores the fundamental principles of the Community, including good governance, democracy, the rule of law, accountability, transparency and the maintenance of universally accepted human rights standards. He also alleges violations of several provisions outlined in the Protocol.
22. The Applicant asserts further that the Reference raises substantial concerns related to the rule of law, and that there is a genuine apprehension that the Respondent may continue to detain him during the pendency of the Reference and the Application.
23. At the hearing, the Applicant went at length to reiterate what he stated in his Affidavit. He submitted that he was imprisoned without ever appearing before any judicial officer and denied his right to a fair hearing. The Applicant complained of bad conditions in the prison and

how his rights are being abused. As a result, he was seeking an order for his interim release from the prison pending determination of **Reference No. 11 of 2022.**

D. THE RESPONDENT'S REPLY AND SUBMISSIONS

24. The Respondent's grounds of opposition to the Application are contained in the Affidavit in Reply and the Supplementary Affidavit in Reply both deponed by Emelda Adongo on behalf of the Respondent. In the Affidavits, the Respondent highlights the chronological events that culminated in the present Application, but briefly states that the only remedy available to the Applicant lies in seeking bail pending an appeal before the High Court, suggesting that alternative remedies are inadequate for the Applicant.

25. Further, the Respondent argues that the Reference from which the Application bases this Application does not raise any serious matters with any degree of success, casting doubt on the merit and seriousness of the Applicant's case. Further, the Respondent also contends that the Applicant is not poised to suffer irreparable injury beyond compensation through damages. Lastly, the Respondent emphasizes that the balance of convenience distinctly favours their position.

26. During hearing, Counsel for the Respondent opposed the Application, asserting that it is bad in law, incompetent, frivolous, vexatious and an abuse of the court process. He urged the Court to dismiss the same as the Applicant is not entitled to the orders sought in the Application.

E. COURT'S DETERMINATION

27. Having considered the varying Affidavits and Submissions both for and against the Application, it is apt that we make a determination thereof.

28. The grant of interim orders is governed by Article 39 of the Treaty. It reads:

“The Court may, in a case referred to it, make any interim orders or issue any directions which it considers necessary or desirable. Interim orders and other directions issued by the Court shall have the same effect *ad interim* as decisions of the Court.”

29. Black’s Law Dictionary (*tenth edition*) defines an interim order as **“a temporary decree that remains in effect for a specified time until a specified event occurs”**. As already indicated in the preceding paragraphs of this ruling, the subject matter of this Application is the prayer for interim release of the Applicant from prison.

30. In granting or refusing the Application for the craved interim order, the Court has to be satisfied that its order will meet the ends of justice. It cannot grant an order where the *status quo* has evolved rendering the order unimplementable.

31. In that regard, it has come to our attention that the order sought has been overtaken by subsequent events. During the hearing of **Application No. 22 of 2022** also arising from **Reference No. 11 of 2022**, on 23rd March 2023, this Court was informed by the Applicant,

Mr Mabirizi, that he had been released from Prison since 25th February 2023.

32. It is the Court's view that the primary purpose of an Interim Order is to address immediate concerns pending the determination of the main Reference. In the instant Application, the Applicant's circumstances have changed. The Applicant is no longer in prison. It would therefore, make no judicial logic to proceed and determine the grant of interim orders against a non-existent threat.
33. Having considered the Application, the Court notes that the impugned action ceased to exist when the Applicant completed his sentence. Since the Applicant has already been released, the urgency for interim orders to secure his release no longer exists. Therefore, we find it just and reasonable to consider this Application moot and unnecessary at this stage.
34. Similarly, this Court cannot proceed to determining whether the Ugandan High Court Civil Division's action of sentencing the Applicant to 18 months in prison infringed the Applicant's right to fair hearing and was therefore unlawful, as these are matters for consideration in the main Reference.
35. This Court in **Mary Ariviza & Another vs Attorney General of Kenya & Another, EACJ Application No. 3 of 2010** cautioned that during the phase when the Court is considering the appropriateness of an injunction, the Court:

“... must of course refrain from making any determination on the merits of the application or any defence to it. A decision on

the merits or demerits of the case must await the substantive consideration of the facts and applicable law after full hearing of the Reference.”

36. Consequently, we deem it appropriate to adhere to the above established practice.

F. CONCLUSION

37. In light of the foregoing, we hereby strike out the Application.

38. In the exercise of our discretion, we direct that each party bears its own costs.

39. It is so ordered.

Dated, signed and delivered at Arusha this 29th day of November 2023.



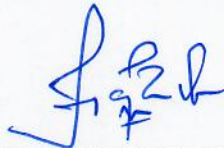
.....
Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



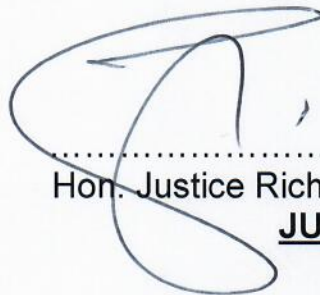
.....
Hon. Justice Dr Charles O. Nyawello
DEPUTY PRINCIPAL JUDGE



.....
Hon. Justice Charles A. Nyachae
JUDGE



.....
Hon. Justice Richard Muhumuza
JUDGE



.....
Hon. Justice Richard Wabwire Wejuli
JUDGE