

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(INTERNATIONAL CRIMES DIVISION)
CRIMINAL CASE NO. HTC – 00 – ICD – SC – 0005 – 2021

UGANDA :::PROSECUTOR

VERSUS

A.1 DHIKUSOOKA FAISWALI *alias*

HIBWAGI SINANI FAROOK *alias* SOOKA

A.2 MUHINDO SARUTIYONA

A.3 MUKWAYA MUZAMIRU

A.4 KAMANYA MUSA

A.5 AGABA FAROOK :::CCUSED

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

RULING.

This ruling is pursuant to Rules of Evidence and Procedure of the International Criminal Court (ICC) and the International Crimes Division (ICD) under Article 61 (7) of the Rome Statute of the ICC. It is a requirement under the cited law that at the pre-trial hearing, the prosecution shall support each of the charges in the indictment with sufficient evidence to establish *substantial grounds* to believe that the accused person committed the crimes. The prosecution may rely on documentary or summary evidence and needs not to call witnesses expected to testify at the trial. Premised on the evidence disclosed, the pre-trial court determines whether there are sufficient grounds to believe that the accused person committed each of the crimes charged. Similar position was adopted in the case of the ***Prosecutor v. Katanga and Ngudjolo case no. ICC.01/04.04/07/717 (decision, 26***

5 **November 2008)** by which this court is persuaded and shall rely upon.
In that case, the pre-trial chamber confirmed charges upon finding
sufficient evidence to establish substantial grounds to believe that the
accused persons committed the crimes by using children under the age
of 15 years to take part in hostilities, besides using them personally as
10 bodyguards and as combatants during attacks on villages in 2003.

In the present case, A1-Dhikusooka Faiswali *alias* Hibwagi Sinani
Faruuku *alias* Sooka; A2-Muhindo Saruti Yona; A3-Mukwaya
Muzamiru; A4- Kamanya Musa; A5- Agaba Farook; were jointly charged
in one count of *belonging or professing to belong to a terrorist*
15 *organisation*, contrary to Section 11(1) and 3 of the Anti-Terrorism Act
2002(as amended); one count of *rendering support to a terrorist*
organisation contrary to Section 11(1) (b) (3)(supra); and of another
count of *conspiracy to commit trafficking in persons*, contrary to Section
8 (b) of the Prevention of Trafficking in Persons Act, 2009.

20 Additionally, A1 is charged alone in one count of *terrorism financing*
contrary to Section 9A (1) (a) of the Anti- Terrorism Act (supra) and with
two alternative counts of the same offence contrary to Section 9A (1) (b)
& (c) (supra). Furthermore, A1, A2 and A5 are charged in four counts
of *aggravated trafficking in persons*, contrary to Section 3 (1) (a) and 4
25 (a) (c) and (e) of the Prevention of Trafficking in Persons Act (supra). A1,
A2, A3 and A5 are also charged of *trafficking in children* contrary to
Section 3 (1) (a) and 5(a) and (d)(supra)

Disclosed evidence.

In count 1, all the five accused are indicted of *belonging or professing to*
30 *belong to a terrorist organisation*, contrary to section 11 (1) (a) and 3 (1)
of the Anti-Terrorism Act. The prosecution alleges that with others still
at large, between May 2018 and July 2019 in diverse areas and places
in the districts of Mbale and other areas of Elgon, Mayuge, Bukedi and

5 others parts of Busoga, Kampala and other parts of Central Uganda and Kasese; all the five accused persons belonged or professed to belong to Allied Democratic Forces (ADF) which is a terrorist organisation.

Belonging or professing to belong to a terrorist organisation, is an offence created under Section 11(1) (a) and 3(1) of the Anti-Terrorism Act, 2002,
10 which states, in the relevant part, as follows;

“A person who belongs or professes to belong to a terrorist organisation commits an offence is liable, on conviction, to imprisonment not exceeding ten years or a fine not exceeding five hundred currency points, or both.”

15 The essential ingredients of the offence are;

- i. the accused must have belonged or professed to belong to an organisation.***
- ii. the organisation must be a terrorist organisation.***
- iii. a common intention to commit the crime.***

20 The evidence disclosed by the prosecution to support of the ingredients of the crime of *belonging or professing to belong to an organisation*, reveals that in his charge- and - caution statement, listed as (PE8) A1 admitted to have joined and belonged to the ADF since 2018. He stated that he was recruited from Luzira Prison by one Mohammed Kaweesa -
25 an ADF operative. A1 further stated that he too has since then recruited several other people from Mayuge, Iganga, and other parts of Eastern Uganda into the ADF and sent them to the DRC through Bwera border post in the Kasese District of Uganda. He further stated that he has also recruited and sent other people for the ADF military training to Zambia
30 and South Africa. That in all these activities, he worked closely and jointly with A5-Agaba Farook, and others still at large.

5 In addition, A1 revealed in the same statement that between July and November 2018, he received more than UGX 4,300,000/= from another ADF operative, one Ssentongo Umar, believed to be resident in London. A1 stated that he used the money to fund recruitment of new ADF recruits whom he also sent to DRC and Zambia for the military training.

10 A1's statement above is reinforced by statements (PE1) and (PE2) respectively, of witnesses "W", and "X", respectively. These witnesses were assigned pseudonyms to protect their identities for their own security and protection. The two statements clearly show and confirm that both A1 and A2 belonged to the ADF. The statements also confirm

15 that A2 was stationed at Bwera in Kasese at the Uganda – DRC border, and that his role was primarily to help transport new recruits from Uganda across the border to the ADF camps in the DRC where they would receive military training. A2 coordinated with A1 to receive new recruits and help them to cross into DRC and transport them to ADF

20 camps for military training.

Similarly, the statements of witnesses "Y" and "Z" contain specific and detailed information that A1, A2, A3, A4 and A5 - all belonged to ADF, and jointly recruited witness "Y" and "Z" into ADF activities and transported them to Bwera border town. "Y" and "Z" were, however,

25 intercepted and arrested at Bwera as A5 was in the process of assisting them cross into the DRC to join ADF military camps. Additional evidence disclosed on this particular essential ingredient of the offence is contained in the statements marked as "PE11" and "PE12", respectively, in the disclosures.

30 In the statement marked as "PE10", it is further stated that A1 recruited A3; who happens to be his nephew, into the ADF sometime in November, 2018. The statement goes on to show that A1 then facilitated A3 to travel to South Africa where the latter received military training

5 for six months. That upon his return to Uganda in April 2019, A3 never reported to the authorities about the activities.

Court finds that the totality and weight of the above evidence bearing on the fact in issue is sufficient to establish substantial grounds to believe that the accused persons jointly committed the crime with
10 regard to the essential ingredient of *belonging or professing to belong to an organisation*.

The second essential ingredient to be established is that the organisation is *a terrorist organisation*. Under the 2nd Schedule of Anti-Terrorism Act (supra) ADF is listed among the terrorist organisations. It
15 is thus purely a question of categorisation by the law, which should be read as it is. ADF is thus a terrorist organisation, and the second essential ingredient of the crime is duly established.

The third ingredient is that all the accused person(s) had *a common intention* of belonging to a terrorist organisation; which in this case is
20 ADF. What constitutes “common intention” is provided under Section 20 of the Penal Code Act, as follows;

***“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence
25 is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence.”***

It is important to note that common intention may be also proved by drawing inferences from circumstances surrounding a fact in issue.

30 The disclosed evidence shows that A1, A4 and A5 recruited “W”, “X”, “Y”, and “Z” into the ADF activities and transported them to Bwera in Kasese district and then to the DRC for military training. Evidence

5 further shows that A2 received new recruits at Bwera and transported them to ADF camp in the DRC. Also, A3 was recruited into ADF by A1 and undertook a military training in South Africa for six months. This disclosure is sufficient to establish substantial grounds to believe that the accused persons jointly committed the crime charged, and all the
10 accused had a common intention to commit the crime of belonging to ADF, a terrorist organisation.

In Count 2, all the accused persons are charged with *rendering support to a terrorist organisation*, contrary to Section 11 (1) (b) (3) of the Anti-Terrorism Act(supra). The prosecution alleges that A1, A2, A3, A4, A5,
15 and others still at large, between the month of May 2018 and July 2019, in diverse areas and places, in the districts of Mbale and other areas of Elgon, Mayuge, Bukedi, and others parts of Busoga, Kampala and other parts of Central Uganda and Kasese, rendered support to ADF, a terrorist organisation, by recruiting and transporting recruits to the
20 ADF camps in the DRC and other bases, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism. The offence of *rendering support to a terrorist organisation* under Section 11(1) (b) (3) of the Anti-Terrorism Act, 2002, is provided for as follows;

25 ***“A person who solicits or invites support for a terrorist organization, other than support with money or other property, commits an offence and is liable, on conviction, to imprisonment not exceeding ten years or a fine not exceeding five hundred currency points, or both.”***

30 The essential ingredients of the offence above are that;

- i. the accused solicited or invited support.***
- ii. the support is for a terrorist organisation. the support is not money or other property.***

5 **iii. all the accused had a common intention.**

The prosecution disclosed evidence of witnesses; “W”, “X”, “Y” and “Z” to support the ingredient that *the accused solicited or invited support*. The statements show that witnesses; “W”, “X”, “Y” and “Z”, were lured by A1, A2, A4, and A5 and by deceit, were recruited into ADF from
10 Eastern Uganda, and were transferred to Bwera in Kasese district and to the DRC for military training. Also, that the accused persons convinced “W”, “X”, “Y” and “Z” to leave their homes in Eastern Uganda and travel to the DRC on the false pretext that the witnesses were going for studies and for work, respectively. For that reason, the witnesses
15 obliged. A2 then received the witnesses at Uganda-DRC border and transported “W” and “X” to the ADF camps in DRC. However, “Y” and “Z” were apprehended while on transit to the ADF camps in the DRC. A1 also facilitated A3 to travel to South Africa for a six months’ military training as an ADF combatant. By doing that, the five accused persons
20 solicited and/or invited different forms of support for ADF by recruiting new members and transferring/transporting them to the DRC through Bwera in Kasese district to enhance ADF operations. The statements of “W”, “X”, “Y” & “Z” (PE1, PE2, PE3 and PE4, respectively) and statements of A1, A2, A3, A4 and A5 (PE8, PE9, PE10, PE11, and PE12,
25 respectively) prove this essential ingredient to the required standard.

The essential ingredient that *the accused rendered support for a terrorist organisation* has already been elucidated. The different forms of support that the accused persons solicited or invited was for ADF organisation. ADF is a listed terrorist organisation under the law. Without further
30 belabouring the issue, the essential ingredient that the accused rendered support for a terrorist organisation has also been duly established to the required standard.

5 The essential ingredient is that *the support is not money or other property* is borne out in the disclosures that the forms of support rendered to ADF by the accused persons, were by the recruitment of new members, transferring and or transporting them to camps in the DRC, and undertaking military training in South Africa, Zambia and the DRC.
10 These different forms of support are not money or other property, but nonetheless amount to support. Therefore, the essential ingredient is duly established by evidence disclosed against all the accused.

The essential ingredient that all *the accused had a common intention* has already been canvassed above and needs not to be repeated. The
15 evidence disclosed has shown that the accused persons had a common intention which they jointly executed, and as such the particular ingredient is sufficiently established, to the required standard.

In Count 3, A1 is singularly charged with *terrorist financing*, contrary Section 9A (1) (a) of the Anti-Terrorism Act (supra). It is alleged that A1,
20 and others still at large, between May 2018 and July 2019, in diverse areas and places in the district of Mbale and other areas of Elgon, Mayuge, Bukedi and others parts of Busoga, Kampala, and other parts of Central Uganda and Kasese, willingly provided funds directly or indirectly by any means with the intention that the funds would be used
25 or in the knowledge that such funds would be used in full or in part by the Allied Democratic Forces (ADF). The offence of *terrorist financing* is defined under Section 9A (1) (supra) which provides as follows;

***“(1) A person commits an offence, who willingly collects or provides funds, directly or indirectly, by any means, with the
30 intention that such funds will be used, or in the knowledge that such funds are to be used, in full or in part, by-***

(a) a suspected terrorist or a terrorist organisation to carry out a terrorist act;

5 ***(b) a person, to travel outside Uganda for the purpose of the
perpetration, planning, or preparation of, or participation
in, terrorist acts, or the providing or receiving of terrorist
training whether against Uganda or any other state; or
(c) any person, to carry out a terrorist act.”***

10 Section 2 (b) (iii) defines an “act of terrorism” to include;

***“intentional and unlawful provision or collection of funds or
services, or providing or receiving training, whether
attempted or actual, with the intention or knowledge that
any part of the funds or services or training may be used to
15 carry out any of the terrorist activities under this Act.”***

Section 1 (a) also defines “funds” to include;

***“assets of every kind, whether tangible or intangible,
movable or immovable, however acquired, and legal
documents or instruments in any form, including electronic
20 or digital, evidencing title to, or interest in such assets,
including, but not limited to, bank credits, travellers
cheques, bank cheques, money orders, shares, securities,
bond, drafts and letters of credit;”***

Section 1 (b) defines “services” to include;

25 ***“...financial services, or the provision of lodging, training,
expert advice or assistance, safe houses, false
documentation or identification, communications
equipment, facilities, weapons, lethal substance, explosives,
personnel (one or more individuals who may be or include
30 oneself) and transportation;”***

The essential ingredients of the offence of *terrorist financing* contrary to
Section 9A (1) (a) are;

- 5 **i. *willingly collects or provides funds directly or indirectly, by any means.***
- ii. *with the intention that such funds will be used, or in the knowledge that such funds are to be used, in full or in part.***
- 10 **iii. *by a suspected terrorist or a terrorist organisation.***

The disclosed evidence the prosecution relied on to establish the ingredient that the accused persons willingly collected or provided funds directly or indirectly, by any means, is that A1 willingly provided money directly to witnesses; “W”, “X”, “Y” and “Z”, for transportation, accommodation and other travel expenses from Eastern Uganda through Kampala to Kasese district. A2 received witnesses “W” and “X”, and was in the process of transferring them to ADF camps in the DRC when they were apprehended. Evidence further shows that A1 willingly provided funds directly to facilitate A3 to travel to South Africa to receive military training for six months. These facts are contained in the witness statements of “W”, “X”, “Y” and “Z” (PE1, PE2, PE3 and PE4, respectively) and in the statement of A3 marked as (PE10). Court’s view, is that the evidence sufficiently establishes that A1 was actively engaged in terrorist financing by willingly collecting and/or providing funds directly or indirectly, by any means.

The ingredient that the accused provided funds with the intention that such funds will be used, or in the knowledge that such funds are to be used, in full or in part has also been established. The main ingredient(s) are the *intention* and *knowledge*. *Criminal intent* is the resolve or determination with which a person acts to commit a crime. *Intention*, concerns the conduct, which can be inferred from the means employed or the conduct of the accused in the commission of the crime. The law requires that criminal intent or *mens rea* and *actus reus* or the actual act be established before prosecution can secure any conviction.

5 General intent corresponds with knowledge of a crime, and specific intent refers to the purpose behind committing it. The ingredient of intention here is the specific intention. Ms Jackeline Okwi, for the prosecution, submitted that knowledge, on the other hand, is the degree of *mens rea* that constitutes part of a crime. That an accused is deemed
10 to have “knowledge” of a particular fact or other matter if such accused was actually aware of such fact or other matter, or a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.
15 Court agrees that this is the correct statement and reflection of the law.

Statements of witness “W”, “X”, “Y”, “Z” (PE1, PE2, PE3, PE4, respectively) and also in A1’s statement (PE8) and A3 statement (PE10) clearly show the *intention* and the *knowledge* by A1, that the funds he provided to witnesses; “W”, “X”, “Y”, “Z” and A3, would be used by them
20 in furtherance of ADF activities, which included military training in the DRC and South Africa. Court finds that this ingredient has been established by evidence of the prosecution, to the required standard.

Regarding the essential ingredient that the provided funds is to be used by a suspected terrorist or a terrorist organisation, evidence disclosed
25 shows that A1 had the intention and the knowledge that the funds he provided to witnesses “W”, “X”, “Y”, “Z” and A3, would be used in full for the ADF activities enumerated above. The disclosed evidence thus sufficiently establishes the essential ingredient of the offence.

In Alternative Count 1 of *terrorist financing* contrary to Section 9A (1) (b)
30 of the Anti-Terrorism Act(supra) the particulars of the offence are that A1, and others still at large, between May 2018 and July 2019 in diverse areas and places in the districts of Mbale and other areas of Elgon, Mayuge, Bukedi and others parts of Busoga, Kampala and other parts

5 of Central Uganda and Kasese, willingly provided funds directly/ indirectly by any means with intention that the funds would be used or in the knowledge that such funds would be used in full or in part by Abdul Malik Kyoyo and Kaawuta Yasin to travel to DRC for purposes of receiving terrorist training against Uganda or any other state.

10 The crime and essential ingredients of the offence of *terrorist financing* contrary to section 9A (1) (b) of the Anti-Terrorism Act, have already been restated above. Regarding the essential ingredient that A1 willingly collected or provided funds directly or indirectly by any means with the intention that such funds will be used, or in the knowledge that such
15 funds are to be used, in full or in part by a person, that too has already been canvassed in the evidence evaluated above. Court thus arrives at the same finding that the two essential ingredients have been established evidence disclosed by the prosecution.

On the essential ingredient of *travel outside Uganda*, the disclosed
20 evidence shows that A1 provided funds to witnesses; “W”, “X”, “Y” and “Z”, to travel to DRC and for A1 to travel to South Africa. This ingredient/element has also been established to the required standard by the prosecution’s disclosed evidence.

The other essential ingredient which the prosecution has to establish is
25 that the travel outside Uganda was for the purpose of perpetration, planning, or preparation of, or participation in terrorist acts, or the providing or receiving of terrorist training, whether against Uganda or any other state. Evidence disclosed and already evaluated shows that the purpose of the travel of witnesses; “W”, “X”, “Y” and “Z” to DRC and
30 A1 to South Africa, was to receive terrorist military training against Uganda and any other state. This ingredient too, has been sufficiently established by the disclosed evidence to the required standard.

5 In the Alternative Count 2 of *terrorist financing* contrary to section 9A
(1) (c) of the Anti-Terrorism Act (supra) it is alleged that A1, and others
still at large, between May 2018 and July 2019 in diverse areas and
places in the districts of Mbale and other areas of Elgon, Mayuge,
Bukedi and others parts of Busoga, Kampala and other parts of Central
10 Uganda and Kasese, willingly provided funds directly or indirectly by
any means with the intention that the funds would be used or in the
knowledge that such funds would be used in full or in part by Abdul
Malik Kyoyo and Kaawuta Yasin to carry out a terrorist act.

The essential ingredients of the offence of *terrorist financing*, contrary to
15 Section 9A (1) (c) (supra) and the evidence disclosed to establish the
same issue, have already been evaluated and pronounced upon by
court, and it is not called for to repeat the same. Regarding the third
ingredient of *carrying out a terrorist act*, again from the evidence
evaluated above, A1 had a clear intention and the knowledge that the
20 funds he provided to witness; “W”, “X”, “Y”, “Z” and A3, would be used
for ADF terrorist activities by transporting the recruits to receive
military training by the ADF - a terrorist organisation. This essential
ingredient has been sufficiently established by the disclosed evidence to
the required standard.

25 Count 4 is *aggravated trafficking in persons* contrary to Sections 3(1) (a)
and 4(a) (c) and (e) of the Prevention of Trafficking in Persons Act, 2009.
The particulars of the offence are that A1, A2, A5, and others still at
large, in January 2019, in Mayuge district, by deception recruited,
transported and transferred Abdul Malik Kyoyo from Mayuge district to
30 the DRC, a syndicate where the accused organised the victim to commit
a crime of *joining and belonging* to ADF which is a terrorist organisation.
Sections 3 (1) (a) of the Prevention of Trafficking in Persons Act, 2009,
provides as follows;

5 ***“A person who recruits, transports, transfers, harbours or receives a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the***
10 ***consent of a person having control over another person, for the purpose of exploitation; commits an offence and is liable to imprisonment for fifteen years.”***

Section 4(a) (c) and (e) (supra) also provides, in the relevant part, that;

“A person commits the offence of aggravated trafficking where-

- 15 ***a) the victim of trafficking is a child;***
 b) the offence is committed by a syndicate, or on large scale;
 c) the offender is engaged in organising or directing another person or persons to commit the offence;
 and shall be liable to imprisonment for life.”

20 To prove the offence of trafficking in persons, prosecution is required to show the *act* (recruits, transports, transfers, harbours, receives, maintains, confines, and hires); *means* (threat, use of force, other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability and giving or receiving of payments or benefits to achieve
25 the consent of a person having control over another person) and *purpose which is the exploitation* (prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, debt bondage, forced or child marriage, human sacrifice, removal of organs and other forms of exploitation).The key ingredients of *aggravated trafficking in persons*
30 under Sections 3 (1) (a) and 4 (a) (c) and (e)(supra) are;

- i. the act,***
- ii. the means, and***
- iii. exploitation.***

5 Evidence disclosed by the prosecution to establish *the act* is that A1, between May 2018 and January 2019, *recruited* Abdul Malik Kyoyo, (the victim), Adam, and many other children from Mayuge district. A1 then transported the victim and Adam from Masulita to Bwera in Kasese district to A2 Muhindo Saruti Yona who *received* the victim and Adam
10 and in turn, personally transported them to the DRC into the ADF camp. Prosecution's evidence further shows that the victim stayed in the DRC until March 2019, when he escaped and returned to Uganda through Mpondwe border in Kasese district, and reported himself to Police. A1 was well known to the victim since he was a close friend to
15 the father of the victim. All these facts are sufficiently established in the statements, marked as "PE1" and "PE8", respectively.

Regarding the *means employed*, the evidence disclosed shows that A1 and A2 recruited, received and transported/transferred the victim, Adam, and others by *deception*. The accused persons deceived the
20 victims that they were going for better jobs of cutting wood for timber and to study Islamic religion only to end up in the DRC in ADF military camps. According to evidence disclosed in statements, marked as "PE1", "PE2", and "PE8", respectively, the victims only realised after they were in the DRC, that they were there neither to cut wood for timber or to
25 study Islamic religion as A1 had told them. Instead, they ended up in the ADF camps where they were made to undertake military training. This essential ingredient has been sufficiently established to the required standard.

On the ingredient; *for the purpose of exploitation*, the evidence in the
30 statements marked "PE1", "PE2" and "PE8", respectively, show that the victim was recruited as a member of ADF, a terrorist group fighting the Government of Uganda from within the country and from the DRC. This evidence points to a syndicate where A1 and A2 organised the victims to commit a crime of joining, training, and belonging to ADF - a terrorist

5 organisation. As such, the particular essential ingredient has been sufficiently established by the evidence disclosed by the prosecution.

Count 5 is; *aggravated trafficking in persons* contrary to Sections 3(1) (a) and 4(a) (c) and (e)(supra). The particulars of the offence are that A1, A2, A5, and others still at large, in the month of January, 2019 in Mbale
10 district, by deception, recruited, or transported or transferred or received Kaawuta Yasin from Mbale district to the DRC, a syndicate where they organised the victim to commit a crime of joining and belonging to the ADF, which is a terrorist organisation.

The position of the law and the essential ingredients of the offence, have
15 already been restated in Count 4 (above) and need not to be repeated. The evidence to prove the ingredient of the *act* in statements marked as “PE1”, “PE2” and “PE8”, respectively, sufficiently establishes that A1 and others still at large, between December, 2018, and January, 2019, recruited Kaawuta Yasin (victim) from Mbale District into ADF, by
20 transporting him from Mbale to Bwera in Kasese district. Then A2 received the victim and in January, 2019, and transported or transferred him to ADF camp in the DRC where he stayed until March 2019, when he escaped and returned to Uganda through Mpondwe border in Kasese district, and reported himself to the security and was
25 transferred to Kampala for questioning.

Regarding the ingredient of the *means*, statements marked as “PE1”, “PE2”, and “PE8”, respectively, show that A1 together with one Mama Jalia; Suliaman; and others still at large, recruited Kaawuta Yasin from Mbale district by deception, by falsely representing to him that he was
30 going to the DRC to study Quran and Arabic. A2 then received Kaawuta Yasin at Bwera in Kasese district and transported/transferred him to ADF camp in the DRC for terrorist military training and other activities. The victim only realised that he was recruited as ADF member and that

5 he had been deceived by A1, when he was already in ADF military training camp in the DRC.

From the statements disclosed as “PE1”, “PE2” and “PE8”, respectively, the prosecution has sufficiently established the essential ingredient of; *for the purpose of exploitation*. The respective statements show that the
10 victim was recruited as ADF member, a terrorist group fighting the Government of Uganda from within and from the DRC. This is a syndicate where A1 and A2 organised the victim to commit a crime of *joining, training and belonging to* ADF - a terrorist organisation. Court finds that the evidence disclosed by the prosecution is sufficient to
15 establishes all the above ingredients.

Count 6 is *aggravated trafficking in persons* contrary to Sections 3(1) (a) and 4(a) (c) (supra). It is alleged that A1, A2, A5, and others still at large, in the month of January, 2019, in Mayuge district, by deception, recruited, transported and or transferred and or received Bazale Sharif
20 alias Haruku Vavena Cobra from Mayuge district to Bwera in Kasese district, a syndicate and on a large scale.

The law on similar offences has already been pronounced upon above and shall not be repeated. However, the evidence disclosed by the prosecution to establish the ingredients will be evaluated. On the
25 element of *the act*, prosecution’s evidence is disclosed in statements marked as “PE3”, “PE4”, “PE8”, “PE9” and “PE13”, respectively. It is shown that A5 convinced Bazale Sharif who is from the same village with him in Magamaga, to travel to Kasese and work as a driver with his friend. A5 and another met Bazale Sharif and offered him a job of a
30 driver in Kasese which Bazale accepted. In the same month, A5 arranged and gathered many young boys at Masulita trading centre including Mulumba Arafat, his two young brothers and Bazale Sharif alias Haruku Vavena Cobra, from Magamaga. They were joined by A1

5 who provided money to facilitate their travel from Mayuge to Kasese through Kampala. A1 also gave them telephone numbers of different people to contact while in Kampala and Bwera in Kasese. Mulumba Arafat and Bazale Sharif alias Haruku Vavena Cobra travelled to Bwera in Kasese through Kampala being guided by A1 who instructed them to
10 receive an assortment of items including; sugar, salt, wheat flour, cooking oil, tea leaves, medicine, first aid kits such as bandages, cotton spirit, gloves, injection needles and *intende* used by Muslims, mainly from Kampala to go with to Kasese to ease their work. A2 Muhindo Saruti Yona, a Congolese national received them at Bwera in Kasese
15 with plans to take them to ADF camps in the DRC. The three were, however, arrested from Bwera in Kasese, and transferred to Kampala for interrogation. Mulumba Arafat and Bazale Sharif alias Haruku Vavena Cobra, narrated to police how they had travelled from their homes to Kasese and the reasons for their going there. Upon
20 interrogation, A2 confessed to participating and being involved in the activities of ADF, including receiving and taking new ADF recruits to camps in the DRC. The assorted items were recovered from them and exhibited. This essential element of the offence has been sufficiently established to the required standard.

25 The essential ingredient of *the means* is established by the prosecution in statements marked as “PE3”, “PE4”, “PE8”, “PE9” and “PE13”, respectively. The evidence therein shows that A1 and A5 convinced Bazale Sharif, by deceit and position of his vulnerability, to go to Kasese and work as a driver with their friend. Regarding the ingredient of
30 *exploitation*, the same evidence shows that the victim was recruited for illegal activity and /or a syndicate and on a large scale. Court finds that the evidence sufficiently establishes all the above stated ingredients.

In Count 7, the accused are indicted of *aggravated trafficking in persons* contrary to Sections 3(1) (a) and 4(a) (e)(supra). It is alleged that A1 A2,

5 A5, and others still at large, January, 2019, in the Mayuge district, by deception, recruited, transported and transferred Bazale Sharif alias Haruku Vavena Cobra from Mayuge District to Bwera in Kasese district, where they organised and directed the victim to commit a crime of joining and belonging to ADF, a terrorist organisation.

10 The law and the essential ingredients and evidence disclosed in support of each ingredient, have been as discussed in Count 6 (above) and need not to be repeated. The evidence disclosed by prosecution is sufficient to prove all the above ingredients of the offence.

Count 8 is *trafficking in children* contrary to Section 3 (1) (a) and 5 (a)
15 and (d)(supra). It is alleged that A1, A2, A4, A5, and others still at large, in the month of January, 2019 in Mayuge district, by deception, recruited, transported Mulumba Arafat, a child aged 14 years old, from Mayuge District to Bwera in Kasese district, for purposes of making him commit a crime to wit; joining or becoming a member of ADF, which is
20 a terrorist organisation operating between Uganda and the DRC.

The provisions of the law are already stated above (supra) and the ingredients are of the offence are the same as earlier disclosed. The evidence disclosed in support of each ingredient have also been duly discussed and evaluated in Count 6 (above). It is emphasised that the
25 purpose of trafficking in children was to make the victim commit a crime of joining or becoming a member of ADF; a terrorist organisation. Evidence further shows that the victim was 14 years old when he was trafficked. The disclosed evidence is thus sufficient to establish all the essential ingredients of the offence of *trafficking in children*, to the
30 required standard.

Count 9 is *conspiracy to commit trafficking in persons*, contrary to Section 8 (b)(supra). It is alleged that A1, A2, A3, A.4, A5, and others still at large, between May, 2018, and July, 2019, in diverse areas and

5 places in the districts of Mbale and areas of Elgon, Mayuge, Bukedi and other parts of Busoga, Kampala, and other parts of Central Uganda, and Kasese; conspired to commit an offence of trafficking in persons.

Conspiracy to commit trafficking in persons, is an offence created and defined under Section 8 (b)(supra) which provides as follows;

10 ***“A person who conspires with another person to do an act of trafficking in persons; commits an offence and is liable on conviction to imprisonment for five years or a fine of one hundred and twenty currency points or to both such imprisonment and fine, and on subsequent conviction for the***
15 ***same offence, is liable to imprisonment of seven years without the option of a fine.”***

Criminal conspiracy exists when two or more people agree to commit any unlawful act, and then take some action/step toward its completion. The action taken needs not itself be a crime, but it must indicate that
20 those involved in the conspiracy knew of the plan and intended to break the law. A person may be convicted of conspiracy even if the actual crime was never committed. As with other specific intent crimes, a person’s intention is key in addition to the mental state(s) of the alleged partner(s) in crime. Other individuals in the conspiracy must intend to
25 agree and all must intend to achieve the outcome. At least, one co-conspirator must take some concrete step in furtherance of the plan. From the above, the essential ingredients of the offence of *conspiracy to commit trafficking in persons*, are;

- i. agreement between two or more persons.***
- 30 ***ii. taking a step/action.***
- iii. to execute unlawful act.***

The evidence disclosed and as discussed under different counts above, shows that there was an agreement between the accused persons to

5 commit unlawful acts of trafficking persons. The common intention of
the accused persons manifests and applies for all the counts where two
or more persons are jointly indicted. The prosecution has sufficiently
established all the essential ingredients for under Count 9.

10 The net effect is that the evidence disclosed by the prosecution has
sufficiently established substantial grounds to believe that the accused
persons committed each of the crimes as charged. The charges are
confirmed as against all the accused persons in accordance with the
indictment. The case shall be remitted for trial to the trial Judge or
Panel, whichever the case shall be.

15

BASHAIJA K. ANDREW

JUDGE.

04/04/2023.