

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

HCT-05-CV-MA-0045-2005

IN THE MATTER OF S. 34 OF THE JUDICATURE ACT (CAP 13)

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD

SUBJICIENDUM

AND

IN THE MATTER OF RA/12321 SGT. OLANYA JOHN BOSCO

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

RULING

The applicant, RA 12321 Sgt. Olanya John Bosco serving with the UPDF made an application to this court for a writ of habeas corpus ad subjiciendum. The application was made under Section 34 of the Judicature Act by notice of motion. The motion was supported by an affidavit sworn by the applicant himself detailing the grounds of the application. The general grounds contained in the notice are as follows:

The applicant was arrested sometime in December 2003 but has never been produced before a court of law to answer any charges.

The applicant is detained at Makenke Barracks, Mbarara on instigations by the Division Legal Officer, O/C SIB and other Division authorities in contravention of the earlier court order for release.

The continued detention without trial of the applicant is not only unlawful but also unconstitutional.

An affidavit sworn by Captain Edgar Tibaijuka, legal officer 2nd Division UPDF. Mbarara, contends that the applicant is being held in lawful custody at the 2nd Division Headquarters and that he is answering charges in case Number SIB/2DCM/14/04.

Attached to the affidavit is a charge sheet dated 16th September 2004. It bears a single charge of manslaughter contrary to sections 187 and 190 PCA. There is also an amended charge sheet dated 21st January 2005 which bears three counts: one contrary to section 34 of the UPDF Act, Cap 307, another of manslaughter contrary to sections 187 and 190 of the Penal Code Act and finally one of escape contrary to section 109 of the Penal Code Act. A record of proceedings was supplied for effect.

The applicant was duly produced before this court. There was no evidence, by affidavit or otherwise, to contradict evidence in the affidavit in support of return of writ of habeas corpus ad subjiciendum. I hold that evidence to be uncontested.

The applicant is being tried before the 2nd Division Court Martial. There is evidence the charges against him are still being heard before that court, which is a competent court under our law. He is no doubt being held under a lawful order. I so find.

P. K. Mugamba

Judge

14th July 2005