

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NO. 230 OF 2006
THE JUDICATURE (HABEAS CORPUS) RULES
IN THE MATTER OF SECTION 34 OF THE JUDICATURE ACT
AND
IN THE MATTER OF MULEMA JOSEPH
AND
IN THE MATTER OF APPLICATION FOR WRIT OF HABEAS CORPUS AD
SUBJICIENDUM

BEFORE: HON. AG. JUDGE REMMY K. KASULE

RULING

On 8th December, 2006, this Court issued a writ of Habeas Corpus Ad Subjiciendum directed at the commanding officer, Makindye Military Barracks and the Attorney General to produce in Court on 15th December 2006, at 9.00a.m. One Mulema Joseph, allegedly detained at Makindye Military Barracks.

A Return to the writ has been filed by the Commanding Officer through the Attorney General. The Return states that Mulema Joseph was charged before the General Court Martial at Makindye with the Military offence of unlawful possession of Firearms under the appropriate law and was remanded to Kigo Government Prison on 14th November, 2006.

Mr. Ssebanja Abubaker, Counsel for the detainee, in view of the Return, is not pursuing any further the Habeas Corpus application. He however, relying on **Miscellaneous Cause No. 100 of 2002: In the Matter of Capt. Ronald Nyanzi**, (Bamwine J., 27.08.02), applies that applicant

be awarded costs of the application as his Constitutional rights have been violated since he was not charged in a Court of law within 48 hours of his arrest.

In this application the applicant was arrested on 8th June 2006 and was charged in court on 14th November 2006. The Habeas Corpus application was filed in Court on 20th November 2006. This application was thus totally unnecessary.

In Capt. Ronald Nyanzi's case, the applicant had been arrested on 17th July 2002. He was only taken to the unit Disciplinary Committee on 22nd August 2002, after the writ of Habeas Corpus had been served on the detaining authority. The application was hence justified. An award of costs was therefore appropriate.

While it is true that in this present application, the applicant was not charged before a lawful Court within 48 hours as the Constitution provides, this is a matter for damages, which Counsel for applicant is not pursuing in this cause.

This can be pursued in a separate suit.

Court is of the view, given the facts of this application, that the best order to make is not to award any costs to either party. It is so ordered.

Remmy K. Kasule

Ag. Judge

18th December 2006