

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCCT 00 – CR- SC- 0829 OF 2019

UGANDA ----- PROSECUTOR

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VERSUS

KASOZI STEPHEN ----- ACCUSED

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

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I carefully listened to the submissions of both Counsel and went through the provisions of the law relied upon to seek the orders of this court.

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The issue of the Accused's ability to understand proceedings in the present case was brought up after closure of the Prosecution case but before the Accused was called upon to give his Defence.

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Court directed the Accused to be medically examined. The report given by the Doctor clearly indicates that the Accused has an intellectual disability and cannot understand the proceedings.

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In those circumstances, this court finds that the requirement to give his Defence would amount to abuse of court process and a breach of the fundamental right to be heard before being condemned.

So would the issuing of any order requiring him to be detained in safe custody pending an order by the Minister. More so, under SS 45 and 49 of the Trial on

Indictment Act when Doctor's report clearly indicates his condition is permanent and he can never be in a position to stand trial.

5 And it is apparent from a number of decided cases that the Minister has on numerous occasions failed or ignored to issue the necessary orders.

Under S.39 (2) of the Judicature Act – where in any case, no procedure is laid down for the High Court by any written law or practice, the court may, in its discretion, adopt a procedure justifiable by the circumstances of the case.

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Court will in the circumstances of the present case exercise its inherent powers to prevent abuse of the process of court, which includes the power to limit and discontinue delayed Prosecutions, and to ensure that substantive justice is been administered without undue regard to technicalities S.17(2) Judicature Act.

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In this case where there is no hope of the Accused ever understanding the proceedings, it would be unjust to detain the him in any asylum pending the orders of the minister which may take ages to come or not at all or only considering the Prosecution evidence and condemning the Accused without hearing his side of the story.

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The Proceedings are accordingly hereby terminated and the Accused is discharged forthwith.

25 The fact that the Accused in his condition could not stand trial/ or should have not stood trial in the first instance invalidates the proceedings before court.

The order is made in a bid to prevent further abuse of court process.

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FLAVIA SENOGA ANGLIN

JUDGE

09.03.2021