

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF LIRA
HCT-10-CR-CS-0060-2019**

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

OKELLO ANTHONY ::::::::::::::::::::::::::::::::::::::ACCUSED

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] This matter came up for plea taking 01/11/2022 but the accused was unable to take plea because he is a person of unsound mind. As per PF24, the accused was declared of unsound mind because of drug abuse. It was submitted by the prosecution that Court should make a special finding of not guilty by reason of insanity.
- [2] The background of this case is that the accused was committed on 13/12/2014 and has been on remand for 8 years, 6 months and 17 days. It was prayed by the defence that the accused person be set free and sent to a mental facility for treatment since his relatives cannot be found. That if the court were to make a ruling under **Section 48(1) of the Trial on Indictments Act**, the procedure of the line minister would take longer thereby occasioning injustice. It was prayed that the court invokes its powers under Section 33 of the Judicature Act and release the accused to a mental facility.



- [3] It was submitted by the prosecution that there is an elaborate procedure under the Trial on Indictments Act Section 48(1) and we should wait for the line minister and Section 33 of the Judicature Act is only intended for general discharge. In rejoinder thereof it was submitted that such a process would take longer thereby occasioning an injustice to the accused person.
- [4] Section 48(1) TIA states thus;

48. Special finding of not guilty by reason of insanity

(1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of that person for that offence that he or she was insane so as not to be responsible for his or her action at the time when the act was done or omission made, then if it appears to the High Court that that person did the act or made the omission charged but was insane as aforesaid at the time when he or she did the Act or made the omission, the court shall make a special finding to the effect that the accused is not guilty of the act or omission charged by reason of insanity.

(2) When a special finding is made under subsection (1), the court shall report the case for the order of the Minister, and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct.

- [5] In the case of **Bushoborozi Eric Vs Uganda HCT-01-CV-MC-0011 of 2015**, a case with similar facts to this one, wherein after the orders of the minister's involvement were made and nothing was done, the trial Judge Batema J, had this to say;



*"The law on Minister's orders under S. 48 of the Trial on Indictment Act is such a law that should be construed with modifications, adaptations, qualifications and exceptions to bring it in conformity with the constitutional provisions on judicial powers and the right to a fair and speedy trial before an independent and impartial court established by law. (Refer to article 28 of the Constitution). This is a case which calls for judicial activism on the part of judicial officers to breathe life into the law in articles 126, 128 and 274 of our Constitution. The Constitution allows our courts to be innovative and introduce changes that will give the law the most correct interpretation and effect that serves the ends of substantive justice. Our hands are not tied by the existing law. I want to borrow the words of Lord Denning in **PARKER vs. PARKER** [1954] ALL E.R. 22 and say; what is the argument on the other side? Only this, that no other case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on: and that will be bad for both. Thus the winds of change are upon us. We have a duty to give the law a persuasive and liberal legal interpretation."*

- [6] While dealing with the issue of delayed Justice, the learned Judge relied on the case of **Uganda Vs Tesimana Rosemary Criminal Revision Cause No. 0013 of 1999** wherein Egonda-Ntende J, as he then was stopped the prosecution and dismissed the charges against an accused person who had been left on remand for 9 years because she was mentally ill stating that the authorities ought to have consulted with the Director of Public Prosecutions



or the Courts on how to handle such a situation and that continuous remand beyond a period of three years was oppressive conduct violating the human rights of the accused. Furthermore, in the case of **Uganda Vs Shabahuria Matia, Criminal Revision No. 05 of 1999** it was held by Egonda-Ntende, J as he then was that;

"the High Court had inherent powers to prevent abuse of the process of the court by curtailing delays as may be necessary for achieving the ends of justice."

- [7] The case at hand is similar to the above encounters. It is apparent that in many instances even when an order is made compelling the line minister to deal with an accused person acquitted by reason of insanity, the line minister rarely responds on time. This is grave abuse and violation of the rights of the accused persons even as per international standards. It turns out therefore, that it is upon the Judicial officers, in exercise of the unlimited jurisdiction conferred on them by the Constitution to ensure that accused persons receive justice and on a timely basis.
- [8] The accused person herein has been on remand since 13/12/2014 which translates to 8 years, 6 months and 17 days on remand which is a manifestly long period of time for someone who requires urgent medical attention and care. It is therefore prudent that this court acts in the best interests of the accused person in order to ensure that they receive the required medical attention and in a timely manner.
- [9] Accordingly, the accused person is hereby acquitted by reason of insanity. It is hereby ordered that the accused person is immediately taken to a mental facility for proper medical care and attention.

I so order

Dated, signed and delivered at Lira this 16th day of
November, 2022


Duncan Gaswaga

JUDGE