

**REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
SITTING AT KOLOLO**

**CIVIL DIVISION**

**MISCELLANEOUS NO. 259 OF 2013**

**MONICA RWAHEIGURU:..... PLAINTIFF/APPLICANT**

**VERSUS**

**NYEBARE JAMES  
NUWAGABA MOSES  
NINSIMA FRANK  
TWINAMASIKO ABEL**

**:.....:DEFENDANT/RESPONDENT**

**BEFORE: HONOURABLE MR. JUSTICE AKIIKI – KIIZA**

**RULING**

This application sought the issuance of a writ of Habeas Corpus Ad Subjicidum in respect of Nayebare James, Nuwagaba Moses, Ninsiima Frank and Twinamasiko Abbey. This Court issued a writ Nisi of Habeas Corpus Ad Subjiciedum directing the officer at Kigo Government prison to produce, Nayebare James, Nuwagaba Moses, Ninsiima Frank and Twinamasiko Abbey. This was on the 30/5/2013. The applicant is Monica Rwaheiguru, who is a relative of some of the applicants or is known to them.

On the 30/5/2013, there appeared another applicant on the same file, but in different names. This time round the detainees were named as the applicants. This was, in my considered view, irregular and the Civil Registry should not have given it the same number as the original one, let alone put on the same file. This is so, as the parties had been changed with new applicants. Be it as it may, during the hearing, the parties decided to continue with the original application, where Monica Rwaheiguru was the applicant.

At the hearing, 3 of the detainees were produced Ms Kampire, appeared on behalf of the respondents and informed Court that, the detainees were in lawful custody having been remanded by the General Court martial. That, Ninsiima Frank, according to the charge sheet, is a serving military man, and is remanded at Makindye Military barracks. He is charged on two counts of Treachery Contrary to Section 129 (d) of the U.P.D.F. Act, No. 7/2005 as the first count, and of Aiding and abetting commission of offence contrary to section 184 (1) (b) (c) of U.P.D.F. Act, No. 7/2005 in the second count.

As for Nayebare James, Nuwagaba Moses and Twinamatsiko Abel, they are also charged of the same offences on both counts and on the same charge sheet.

On the other hand, Mr. Rwakafuzi who appeared with Mr. Luzige, who was the original Counsel for the applicant, submitted that, the produced detainees (apart from private Ninsiima Frank) are civilians and therefore are not subject to the UPDF Act hence they are not in lawful custody as claimed by the Attorney General.

That secondly on the second count of Aiding and abetting, the detainees must be shown to have been charged jointly with serving officers. He prayed that the court makes the decree Nisi, it issued on the 30/5/2013, absolute and order the immediate release of the detainees.

I have carefully considered the submissions of both Learned Counsel and I have perused all the court papers filed and the authorities cited. The following are my findings.

The detainees by the time of the return of the writ on the 30/5/2013, they were detained both at Kigo Government Prison and at Makindye Military Barracks. The charge sheet bearing the signature of the Chairman of the General Court Martial as returned by the respondent shows that, the detainees appeared before him on the 28/5/2013.

It appears before that, they had been detained on orders of the Chairman of the Unit Disciplinary Committee who appeared before him on the 10/5/2012.

The remedy of Habeas Corpus is available where there is a deprivation of personal liberty without legal justification. Under Article 23 (4) of the Constitution, a person arrested or detained upon reasonable suspicion of having committed an offence shall, if not released, be brought to Court as soon as possible, but in any case not later than 48 hours from the time of his arrest.

The remedy of habeas Corpus is intended to facilitate the release of persons illegally detained. It is the fact of detention and nothing else, which gives the court jurisdiction.

In the instant case the detainees are said to be in both Kigo Government Prison and Makindye Military Barracks. The filed return shows that they were remanded to these detention facilities by the General Court Martial. There is no doubt that, the General Court Martial is a Court recognized by law in Uganda, though it generally handles those people who fall under the U.P.D.F. Act, in other words, soldiers who are subject to military law.

The jurisdiction of the General Court Martial is conferred by the Statute which creates it, that is the UPDF Act. S. 197 (2) provides as under:-

**“ The General Court Martial shall have unlimited original jurisdiction under this Act and shall hear and determine all appeals referred to it, from decisions of Divisional Courts Martial and then the Disciplinary Committees.”**

This means that, under the UPDF Act, the Unit Disciplinary Committees are recognised by law. Hence, the initial appearance of the detainees before the CMI Unit Disciplinary Committee was prima facie legal.

Subsequently they were referred to the General Court Martial. The UPDF Act creates, many offences including those with which the detainees are charged with.

As far as Private Ninsiima Frank is concerned, in my judgment, he clearly under the provisions of this Act, as there is no evidence on record to show that he is not a serving officer of UPDF. On the other hand the other three detainees are civilians, as there are no military ranks tagged to their names in the charge sheet. Hence ordinarily they are not subject to the UPDF Act. **(See the case of A.G. VS UGANDA Law Society, S.C.U. Const. Appeal 1/06).**

In the case of **NAMUGERWA HADIJAH VS. D.P.P. & A.G. UCA, Civil Appeal 10/12**, it was pointed out by the Uganda Court of Appeal that, the language of **S. 119 (1)** of the UPDF Act, covers civilians in certain circumstances.

Section 119 (1) (g) enacts as follows:-

**“ (1) The following persons shall be subject to military laws –**

**(a) every person, not otherwise subject to military law who aids or abets a person subject to military law in the commission of a service offence.”**

In the instant case, the second count in the charge sheet before the General Court Martial reads as follows:-

“ Statement of offence:

**Count II: Aiding and abetting commission of offence contrary to section 184 (1) (b) ( c) of the UPDF Act No. 7/05.**

Particulars of the offence:

**You Ninsiima Frank, Nayebare James Karuhanga, Nuwagaba Moses Kakungabi, Twinamatsiko Abel and others still at large on or around the months of March and May 2013 aided, abetted, counseled or procured RA 194684 L/CPL Nasasira Grace, and R/A 182084 L/CPL Karuhanga Geoffrey alias Mwebaze to recruit soldiers from SFC into subversive activities intended to overthrow the legitimate Government of Uganda.”**

It appears therefore that, though, the three detainees are civilians, S. 119 (1) (g) clearly brings under the jurisdiction of the General Court Martial. The Uganda Court of Appeal in the case of **NAMUGERWA HADIJAH** cited above, had the following to say about S. 119 (1) of the UPDF Act.

**“ Because of the clarity of the Act, the only way then to prevent this exercise of jurisdiction (over civilians) is for the Statute to be found to be unconstitutional. The only Court considering this issue has been the Constitutional Court in the case of Uganda law Society Vs. A.G. Const. 18/05.**

**In this case, the court upheld the constitutionality of the provision, and when this case went further to the Supreme Court, (Constitutional Appeal 1/06) this issue was not addressed.”**

That being the current position of the Law, the detainees in this case are all legally before the General Court Martial and were legally remanded by that to Kigo Government prison and Makindye Barracks. I will not therefore order their release as prayed for.

As regards costs, generally these follow the event, however, Ms. Kampire, who appeared for the Learned Attorney General never prayed for costs during her submission. I also award none.

All in all, the detainees to remain in their respective places of detention, as ordered by the General Court martial or till the same court orders otherwise.

**Justice Akiiki – Kiiza  
Judge  
10/06/2012.**

**Order:** The Assistant Registrar to read this Ruling to the parties.

**Justice Akiiki – Kiiza**  
**Judge**  
**10/06/2012.**