

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MC-0016-2013
(From Original Pallisa Civil Suit No. 165 of 2012 and 166 of 2012)**

KOPIA MOSES.....APPLICANT

VERSUS

1. KINTU BOB

2. TAIKA JACKSON.....RESPONDENTS

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

This is an application seeking orders that this honourable court directs that a writ of Habeas Corpus and Subjiciendum issues directly to the officer in charge of Kamuge Prison at Kamuge, Pallisa District, to have the body of **KOPIA MOSES** immediately before the High Court at Mbale to undergo and receive all the singular such matters and things as this court shall herein consider of concerning him in his behalf, that the said **KOPIA MOSES** be released from the said prison, and costs thereof be provided for.

The application was by Notice of Motion under Article 23 (1) (a) and 44 (e) of the Constitution of Uganda, section 34 (a) of the Judicature Act, and Rule 3 of the Judicature (Habeas Corpus) Rules.

The application is exparte and supported by the affidavit of the applicant **KOPIA MOSES**.

The application raises 8 grounds whose import briefly is that:

1. Applicant has been denied personal liberty arbitrarily contrary to Article 23 (a) of the Constitution.
2. His detention arising out of a judgment debt in civil suits 165/2012 and 166 of 2012 is unconstitutional.
3. The civil suits above the basis of his detention are before the High Court for revision orders.
4. The Grade I Magistrate in Pallisa did not have jurisdiction to continue with the proceedings in the suits which were before the High Court for revision.
5. The judgment creditors never sued applicant on the alleged guarantee, which guarantee applicant denied.

I have looked at the evidence, the law applicable and the arguments by counsel in this application. I have also perused the lower court's record at the court in Pallisa.

I am in agreement with applicant that the current detention of the applicant in Kamuge Prison is unlawful and illegal.

The record shows that the Trial Magistrate made a ruling on 7th November 2013 at page 5 which is a one paragraph as follows:

"I have heard submissions of both lawyer and Judgment Creditor. In respect of the contempt, I shall discharge the

said Kopia Moses and he is hereby discharged. In respect of the Judgment Debt, I believe he is still indebted to the Judgment Creditor, therefore he KOPIA MOSES must provide for avenues through which the Judgment Creditor should realize all his money (judgment Debt).”

On page 6 of the record, court notes,

“Let the said Kopia Moses’ relatives look for some substantial amount of money then we shall release him otherwise, we shall appear as if we are playing comedy for now, I shall further remand the said Kopia Moses to a civil Prison.”

This is a travesty of justice where the court just sends innocent people in custody to satisfy its own ends. This is a proper case where the provisions of section 34 (a) of the Judicature Act, must be invoked to put an end to the illegal detention of the applicant. I rule that the grounds of this application are dully proved.

Under Rule 4(1) and 6 of the Judicature (Habeas Corpus) Rules I hereby order the officer in charge of Kamuge Prison Pallisa to immediately release the said **KOPIA MOSES** from custody. I also issue the writ of Habeas Corpus as prayed.

Costs of this application are granted to the applicant.

I so order.

Henry I. Kawesa

JUDGE

14.01.2014

