

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NO. 094 OF 2011

(Arising from Criminal Case UPDF/GCM/045/2010:

UGANDA VS KIMERA ISMA)

NAMATA JANE:.....APPLICANT

VERSUS

- 1. THE OFFICER IN CHARGE KIGO GOVERNMENT PRISON**
- 2. COMMANDER OF THE UGANDA PEOPLES DEFENCE FORCES**
- 3. ATTORNEY GENERAL OF UGANDA:.....RESPONDENTS**

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

RULING

I have listened to the submissions of both learned Counsel. It is not in dispute that the prisoner was arrested by the Rapid Response Unit officials and was then charged with aggravated robbery C/S 285 and 286 (2) of the Penal Code Act. He is held by virtue of a Warrant of Commitment attached to the returns.

It is not in issue that the prisoner was charged under the Court Martial. Counsel Rwakafuzi relied on *Constitutional Petition No. 18 of 2005 Uganda Law Society Vs Attorney General* where it was held that a Court Martial did not

have powers to try civilians. The Supreme Court confirmed this in Constitution Appeal No. 1 of 2006

(See Mulenga J's judgment).

Counsel for the applicant prayed for orders that the applicant be tried by a competent authority. The Attorney General did not oppose the application and asked court to either order as prayed or release the prisoner, in exercise of its discretion.

I find that the prisoner was unlawfully charged under the Court Martial being a civilian. It was not indicated that the prisoner had committed any offence that put him under military law. Section 15 (h) and (i) the UPDF Act Cap. 307 states that the following persons shall be subject to military law (as far as relevant): (h) any person not otherwise subject to military law who aids or abets a person subject to military law in the commission of a service offence. (i) every person found in lawful possession of arms, ammunition, equipment and other prescribed classified stores ordinarily being the monopoly of the army.

There is no indication that the prisoner committed any act which put him under military law. The above being the case I find that his detention on charges by the court martial is illegal. He should be released forthwith

unless he is being held in respect of another lawful sentence imposed by a competent court. Costs to be paid by the Attorney General.

It is so ordered.

Elizabeth Musoke

JUDGE

9/8/2011