

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

**MISC. CAUSE NO. 229 OF 2016**

**THE JUDICATURE (HABEAS CORPUS RULES )**

**AND**

**IN THE MATTER OF EVERT ARINAITWE**

**AND**

**IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD  
SUBJICIENDUM**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

Mr. Muhurizi of Tibaijuka & Co advocates filed an application under rules 3 and 4 of the Habeas corpus rules for a writ of habeas corpus to issue directed to the Attorney General, Army Commander of UPDF and the Commandant Makindye Military Police Barracks directing them to produce the body of Arinaitwe Evert .

The notice of motion was supported by the affidavit of Shilah Akankunda in which she deponed that she learnt that her brother was arrested on 13<sup>th</sup> June 2016 at Bombo transferred to Makindye Barracks where he has been detained since 16<sup>th</sup> June 2016. She has been allowed to see her brother twice who informed her he had not been informed of the charges against him.

As a result, a writ was issued as prayed for the said Arinaitwe to be produced on 14<sup>th</sup> September 2016.

The affidavit of service of Ndongereye Charles sworn on 13<sup>th</sup> September showed that all the recipients named in the writ were served. In spite of service, none appeared and Arinaitwe was not produced.

As a result, on 16<sup>th</sup> September I extended the writ for the body of Arinaitwe to be produced on 20<sup>th</sup> September which writ was flouted as none of the recipients responded neither was Arinaitwe produced.

On 14<sup>th</sup> September, the clerk brought to my attention a document that was filed by one Lt. Mwesigye of Military Police Headquarters. The document is a record of proceedings before the Disciplinary Committee of Military Police Makindye dated 13<sup>th</sup> September 2016 in which Arinaitwe is informed of the offence relating to Security c/s 130(1) (f) of the UPDF Act and committed to the General Court Martial for trial.

The document was not accompanied by an affidavit.

On 20<sup>th</sup> September 2016 when there was disobedience of the second writ, counsel Muhurizi prayed for an order of release.

Counsel filed written submissions in support of his prayer for release.

In the absence of evidence to the contrary I find that the said Arinaitwe has been in detention since 13<sup>th</sup> June 2016.

Secondly, in light of the record of proceedings of the Disciplinary Committee filed in court on 14<sup>th</sup> September 2016, I find that he was in unlawful detention with effect from 13<sup>th</sup> June until 13<sup>th</sup> September 2016 when he was informed of charges against him. This was in breach of Article 23 (4) of the Constitution which commands that a person arrested shall be produced before a court within 48 hours of the arrest.

Makindye Military Barracks where he has been held is not a gazetted detention centre. This further compounds the abuse of the fundamental right of the applicant to be held in a place authorized by law. Article 23 (2) of the Constitution refers.

Thirdly, the record of disciplinary proceedings does not state where he will be held as he awaits trial by the Court Martial. It might as well be that he is being held at the same facility that is not gazetted as a detention centre.

**In Mbarara HCMA 42 of 2012 In the matter of Muhindo Herbert and five others**, in a case where applicants' right to a speedy trial was violated by continued detention without trial, the court ordered release of the applicants.

Article 44 (d) of the Constitution commands that there shall be no derogation from the right to habeas corpus. The fact that twice, the responsible institutions have disobeyed the writs of habeas corpus is itself a violation of the constitution.

The flagrant disregard of the writ of habeas corpus by concerned authorities; the detention of the applicant in an ungazetted detention facility; the unlawful detention beyond 48 hour rule and the unknown detention facility that he was remanded following the committal on 13<sup>th</sup> September 2016 are violations of the applicant's fundamental human rights which this court has a duty to put a stop. Accordingly, I order his immediate release from detention.

**DATED AT KAMPALA THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2016.**

**HON. LADY JUSTICE H. WOLAYO**