

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 125 OF 2018
(ARISING FROM CR. CASE NO. UPDF/GCM/005/2018)**

HAJJI KITATA ABUDALA :::::::::::::::::::::::::::::: APPLICANT

VERSUS

- 1. DIRECTOR OF PUBLIC PROSECUTIONS**
- 2. ATTORNEY GENERAL :::::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

a) Introduction

1. This application was brought under articles 23, 24, 27, 28, 43, 44, 50, 120, 250(2) and 250(4) of the Constitution, section 204 of the Uganda People’s Defence Forces Act No. 7 of 2005 (hereinafter the UPDF Act) and the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules S.I No. 55 of 2008 seeking twenty declarations and three orders. The declarations sought are that:
 - i. The applicant being a civilian is subject to trial before either the Magistrates Court or the High court under section 204 of the UPDF Act.
 - ii. The Uganda Peoples’ Defence Forces (Application to Civilians) Regulations SI 307-8, providing for trial of civilians before the court martial is no longer valid given that the previous ministerial power under the old UPDF Act Cap

307 to extend application of military law to civilians was repealed by the current UPDF Act and it violates section 204 of the UPDF Act.

- iii. Regulation 3 of S.I 307-8 providing for trial of civilians before the court martial violates section 204 of the UPDF Act and is consequently *ultra vires* and unlawful.
- iv. The court martial prosecutor general in raising charges against the applicant usurped the powers of the first Respondent to levy the same charges before the Magistrates court or the High Court in compliance with section 204 of the UPDF Act, the Magistrates Courts Act and the Penal Code.
- v. The first Respondent has breached articles 120(b) and (c) of the Constitution by failing to take over, continue or discontinue Cr. Case No. UPDF/GCM/005/2018, Uganda v. Abudala Kitata instituted by the General Court Martial against the applicant who is not a soldier but a civilian.
- vi. The General Court Martial has violated regulation 25(1)(f) of the Uganda Peoples Defence Forces (Rules of Procedure) Regulations, SI 307-1 in failing to provide the applicant with the recorded proceedings and finding that being civilians the applicant and others are subject to military law and the General Court Martial jurisdiction.
- vii. The Registrar, General Prosecutor, Judge Advocate and the General Court Martial have violated section 209 of the UPDF Act in omitting, acting negligently and failing to prepare the cause list indicating when the applicant's cases would be call, a civilian, without having been called out for service in aid, usurped the powers of the Uganda Police and all the other appropriate civil authority and violated sections 43 and 44 of the UPDF Act rendering the arrest unlawful.

- viii. The defence forces in detaining the applicant in military facilities usurped the powers of the Uganda Police, Uganda Prisons and all other civil authority violating his right to civil custody thereby rendering his detention unlawful.
- ix. The General Court Martial violated regulation 5(2) of S.I 307-8 by ordering that the applicant be detained at Makindye military prison in absence of statutory powers vesting the court martial with discretion to determine his detention location.
- x. Section 119(1)(h) of the UPDF Act is inoperative and inapplicable to the applicant given the defence forces council's omission, neglect and failure to enact a statutory instrument compliant with sections 2, 49, 252(1) of the UPDF Act prescribing the arms, ammunition, equipment and classified stores deemed the ordinary monopoly of Defence forces.
- xi. The Minister in copying and pasting the provisions of the Firearms Act Cap 299 into the Uganda Peoples' Defence Forces Arms, Ammunition and Equipment (ordinarily the monopoly of the Defence Forces) Regulations S.I No. 13/2006 vested the UPDF with perpetual ad hoc discretion on a case by case basis to make such determination and failed the direction by Parliament to prescribe the said weapons rendering section 119(1)(h) of the UPDF Act in violation of article 28(7) of the Constitution.
- xii. S.I 13/2006 which was copied and pasted from the Fire Arms Act, unlawfully repealed the Firearms Act which enables civilians to possess firearms which have not yet been particularly prescribed as war materials by the Firearms Act.
- xiii. The trial of the applicant by the registrar, the prosecutor general, judge advocate and the General Court Martial is defective, illegal, unlawful, pre-emptive and usurped the powers of the Minister under the Firearms Act to

determine the ammunition of war and arms of war thereby violating article 28(7) of the Constitution by presiding over non-existent charges.

- xiv. The trial of the applicant is defective, illegal and unlawful on account of the judge advocate and the General Court Martial's omission, failure and neglect of their statutory duty under regulations 25 (1) (f) and 25(3) of SI 307-1 to report to the convening authority the omission, neglect and failure by the Minister and the defence forces Council to make requisite laws so as to render trial under section 119(1)(h) of the UPDF Act defective and unlawful and in violation of Article 28(7) of the constitution.
- xv. The arrest of the Applicant by the military for purposes of investigating and recording his statement in the absence of his advocate violated his constitutional right under Article 28(11) of the Constitution not to incriminate himself.
- xvi. The Attorney General violated the 5th February 2009 Constitutional court orders in Uganda Law Society & Jackson Karugaba v. Attorney General Constitutional petitions Nos. 2/2002 and 8/2002 thereby violating the Applicant's constitutional rights.
- xvii. The Attorney General is in contempt of court orders and the applicant's constitutional rights having failed to make annual reports to Parliament of Uganda, the Chief justice and the Uganda Human Rights Commission on matters in the preceding paragraph.
- xviii. The Attorney General continues to act in perpetuity implementing the orders of Uganda Law Society & Jackson Karugaba v. Attorney general Constitutional petitions Nos. 2/2002 and 8/2002 no later than one week before every state of nation address by the President, by filing written annual reports to Parliament of Uganda, the Chief justice and the Uganda Human Rights Commission about review, amendment and implementation of the law

regarding arrest of civilians by the military in aid of civil authority, detention of civilians at civil prisons pursuant to any military intervention among others.

- xix. Declaration that the applicant is entitled to redress and compensation from the Respondents for violation of his fundamental rights.
2. The orders the Applicant seeks are: (i) an order declaring the criminal proceedings in *Uganda v. Kitata Abudallah & ors*, Cr. Case No.UPDF/GCM/005/2018 instituted by the second Respondent are unconstitutional, illegal, unlawful, null and void and (ii) an order quashing and prohibiting any continued trial of the applicant in the said criminal offence. The third order is similar to the first order. The applicant also seeks costs of this application and any other relief that the court deems fit.
 3. In summary through these declarations and orders, the Applicant is challenging his trial in the General Court Martial and wants this court to declare the same unlawful.
 4. Mr. Jimmy Muyanja of M/s. Muyanja & Associates represented the Applicant and the Respondent was represented by Mr. Wanyama Kodoli - principal state attorney in the Attorney General's Chambers.
 5. The application was supported by the affidavit of the Applicant. The grounds for the application were briefly that the Applicant's fundamental rights guaranteed by the Constitution and the laws of Uganda have been violated by his trial by the General Court Martial. The Applicant contends that being a civilian he can only be tried either by the Magistrates court or the High court in accordance with section 204 of the UPDF Act No. 7 of 2015. Further that Regulation 3 of S.I 307-8 under the UPDF Act 307 providing for trial of civilians before the General Court Martial has no legal force since Cap 307 was repealed. Therefore such trial of civilians is thus *ultra vires* section 204 of the UPDF Act and is unlawful.

6. The Applicant also averred that the first Respondent despite being notified that the Applicant is a civilian charged before the General Court Martial has neglected the constitutional mandate imposed by Article 120(b) and (c) of the Constitution to have civilians prosecuted before the Magistrates court or the High court. Further that the Applicant is being detained in a military prison on the orders of the General Court Martial *suo moto*, which does not have jurisdiction to direct such detention in a military facility. He also averred that section 119(1)(h) of the UPDF Act is inoperative and inapplicable to the Applicant, given the Defence Forces Council's omission, neglect and failure to enact a statutory instrument compliant with sections 2, 49, 252(1) and 252(1)(a) of the UPDF Act prescribing the particulars of arms, ammunition, equipment and classified stores deemed the ordinary monopoly of defence forces.

7. The application was opposed by the Respondents through the affidavit in reply of RO/10667 Major Raphael Mugisha the lead prosecutor general of the Court Martial. He averred that section 204 of the UPDF Act does not oust the power of the General Court Martial to try a civilian properly under its jurisdiction. Further that the jurisdiction of the General Court Martial to try civilians is provided for under section 119 (1) (d) (e) (f) (g) and (h) of the UPDF Act, 2005 and the UPDF (Application to Civilians) Regulations S.I 307-8 which are saved under section 256(2)(a) of the UPDF Act and that the first Respondent is precluded by article 120(3) (b) of the Constitution from instituting proceedings in the Court Martial.

8. Major Mugisha also deponed that the military have powers of arresting anybody who is suspected of or charged under the UPDF Act, having committed a service offence under section 185(1) of the UPDF. Further that the trial of the Applicant is lawful and premised on a proper charge sheet disclosing the offences of the unlawful possession of firearms, ammunition and military stores under the provisions of the Firearms Act and the UPDF Act respectively.

b) Analysis

9. The Applicant takes issue with the applicability of section 119 of the UPDF Act¹, S.I 13 of 2006 and S.I 307 -8. He contends that SI 307-8 was repealed by the current UPDF Act No. 7 of 2005. I have looked at these different laws. While the old UPDF Act was repealed by section 256 of the new UPDF Act, subsection 2² of this section in clear terms saved the regulations in SI 307-8 along with other rules, orders and directions that were in force until they expire or are revoked by new regulations or orders and directions made by a competent authority under the new Act. No competent authority under the UPDF Act has revoked these regulations under S.I 307-8. So under the rules of statutory interpretation, they remain law under the new Act. So the regulations in S.I 307- 8 are applicable.

¹Section 119 of the UPDF Act provides for persons subject to military law. (1) the following persons shall be subject to military law- (h) every person found in unlawful possession of- (i) arms, ammunition or equipment ordinarily being the monopoly of the Defence Forces; or (ii) other classified stores as prescribed.

²notwithstanding the repeal specified in subsection (1)- (a) all things lawfully done under the repealed enactment which are of force and effect immediately before the commencement of this Act, including any regulations, rules or orders made, decisions made by anybody created or directions given under the repealed enactment, all regulations made under the repealed Armed Forces Act, 1964 saved by the repealed enactment which are of force and effect immediately before the commencement, and anything done under a military court warrant or under any such regulations, rules, orders or directions, shall, so far as consistent with this Act and anything done under it, continue of force and effect after the commencement, and such continuance shall have effect notwithstanding any change in the authorities empowered to do or effect any such thing; and any such regulations, rules, orders or directions shall continue in force until they expire according to their terms or are revoked by regulations or orders, directions and instructions made or given by a competent authority under this Act.

10. The Applicant takes issue with the applicability of section 119 of the UPDF Act to him and the trial of a civilian under the UPDF Act. After looking at the UPDF Act and regulations, the UPDF Act was primarily set up to concern itself with members of the UPDF and not civilians. However there are exceptional provisions under the Act and the regulations which make it applicable to civilians. Section 197³ of this Act establishes the General Court Martial with unlimited original jurisdiction to try offences under the Act. Under regulations 2⁴ and 3⁵ of S.I 307-8, civilians can be tried by the General Court Martial. Section 119 of the UPDF Act delineates persons subject to military law.

11. Subsection 1 (d), (e), (f), (g), (h) list instances where persons who are not members of the military become subject to the UPDF. Subsection (1) (h) (i) and (ii) in particular list every person found in unlawful possession of (i) arms, ammunition or equipment ordinarily being the monopoly of the defence forces; or (ii) other classified stores as

³There shall be a General Court Martial for the Defence Forces, which shall consist of- (a) a Chairperson who shall not be below the rank of Lieutenant Colonel; (b) two senior officers; (c) two junior officers; (d) a political Commissar; and (e) one non- commissioned officer, all of whom shall be appointed by the high command for a period of one year.

(2) 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 the Division Courts Martial and unit disciplinary Committees.

(3) The General Court Martial shall have revisionary powers in respect of any finding, sentence or order made or imposed by any summary trial authority or unit disciplinary committee, to be exercised in accordance with the provisions of part XIII of this Act.

⁴The provisions of the Uganda Peoples' Defence Forces Act shall apply to civilians as modified by these regulations.

⁵A civilian to whom the provisions of the Act apply shall be tried only by the division court-martial, general court-martial and court martial appeal court.

prescribed. This section makes the UPDF Act applicable to civilians. So the applicant's contention that civilians cannot be tried in the court martial is not correct. Civilians can be tried under the UPDF Act if they bring themselves within these provisions of the UPDF Act.

12. The Applicant has cited so many cases to support his position that his trial in the General Court martial is unlawful and inconsistent with the constitution. These include *Uganda Law Society v. Attorney General*, Constitutional Petition No. 18/2005 and *Attorney General v. Uganda Law Society* Constitutional appeal No. 1 of 2006. It is important to note that the Supreme Court discussed these cases in *Namugerwa Hadija v. Attorney General* SCCA No. 4 of 2012.

13. The Supreme Court in the *Namugwera* case articulates the question of whether or not a civilian can be tried by the court martial. At page 15, the Supreme Court held that "from the above cited provisions, it is clear to me that civilians in Uganda can become subject to military law and once they become subject to military law they will be tried by the General court Martial. I am unable to see any exception of civilians from the application of section 179 of the Act once they become subject to military law under section 119(1)(g) and (h) of the Act. Ordinarily civilians who are not involved in fighting wars should be tried by civilian courts, not military courts. Therefore, section 119 (1) (g) and (h) of the UPDF is rather unusual. However, the constitutionality of this section was upheld by the Constitutional Court in *Uganda Law Society v. Attorney General* (supra) and when its decision was appealed to this court the constitutionality of the section was not raised and argued by the cross- appellant (*Uganda Law Society*), and so this court did not address it. Therefore until section 119(1) (g) and (h) of the UPDF Act is repealed or declared to be unconstitutional by a competent court, it will remain valid, effective and enforceable regardless of the misgivings of human rights advocates about it."

14. In the case before me, the Applicant adduced his charge sheet in the General Court Martial. In it, he and twelve others are charged with six counts. Counts one to five are unlawful possession of firearms contrary to section 3(1), 2A of the Fire Arms Act, Cap 299. In count six they are charged with unlawful possession of military stores contrary

to section 160 (2) (c) of the UPDF Act. In the particulars of the offences in all six counts, the charge sheet describes that the different items found in possession of the applicant and his co- accused were ordinarily a monopoly of the defence forces. This construct in their charge sheet makes section 119 subsection (1) (h) (i) and (ii) applicable to the Applicant and his co- accused.

15. In one leg the Applicant contends that section 119 (1) (h) is inoperative and inapplicable to the Applicant because the defence forces Council has omitted, neglected and failed to enact a statutory instrument compliant with sections 2, 49, 252(1) and 252(1) (A) of the UPDF Act. This statutory instrument was meant to prescribe the particulars of arms, ammunition, equipment and classified stores deemed to be the monopoly of defence forces.
16. However this position is not true. The Uganda Peoples' Defence Forces (Arms, Ammunition and Equipment Ordinarily the Monopoly of the Defence forces) Regulations, 2006 was enacted as statutory instrument 13 of 2006 on 9th March 2006 for this purpose. Regulation 3 provides that “ arms and ammunition which, for the purposes of paragraph (h) of subsection (1) of section 119 of the Uganda Peoples' Defence Forces Act, are ordinarily the monopoly of the Defence Forces include- (a) any firearm which is so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or until the magazine containing the missiles is empty; (b) any firearm possessing a mechanism which ejects the expended cartridge and reloads the firearm by manual action other than the pressing and releasing of the trigger; (c) ammunition for use with the firearm specified in paragraph (a) and (b) of this regulation; (d) arms of war; (e) ammunition of war; (f) any weapon of whatever description designed or adapted for the discharge of any noxious, liquid, gas or similar thing dangerous to human beings; (g) any ammunition containing or designed or adapted to contain, any such noxious thing; or (h) any firearm, ammunition or equipment specified, or any firearm or ammunition of a class or type specified in the Gazette by the Minister.”

17. In the other leg the Applicant changes goal posts and submits that by copying and pasting provisions of the fire Arms Act cap 299 into this statutory instrument, the Minister acted ultravires his powers and vested the UPDF with perpetual *ad hoc* discretion on a case by case basis to make such determination and failed the direction by Parliament to prescribe the said weapons under sections 2, 49, 252(1) and 252(1) (a) of the UPDF Act and thus rendering section 119(1) (h) violative of Article 28 (7)⁶ of the Constitution. Further the Applicant contends that by such copying and pasting, the Minister repealed the provisions in the Firearms Act which enable civilians to possess fire arms which have not yet been particularly described as war materials.
18. I have not found a law that makes copying and pasting provisions in related laws like the Firearms Act and the SI 13 of 2006 unlawful or ultravires the powers of the Minister vested with such enactment. I also find no illegality in the Minister vesting wide discretionary powers in determining on a case by case basis what amounts to ammunition that is the preserve of the defence forces.
19. As a judge of the High Court, my duty is to apply the law as it is. I have to read and apply SI 13 of 2006 as it is constructed. The Applicant can challenge the interpretation and require amendment of SI 13 of 2006 vis -a vis it having similar provisions in the Firearms Act in the Constitutional court. Until that is done to cause a repeal of SI 13 of 2006, I cannot read it otherwise.
20. The Applicant fails to demonstrate in any way his claim that such wide discretion renders section 119 (1) (h) violative of Article 28(7) of the Constitution as he claims in paragraph 12 of his application. The UPDF Act came into force in 2005 and the Regulations came into force in 2006. In the particulars of offences for the six counts, the Applicant and his co- accused are alleged to have committed the crimes they are charged with in January 2018. By this time the UPDF Act and the Regulations were in force. This claim is speculative and unsubstantiated.

⁶ No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.

21. Section 204 of the UPDF Act provides that “nothing in this Act shall affect the jurisdiction of any civil court to try a person for an offence triable by that court.” Nothing in this section bars the trial of a civilian in the court martial if they fit the list in section 119 of the UPDF Act. This section simply creates two avenues for trial of civilians falling under the ambit of section 119. They can be tried in the civil court under section 204 or in the military court under section 119. Once the trial is in the military court the DPP has no prosecution mandate there. The prosecution in the court martial is the mandate of Prosecutor General of the court martial.

22. I have carefully looked at the powers of the DPP under article 120⁷ of the constitution. The Applicant correctly points out in paragraph five that under Article 120 (3) (c) the

⁷There shall be a Director of Public Prosecutions appointed by the President on the recommendation of the Public Service Commission and with the approval of Parliament.(2)A person is not qualified to be appointed Director of Public Prosecutions unless he or she is qualified to be appointed a judge of the High Court.(3)The functions of the Director of Public Prosecutions are the following—(a)to direct the police to investigate any information of a criminal nature and to report to him or her expeditiously;(b)to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial;(c)to take over and continue any criminal proceedings instituted by any other person or authority;

(d)To discontinue at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court.(4)The functions conferred on the Director of Public Prosecutions under clause (3) of this article—(a)may, in the case of the functions under clause (3)(a), (b) and (c) of this article, be exercised by him or her in person or by officers authorised by him or her in accordance with general or specified instructions; and (b) shall, in the case of the functions under paragraph (d) of that clause, be exercised by him or her exclusively.(5)In exercising his or her powers under this article, the Director of Public

DPP can take over, continue or discontinue criminal proceedings instituted by any person or authority. However nothing in this section makes it mandatory for the DPP to take over or continue a case being prosecuted by the Prosecutor general in the court martial. It remains a discretionary determination of the DPP whether or not to intervene in such proceedings before the court martial. In all events charging a person before the court martial does not necessarily amount to usurping the powers of the DPP. In the same way the DPP once notified of a civilian being tried in the court martial is under no specific obligation to take over or continue prosecutions in the court martial.

23. In ground 7 the Applicant takes issue with the procedure adopted in his criminal trial in the general court martial. The Applicant only takes issue with proceeding in the court martial without a cause list. While this court is alive to the fact that an accused needs to properly be informed of proceedings regarding his case, this court considers that there is no specific requirement of the use of cause lists and that cause lists alone do not warrant protection of the rights of an accused.

24. In grounds 8 and 12, the Applicant also takes issue with his arrest by the military and without a warrant of arrest. In his supplementary affidavit, Major Joshua Karmagi explained in paragraph 3a of his supplementary affidavit that the Applicant was arrested on reasonable suspicion of being in unlawful possession of firearms, ammunition and military clothing. Regulation 4 of SI 307-8 provides that “a civilian shall not be arrested by a soldier without a warrant of arrest issued by a competent military court unless that person is found in circumstances whereby any person is, under the criminal procedure Code Ac, empowered to arrest that person without a warrant of arrest. Section 10 of the Criminal Procedure code Act provides offences for arrest without a warrant. Under subsection (i) any person in whose possession anything is found which may be

Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process.(6)In the exercise of the functions conferred on him or her by this article, the Director of Public Prosecutions shall not be subject to the direction or control of any person or authority.(7)The Director of Public Prosecutions shall have the same terms and conditions of service as those of a High Court judge.

reasonably suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to that thing. This court considers that the offence the Applicant was arrested for as explained in paragraph 24 above falls within subsection (i) for arrest without warrant.

25. For clarity this court considers that regulation 4 does not bar the military to arrest a civilian. Rather it requires such arrest on a warrant of arrest from the court martial or for an offence for which one can be arrested without a warrant of arrest under the Criminal Procedure Code Act. In this case while there is no demonstration that there was a warrant of arrest for the Applicant from the court martial, it has been properly demonstrated that the Applicant was arrested for an offence under section 10(i) of the Criminal procedure code Act, for which a warrant was not required.
26. Under grounds 18 and 19, the Applicant takes issue with the Respondent's failure to comply with the constitutional Court's directions in *Uganda Law society & Jackson Karugaba v. Attorney General* in constitutional Petition Nos. 2/2002 and 8/2002 by omitting to; (a) review and amend the laws relevant to the administration of justice by the court martial and (b) make annual reports to Chief Justice on the progress of the review and amendment of the laws relevant to the administration of justice by the court martial. While this court considers that the Respondent has not sufficiently responded to this claim by the Applicant, this court considers that to avoid a convulsion and confusion of this issue, the Applicant if still interested should file a proper application for contempt making specific references to the judgment of the court and demonstrating the alleged contempt so that the Respondent can also competently reply and the court will make a well informed decision over the same.
27. The Applicant takes issue with the recording of his statement without his lawyer. In his supplementary affidavit by Major Joshua Karamagi in paragraphs 3b and 3c, the Respondent explained that after informing the Applicant that he could wait to make his statement in the presence of his lawyer, the Applicant chose to record the statement and the same was recorded. It is hard to tell who is telling lies between the Applicant and the Respondent. However if the Applicant felt that his statement was not properly taken, he

would have raised issue at the court martial at the earliest opportunity at his appearance. He did not have to wait to file this application. In all events the Applicant does not demonstrate that the statement as taken was used in a prejudicial manner against him for this court to consider it as a violation of his rights.

28. In grounds 8 and 9 the Applicant takes issue with his arrest and military detention yet he is a civilian and seeks a declaration that it is unlawful. The Respondent explained that after the Applicant was initially detained at Luzira prison, intelligence was received that some people were planning to kill the Applicant. It was on this basis that the Applicant was transferred to military detention in Mbuya. While regulations 2 and 3 of SI 307-8 empower the court martial to try civilians under the UPDF Act, Regulation 5(1) bars the detention of a civilian in a military cell beyond forty eight hours of his or her arrest.
29. Regulation 5(2) categorically prohibits the remand of a civilian in military detention after appearing in court for plea. It provides that ... the military court shall remand that person in a civil prison from where, whenever that person is required to be produced before the military court, he or she shall be brought. Sub regulation 3 requires that a case against a civilian held under this regulation shall be heard as soon as possible. The Applicant's cases in the court martial may easily be considered as sensitive. If I consider the Respondent's position that they received intelligence that there were plans to kill the Applicant, then it was incumbent on the Respondent through the prisons systems to take up the Applicant's security and secure his safety. However in so doing the prison authorities were under strict obligations not to breach regulation 5. This court therefore finds that the detention of the Applicant who is a civilian in military detention beyond forty eight hours after his arrest and after he appeared for plea in court martial was in contravention of regulation 5(1) and 5(2) and was illegal.
30. However given the sensitive nature of this case and the charges against the Applicant being of a serious nature and also mindful that at the time of this ruling, the Applicant had long been returned to civil prison in Luzira, in the exercise of this court's discretion, I will not grant damages for this unlawful detention.

31. Based on all the above, except in respect of the declaration that the Applicant's detention in the military was unlawful and the direction to file an application for contempt, the application is dismissed in all the other respects. No order as to costs or damages.

I so order.

Lydia Mugambe
Judge
30th May 2019