

**THE REPUBLIC OF UGANDA**

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

**MISCELLANEOUS CRIMINAL APPLICATION NO 083 OF 2020**

**[ARISING OUT OF A-009/2018 OF THE CHIEF MAGISTRATES COURT OF  
KAMPALA AT BUGANDA ROAD)**

**1. NAKANDI HAJARA**

**2. KATO HASSAN MIIRO**

**3. WASSWA HUSSEIN=====APPLICANTS**

**VERSUS**

**UGANDA=====RESPONDENT/PROSECUTOR**

**BEFORE HON. JUSTICE TADEO ASHIMWE**

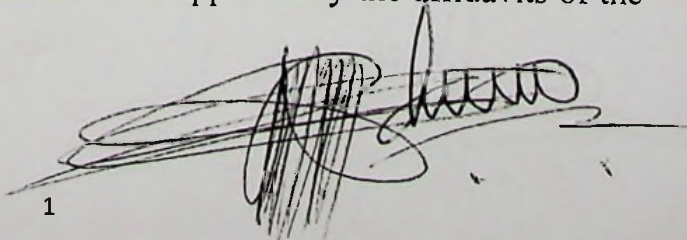
**RULING**

This is an omnibus application seeking for a permanent stay of the prosecution of the applicants in the main criminal case and bail pending trial as an alternative. The application brought is brought by way of Notice of Motion under Articles 23 (6) (a), 24, 28(1) and 28(3)(a) of the Constitution, S17(2),33 and 39 of the Judicature Act, Sections 2,3,4,5,14,15,17, of the 2012 prevention and prohibition of Torture Act.

The applicants are indicted on two counts of murder contrary to sections 188 and 189 of the penal code Act, two counts of kidnap with intent to murder and two counts of Aggravated Robbery.

The grounds of the application as presented and supported by the affidavits of the applicant's relatives are as follows;

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1. 1. That this court is duty bound to respect, uphold and promote the applicants right to dignity, a speedy trial, presumption of innocence and to be released on bail pending trial on reasonable conditions that court may find appropriate.
2. That the applicants have been in detention since 27<sup>th</sup> April 2018, which is an excessively long period without trial, and yet there is no indication that trial s imminent
3. That the applicants were subjected to torture over a period of three weeks during detention at the hands of security operatives prior to their arraignment in court on the charges in issue.
4. That the offences in the indictment at hand are bailable by this court
5. That on account of the foregoing, staying the overly delayed prosecution at issue or releasing the applicants on bail unconditionally is fair and just decision in the circumstances as it will allow the applicants and their respective families to heal from the traumatic ordeal they have already been subjected to.
6. That the grant of bail will also allow the applicants to access their counsel with ease and thus enhance the effectiveness of the preparation of their defenses, since they will be in position to seek their counsel more regular, with less restrictions.
7. That as the investigations I to the case are complete, the applicants release on bail will not prejudice the investigation process.
8. That partrick Agaba, the alleged mastermind of the offences in issue who was extradited from south Africa on 15/05/2019 was granted bail by this court on 29/07/2020 and that it is therefore just and equitable that the applicants be released as well.



At hearing, the applicants were represented by counsel Gerald Owinyi While the respondent was represented by Nyamwiza Judith, a State attorney form ODPP.

Both counsel made oral submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant submitted relying on the affidavits/affirmation of Nakazi Saniya that his clients were tortured while in pre-detention facilities referring to a medical report of the examination of the applicants. He further submitted that it is his client's constitution guaranteed rights against torture and have been violated then the whole criminal trial process is stayed and it should not continue.

#### **RESSOLUTION.**

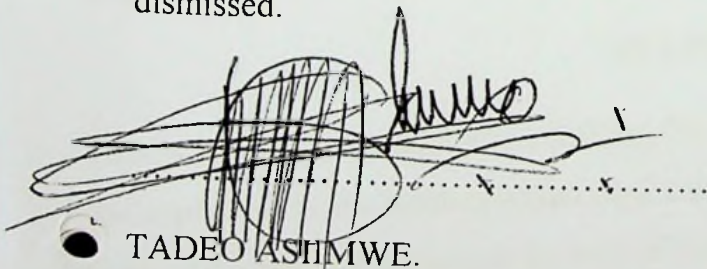
This application is omnibus seeking 2 different remedies. Ordinarily it should have been struck out had it been objected to by the respondents. Mixing up 2 applications in my view causes confusion and prejudices the respondents who have to make reply to 2 different prayers in one document. That being the case, I will sever the application by striking out the aspect of bail application and proceed to resolve the application for stay alone.

The applicant's complaint leading to this application as can be gathered from evidence on record is based on infringement of their fundamental rights under the constitution. There are also issues of torture. These are serious allegations which ought to be fully investigated. In my view this can only be done by the trial court of the main case after considering the evidence and not through an interlocutory application which is limited by affidavit evidence. This is the import of section 8(1) of human rights enforcement Act.

In this case the applicants allege that they were tortured while in detention a basis for their prayer to stay proceedings in the main case. This prayer will be best handled by the trial judge of the main case when it starts to determine whether to proceed with case or not based on evidence. Otherwise the applicants have other remedies they may seek under the law against attorney's general in civil suit.

Besides the allegations of torture in this application are supported by the affidavits of 3<sup>rd</sup> parties and not corroborated by any evidence from the applicants. Evidence of the 1<sup>st</sup> applicant's husband and the 2<sup>nd</sup> and 3<sup>rd</sup> applicant grandmother as contained in the affidavits in support of the application contain hearsay evidence which cannot be a basis for a concrete finding. The entire evidence in support of this application falls far below the requisite standard to warrant any grant. The application was improperly filed before this court and even if it was proper, it lacked evidence.

In conclusion therefore, I find no merit in the application and the same is here by dismissed.



TADEO ASHIMWE.

JUDGE

3/12/2021.