

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CRIMINAL DIVISION)**

**CRIMINAL APPLICATION NO.04 OF 2022**

5 **(ARISING OUT OF ENTEBBE CHIEF MAGISTRATE COURT CRIMINAL  
CASE NO:666 OF 2021)**

**MALE H. MABIRIZI K. KIWANUKA-----APPLICANT**

**VERSUS**

**UGANDA-----RESPONDENT**

10 **BEFORE HON: JUSTICE ISAAC MUWATA**

**RULING**

The applicant herein brought this application for revision challenging the proceedings in Entebbe chief magistrates court in criminal case no.0666 of 2021.

15 When the matter first came up for hearing the applicant sought an order of this court to be allowed to access internet for purposes of research. This order was specifically directed to the O/C Kitalya Mini Max Mr. Ayikomundu Hamidu

20 During the further hearing of the matter, the applicant raised a preliminary objection to the effect that he had been denied access to internet contrary to that order. That he was subsequently transferred to Luzira prison where he has since been denied access to the same.

25 It was his contention that the denial to access internet violates his right to a fair hearing in the sense that he is unable to effectively prosecute his application. He also prayed that the respondents be held in contempt of court for violating the said court order.

In reply, the respondents argued that the applicant is a convict serving a sentence and as such he is not entitled to internet services. That allowing the applicant access internet poses a great security risk to the other prisoner and the institution as a whole, it was also submitted by the respondents that the prisons have adequate facilities to enable the applicant conduct his research. With regard to the contempt, counsel for the respondent Mr. Amerit Timothy argued that the order was specifically directed to the O/C Kitanya Mini Max and not Luzira prisons where the applicant has since been transferred to.

### **Consideration**

After listening to the parties and specifically SP Herbert Kaheru the assistant OC Luzira Upper who was invited by court on its own motion to guide it in resolving this matter I make the following observations.

Under the constitution, the prisons act and the regulations made thereunder, there is no provision that an inmate/convict is entitled to access internet services as a matter of right.

The framers of the constitution did not envisage this right under the tenets of a fair hearing enshrined under Article 28 of the constitution and rightly so because the prohibition on the use of the internet by prisoners/inmates primarily arises from the need to preclude communication of a prisoner with persons outside. Further, this is also to preclude obtaining information from the internet which could endanger the security of the prison public safety. The fact that the internet can be used for commission of offences is a well-known fact.

I have also considered whether granting this access is within the competence of the prison service. The applicant has not requested for particular information, but he requests to access it in a particular manner. Allowing the applicant to access internet services through this manner may necessitate additional supervision of the applicant which in turn would bring about

additional expenses not ordinarily catered for by the prison service. A situation may develop where there is no actual control over the activities of the applicant. Furthermore, the fact that the applicant's incarceration arises from the misuse of the internet makes it even of greater concern to allow his  
60 prayers to access the internet.

The applicant can therefore access whatever information he needs through the library and the prisons legal clinic because access to information need not be ensured necessarily electronically, but it may be ensured also on paper. The applicant is also at liberty to instruct his legal clerk to do research  
65 on his behalf.

I therefore find it difficult to find that failure to access internet in anyway violates a person's right to a fair hearing moreover one who is a convict. This restriction arises from the need to preserve public safety and achieve the objectives of imprisonment of prisoners. There is also nothing special about  
70 the contemnor to warrant this court to grant the prayers sought and yet all other inmates are not entitled to access internet services.

Regarding the order referred to and dated 7<sup>th</sup> April 2022, the order was made in personam specifically to the O/C Kitanya, it was not made to the entire prison service and upon his transfer to Luzira the order ceased having effect  
75 because it was made against an individual person.

It would be improper to fault the Prison Service and hold them in contempt for the mere fact that it transferred the applicant to Luzira prison because section 73(3) of the Prisons Act gives the commissioner general powers to direct that a prisoner be transferred from one prison to another.

80 Consequently, I find that the failure to access internet by the applicant does not in any way violate his rights to a fair hearing, I am also unable to find the respondents in contempt of court

The objections are therefore dismissed. The court order dated 7<sup>th</sup> April, 2022 is also vacated having ceased to have effect.

85 I so order

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**JUDGE**

**23/06/2022**

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