IN THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

[CORAM: Kakuru, Egonda-Ntende & Obura JJA]

CRIMINAL APPEAL NO. 107 OF 2013

(Arising from the Court Martial Appeal Court, Criminal Appeal No. 010 of 2012 from General Court Martial Appeal No. 034 of 2010 on appeal from 3rd Division Court Martial Session Case No. DCM/3DIV/01/10 sitting at Mbale Municipal Hall)

2nd Lt. Ambrose Ogwang.....Appellant

Versus

Uganda.....Respondent

(An appeal from the judgment of the Court Martial Appeal Court delivered on 12th July 2013)

JUDGMENT OF THE COURT

Introduction

1. This is a third appeal originating from the judgment of Court Martial Appeal Court sitting at Makindye delivered on 12th July 2013. Under Count 1, the appellant was indicted of the offence of robbery contrary to sections 285 and 286 (1) of the Penal Code Act. Under count 2 the appellant was indicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars of the offence were that on the 23rd of March 2010, the appellant while at Plot 16 Kumi Road, Mbale town in Mbale District with malice aforethought shot and killed Inspector of Police, Koire George William using SMG No. UD8732-1998.

2. On 18th June2010, the 3rd Division Court Martial convicted the appellant of murder and sentenced him to death. For count 1, the record does not reveal any verdict.

3. Upon being dissatisfied with the conviction and sentence, the appellant appealed to the General Court Martial. Judgment was delivered on 13th September 2012. The appeal against conviction was dismissed. The appeal against sentence was allowed in part in so far as the sentence was reduced to life imprisonment.

4. On 4th April 17, 2013, the appellant filed a second appeal before the Court Martial Appeal Court raising only one ground of failure to re-evaluate evidence leading to wrongfully convicting the appellant. In the judgment delivered on 12th July 2013, the second appellate court dismissed the appeal and upheld the decision of the first appellate court.

5. The appellant being dissatisfied with the decision of the second appellate court has appealed to this court on the following grounds;

> '(1) That the Court Martial Appeal Court erred in law and fact to uphold a conviction on the litigant when it failed to objectively scrutinize the whole evidence thus, rendered the conviction unsafe
> (2) That it was repugnant to all principles of justice for the Court Martial Appeal Court to adopt the charge and caution statement obtained perfunctorily and unprofessionally to uphold the conviction on the litigant.
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> (3) That the Court Martial Court of Appeal erred in law and fact when it disregarded the discrepancies in prosecution case which occasioned a miscarriage of justice.

(4) That the Court Martial Appeal Court erred in law and fact when it upheld the unconstitutional imprisonment for life on the appellant leading to a miscarriage of justice.'

6. The respondent opposed the appeal.

Submissions of Counsel

7. During the hearing, the appellant represented himself but with the guidance of Mr Walter Okidi Ladwar on state brief and Senior Assistant DPP Nabaasa Caroline Hope represented the state. The parties filed written submissions.

8. At the beginning of the hearing, Counsel for the respondent raised preliminary points of law on the competence of this appeal. It was the submission of Counsel for the respondent that the DPP has no *locus standi* in matters originating from the court martial under Article 120(3) (b) of the 1995 Constitution of Uganda. Ms Nabaasa further contended that this matter is incompetent before this court in light of section 46 of the Criminal Procedure Code Act, Rule 58 of the Judicature (Court of Appeal Rules) Directions S.1 13-10.

9. In reply to the averments of Counsel for the respondent, the appellant relied on the case of Sgt. Kalemera Frank vs Uganda C.A No. 18 of 1994 and Regulation 20(2) of the UPDF (Court Martial Appeal Court) Regulations S.I 307-7 for his submission that the appeal is competent before this court. He contended that Article 120 (3) (c) grants the DDP *locus standi* in this matter.

10. For ground one of the appeal, the appellant contended that the trial was contrary to the principles of natural justice in particular Article 28(1) and 44(c) of the Constitution when Major Muraro who had participated in the apprehension of the appellant and investigation of the case was allowed to be a member of the panel in

the 3rd Division Court Martial. He cited the case of Laurent Busalo s/o Makumba v R [1957] EA 298 in support of this submission.

11. On the second ground, the appellant submitted that there was a grave miscarriage of justice when the 3rd Division Court Martial admitted into evidence the retracted charge and caution statement contrary to Section 24 Evidence Act Cap 6. That a certificate of translation ought to have ben annexed to the charge and caution statements. On the third ground, the respondent contended that evidence of PW 14 pointed to the inconsistencies in the prosecution case which pointed to his innocence. He relied on the case of Santa Singh V State of Punjab (1956) A.I.R (SC) 526 for his submission.

12. In reply to the above grounds, the counsel for the respondent submitted that there is sufficient evidence on record to warrant the appellant's conviction. That the two appellate courts found no justifications to interfere with the findings of the trial court so should this court.

13. On the forth ground, the appellant relied on the cases of Livingstone Kakooza V Uganda, SCCA No. 17 of 1993 (unreported), Kansiime Brazio & Another V Uganda, Criminal Appeal No.12 of 2008 (unreported) for the preposition that term imprisonment for life should be interpreted to mean 20 years and in light of the decision in Tigo Stephen v Uganda, SCCA No. 8 of 2009 (unreported), the law should not be applied retrospectively. In reply, counsel for the respondent submits that in Tigo Stephen v Uganda (supra), the Supreme Court only interpreted the existing law.

Analysis

14. The brief facts of the case according to the prosecution case are that the appellant was an army officer, formerly attached to 67Bn, Karita in Amudat District. On the 22nd day of March 2010, the appellant requested for a movement order to go to Mbale

but was advised by LT J K Lukanga, the Adjutant, to wait because the movement order forms were over. Shortly after that the appellant disappeared from his unit. His gun was missing as well.

15. On the 23rd day of March 2010, the appellant turned up in Mbale at Royal Stationeries with a gun and robbed the owners of an unspecified amount of money. This prompted the people to chase him wherein he entered a certain house and held hostage a woman with her two children. The appellant's actions prompted police to arrest him but in the process IP Koire George William was shot dead by the appellant. The appellant was eventually found in the house, hiding under a bed and was arrested together with two guns.

16. At the hearing the respondent raised preliminary objections to the effect that the DPP has no authority to appear in this matter and that this appeal is incompetent before this court.

17. Counsel for the respondent contended that Article 120 (3) (b) constitutionally prohibits the DPP from appearing on behalf of the respondent in this case Uganda. We respectfully disagree. Under Article 120 (3) (c) of the Constitution, the Director of Public Prosecution has power to take over and continue any criminal proceedings instituted by any other person or authority. This includes proceedings originating from the court martial. To that end, the Director of Public Prosecutions cannot rely on Article 120 (3) (b) of the Constitution to abscond this duty. Article 120 (3) (b) of the Constitution does not give the Director of Public Prosecution mandate to appear on behalf of the respondent in matters being heard in the court martial but there is no bar to take over such matters once they proceed to civil courts.

18. The respondent also contended that this appeal is incompetent because this being a third appeal, there is no law governing an appeal of this nature before this court. This

appeal was brought under Regulation 20 (2) of the UPDF (Court Martial Appeal Court) Regulations S.I 307-7 which grants leave to an appellant whose sentence of death or life imprisonment has been upheld by the Court Martial Appeal Court to appeal to this court. The Supreme Court in the case of Sgt. Kalemera Frank v Uganda, Criminal Appeal. No.18 of 1994 (unreported) held that appeals from the Court Martial Appeal Court must first be made to the Court of Appeal with the Supreme Court being the final appellate court. It is therefore untenable to suggest, as the respondent does, that this appeal cannot be heard before this court due to lack of a law regulating the procedure to bring such an appeal to this court. The rules of this court, the Judicature (Court of Appeal Rules) Directions S.1 13-10 set out the procedure to be followed in appeals to this court. Moreover article 126 (2) (e) of the Constitution enjoins this court to administer substantial justice without undue regard to technicalities.

19. We therefore hold that this appeal is competent before this court and the Director of Public Prosecution has the mandate to represent the respondent in this matter.

20. Turning to the appeal, we are aware of our duty as a third appellate court. In any third appeal, this court is to decide the question of law which is put before it. See Rule 32 (3) Judicature (Court of Appeal Rules) Directions S.1 13-1.

GROUND ONE

21. The appellant's contention is that the Court Martial Appeal court, having failed to objectively scrutinize the evidence on record, erroneously upheld the conviction of the appellant. He further submitted that it was improper and against the principles of natural justice for court to have relied on the evidence on court record that was influenced by Major Muraro, who was a member of the court yet he had been

involved in the investigation of the matter. It should be noted that this ground was never raised in the Court Martial Appeal Court but as it is a question of legality or illegality, going to the very root of the trial, and in the interests of justice it is imperative that we consider the same.

22. Secondly this point arises in the submission in relation to ground 1 while it ought to have been raised specifically as a separate ground raising the question of the legality of the constitution of the court that tried this case at first instance. Notwithstanding the foregoing this is not a matter we can ignore merely on account of pleading. As noted above this appeal raises a fundamental constitutional issue that needs to be addressed.

23. The record of proceedings of 18th of May 2010 at page 65 confirm that indeed one of the court members participated in apprehending the accused. Upon making the discovery, the trial court adjourned the proceedings for the purpose of recusing the court member having noted that this was contrary to the law. The identity of the court member was not disclosed but we are assuming it is the person the appellant is referring to. The appellant contended that court ought to have ordered a re-trial as Major Muraro had influenced other panel members into the decision they arrived at.

24. The only provisions relating to ineligibility to serve on military courts are found in section 203 of the UPDF Act which bar witnesses for the prosecution or persons involved in the investigation of the case to be members of a Field Court Martial. No similar provision are available in relation to the other military courts. Nevertheless in our view, if only by analogy, the same principles must apply to other military courts. This is imperative from article 28 (1) of the Constitution which provides the right to a fair hearing and requires that this must be before an impartial court.

25. We find merit in this ground. A court member that participated in the arrest of the appellant or in the investigation of the case can hardly be impartial in the matter. 11 witnesses had already testified and several rulings had been made including the admission in evidence of the charge and caution statements. This impugned member participated in the trial up to this stage including making decisions as to admissibility of the charge and caution statements in the evidence before the court. The charge and caution statements were relied upon to convict the appellant.

26. The trial court, as per the Chairperson, stated,

> 'This case was adjourned to today the 18th May 2010, however, court found out that one of the court members participated in apprehending the accused person. So as per the law he is not allowed to try the same case. Therefore this case is adjourned to 20 May 2010 for further hearing as the accused person is further remanded till then.'

27. The court member that was found to have been wrongly included on the court was not named. Neither was the new court member that replaced him disclosed. We can only presume that the trial proceeded with the new member who had not heard the earlier 11 witnesses that had testified in the case prior to the 18th May 2010.

28. Indeed on the 20th May 2010 the trial continued with the presentation of further witnesses. We agree that this was a fatal irregularity. Section 198 (c) of the UPDF Act requires all the 7 members of a Division Court Martial to be present when trying a capital offence. The new member was not present for most of the trial. The trial court ought, at this stage, to have ordered a re-trial as the previous proceedings were incurably defective having been before an ill-constituted court. This is a matter that goes to jurisdiction.

29. At the same time the appellant was entitled to be tried by an impartial court. A court composed of a person who had personal knowledge of the facts relating to the alleged commission of the offence by the appellant could hardly be impartial.

30. Article 28 (1) of the Constitution states,

> 'In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before **an independent and impartial court or tribunal established by law**.'

31. Rule 7 of the Code of Conduct for Judges, Magistrates and Other Judicial Officers 1989 requires a Judge or Magistrate to disqualify themselves in a matter or proceeding in which his or her impartiality might reasonably be questioned. One of the examples stated is where he or she has personal knowledge of the contested or disputed matters.

32. The appellant was charged with 2 capital offences under the Penal Code Act. This was murder and aggravated robbery. He was certainly entitled to appear before an impartial court. This right is non-derogable pursuant to article 44 (c) of the Constitution. The right to a fair trial cannot be abridged.

33. We agree with the Appellant that had the Court Martial Appeal Court scrutinized the record of the trial it would have realised that the trial court had wrongly been constituted to include, a person who participated in apprehending the appellant, who could be a witness to the offences under trial, as one of the members of the court trying the same. Secondly, the substitution of that incompetent member with a new member of the court more than halfway through the trial was equally wrongful and

contrary to section 198 (c) of the UPDF Act. A member of the court had to be present throughout the trial from the beginning to the end of the trial in order to participate in determining the final verdict.

34. In the result ground one succeeds. We quash the conviction of the appellant on count 2 and set aside the sentence imposed upon him. We had been inclined to order a re-trial, pursuant to section 240 of the Uganda Peoples' Defence Forces Act, 2005, before the 3rd Division Court Martial. However, upon further consideration it appears there are fundamental constitutional barriers to that course of action as we shall presently explain.

35. Article 28 (1) of the Constitution has already been set out above. It requires that in 'the determination of any criminal charge' an accused 'shall be entitled to a fair, speedy and public hearing before **an independent** and impartial court or tribunal established by law.'

36. No doubt the Division Court Martial is established by law, the Uganda Peoples Defence Forces Act, 2005. The question is whether it is independent. Independent in the above article 28 (1) can only be understood in the general constitutional architecture of separation of powers. In particular article 128 (1) of the Constitution that provides,

> '(1) In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.'

37. This requires that a court must be independent of the authority that brings the charges for trial. The judges of an independent court cannot be under the administrative control of the authority that brings the charges. In order to secure the independence of the courts the courts are placed under a different arm of the state known as the

Judiciary with security of tenure and insulation from control of the Executive which originates criminal charges with the exception of private prosecutions which are brought by private individuals.

38. Military Courts, appointed by the High Command, are basically organs of the army intended to ensure operational efficiency and discipline of officers and militants of the Uganda Peoples Defence Forces. That is the purpose and thrust of military justice. For that reason service offences are created under the Uganda Peoples Defence Forces Act under Part VI of the Act over which Military Courts exercise jurisdiction.

39. Military courts are quasi-judicial bodies that must observe certain principles of law but have limited jurisdiction, similar to police disciplinary courts and other limited jurisdiction bodies. However, what is significant and of constitutional importance, in our view, is section 179 of the UPDF Act. It states,

> '**Service trial of civil offences**
> (1) A person subject to military law, who does or omits to do an act-
> (a) in Uganda, which constitutes an offence under **the Penal Code Act or any other enactment**;
> (b) outside Uganda, which would constitute an offence under **the Penal Code Act or any other enactment** if it had taken place in Uganda,
> commits a service offence and is, on conviction liable to a punishment as prescribed in subsection (2).
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> (2) Where a military court convicts a person under subsection (1), the military court shall impose a penalty in accordance with the relevant enactment and may, in addition to that penalty, impose the penalty of dismissal with disgrace from the Defence Forces or any less punishment prescribed by this Act.'

40. The effect of this provision is to turn all criminal offences under the law of this country into service offences for persons subject to military law. Secondly the effect

is profoundly transformative of military courts from being limited jurisdiction quasi-judicial bodies into general jurisdiction criminal courts for all criminal offences for persons subject to military law.

41. Courts that try, 'any criminal charge' or 'civil offences' must be independent in terms of article 28 (1) of the Constitution which military courts are not. Military courts are manned by military personnel, inclusive of the judges, the prosecutors and at times, defence counsel. The military courts are not independent of the Executive. They belong to the Executive. The charges are brought by the Army the institution to which they belong.

42. It was established in Attorney General v S Abuki, S C Constitutional Appeal No. 1 of 1998, (unreported) that law may be unconstitutional if its purpose or effect is contrary or inconsistent with the Constitution. The effect of section 179 of the UPDF Act is to transform military courts into general jurisdiction criminal courts for persons subject to military law.

43. Persons subject to military law, like all other people in this country, enjoy fundamental human rights which may only be limited in the manner provided by the Constitution. The officers and militants of the UPDF do not give up their fundamental rights and freedoms on account of joining the UPDF. Such rights and freedoms are available to officers and militants of the UPDF as much as they are available to the rest of Ugandans and others that live here in this country as they are inherent in every person. There may be limitations to such rights and freedoms but such limitations are governed by article 43 of the Constitution and they are to be strictly construed.

44. The appellant in this case is charged with 2 offences, murder and robbery, contrary to the Penal Code Act. These are, to use the language of the UPDF Act 'civil offences'. They are alleged to have been committed in Mbale. The offences were not

committed during a military operation. Save for section 179 of the UPDF Act those offences would be tried in the High Court. Under section 204 of the UPDF Act this jurisdiction of the civil courts is recognised. It states,

> 'Nothing in this Act shall affect the jurisdiction of any civil court to try a person for an offence triable by that court.'

45. Civil Courts do not have jurisdiction to try military offences at first instance and only in cases where the death penalty or life imprisonment is the punishment would a right of appeal to civil courts avail. However, with regard to the section 179 of the UPDF Act offences, which are all the criminal offences under the law, civil courts would have concurrent jurisdiction with the military courts as recognised by section 204 of the UPDF Act.

46. The UPDF Act provides no guidance as to how the forum, i.e. military or civil court, in such circumstances would be determined and who has primacy in determining so. The absence of any guidance as to how this choice would be made opens up this area to the possibility of arbitrary decision making. An affected party would not know how to challenge such a decision and the considerations that would be taken into account in arriving at such a decision. This is inimical to the constitutional right of a fair hearing.

47. It is our considered view that only an independent court has jurisdiction under article 28 (1) of the Constitution to try any criminal offence under civil law. A military court, a court of limited jurisdiction can only try service offences, which in our view have been amply set out in sections 120 to 178 of the UPDF Act.

48. The real import of section 179 is captured in its title or heading. '**Service trial of Civil Offences**.' The section grants jurisdiction to the military courts to try all civil offences under any law rather than creating military offences. This massive sharing

of jurisdiction for civil offences is inconsistent with the Constitution as it infringes or whittles away those accused persons' right to a trial by an independent court, a civil court, enshrined in article 28 (1) of the Constitution. Moreover this right to be tried by an independent court is a constituent element of the right to a fair hearing from which no derogation is permitted under Article 44 (c) of the Constitution. We are unaware of any justification for this infringement.

49. We take some guidance from the decision of the Supreme Court in the case of Attorney General v Joseph Tumushabe, S C Constitutional Appeal No. 3 of 2005, (unreported). What was in issue in this appeal was whether article 23 (6) of the Constitution applied to persons being tried by military courts or as the appellants contended the said provisions of the Constitution did not apply to persons on trial before military courts. The Supreme Court held unanimously that the said provisions of the Constitution, as indeed all chapter 4 rights and freedoms, applied to persons charged with offences before the military courts set up under the UPDF Act.

50. Mulenga JSC., stated in part,

> 'The proposition that a person awaiting trial in the General Court Martial is, in respect of bail, governed only by provisions of the UPDF Act, and not by the constitutional provisions, is based on wrong premises and is untenable. That proposition, which the appellant heavily relies on, is premised on the assertion that article 23(6) does not apply to military courts and is encapsulated in the minority judgment of Byamugisha J.A., where she said –
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> *"To summarise what I have said, the General Court Martial or any court martial is not a court of judicature established by or under the authority of the 1995 Constitution. It is also not a court subordinate to the High Court within the meaning set out in the Constitution. In other words,* [they are] *not part of the courts of judicature. It goes without saying that the provisions of article 23(6) with regard to grant of bail either immediately*

on being arraigned or after 120 or 360 days do not apply to the courts martial. If the framers of the Constitution had wanted the article to apply to military courts I have no doubt in my mind they would have stated so expressly. I think the omission was deliberate".

With due respect, however, the opposite conclusion can be asserted with equal, or even more force, namely that if the framers of the Constitution had wanted the article not to apply to military courts, they would undoubtedly have stated so expressly, as was done in article 137(5) in respect of the Field Court Martial. In that article it is provided that a question as to the interpretation of the Constitution arising in proceedings before any court, except the Field Court Martial, shall be referred to the Constitutional Court. The framers of the Constitution deliberately directed the provisions in Article 23(6) to everybody that happens to be on criminal charge and so had no reason to particularise any category. But more significantly, **I should stress that the Constitution guarantees to every person the enjoyment of the rights set out in Chapter 4 except only in the circumstances that are expressly stipulated in the Constitution. The Constitution also commands the Government, its agencies and all persons, without exception, to uphold those rights. The General Court Martial is not exempted from the constitutional command to comply with the provisions of Chapter 4 or of Article 23(6) in particular**, nor is a person on trial before a military court deprived of the right to reclaim his/her liberty through the order of *habeas corpus* or application for mandatory bail in appropriate circumstances.'

51. Mulenga JSC., went on to say,

'In the 2nd ground of appeal, the appellant contends that the Constitutional Court erred in declaring that the accused persons (detainees) were entitled to be released on bail after 120 days on remand in custody. The submissions in support of the contention revolve on the assertions that the General Court Martial is not a subordinate court and that the detainees, being charged before a military court, were entitled to apply for bail only in accordance with the provisions of the UPDF Act. The bottom line of the arguments is that the provisions in Article

23(6) are parallel to the provisions in the UPDF Act, as to bail, and that because the latter do not include provision for mandatory release on bail, persons charged under the Act do not come under the ambit of Article 23(6) of the Constitution. With due respect, this is a fundamental error. It is tantamount to construing provisions of the Constitution as subject to provisions of the UPDF Act rather than the reverse. By virtue of the supremacy of the Constitution, which is enshrined in Article 2, its provisions have binding force on all authorities and persons, and except through amendment under Chapter 18, **Parliament has no power to remove or modify that application in respect of any authority or person. The UPDF Act does not, and could not remove the application of Article 23 to persons charged before military courts.** Indeed, as I said earlier in this judgment, that Act has to be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution.

In view of my findings in respect of the 1st ground, I find no merit in this ground also and would dismiss it. The detainees were remanded in custody for more than 120 days while awaiting trial for the offence of treason, which offence is triable by the General Court Martial, a subordinate court, as well as by the High Court. Under Article 23(6) (b) it was mandatory to release them on bail, irrespective of the provisions of the UPDF Act concerning bail. Failure to release them on bail after expiry of the said period was inconsistent with and contravened Article 23(6) (b) of the Constitution.'

52. Katureebe JSC., (as he then was), after agreeing with Mulenga JSC., stated,

'I only wish to add for emphasis that the arguments by the Appellant seem to be based on a fundamental fallacy, namely that the provisions of the UPDF Act with regard to Courts Martial and bail are superior to the provisions of the Constitution. Article 2 of the Constitution is clear that the

" (1) Constitution is the supreme law of Uganda and shall have binding force on

all authorities and persons throughout Uganda. (2) If any other law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void."

Article 23(6) of the Constitution applies to a person arrested in respect of a criminal offence and provides for the manner through which that person may be granted bail, whether by the High Court or a subordinate court. For the appellant to argue that these clear provisions of the Constitution do not apply to persons arrested in respect of a criminal offence and charged before a Court Martial, is to distort the letter and spirit of the Constitution.'

53. We take solace in the foregoing remarks of the Supreme Court that emphasise that chapter 4 rights apply to all persons. In that case it was a question of the fundamental right to liberty and entitlement to bail. The UPDF Act could not override the Constitution. Similarly the right of any person charged with a criminal offence to be tried by an independent court is sacrosanct under article 28 (1) of the Constitution. Such right cannot be overridden by the UPDF Act.

54. It is significant that the cluster of rights that comprise the right to a fair hearing, set out in article 28 (1) of the Constitution, as with all rights and freedoms enshrined in chapter 4 of the Constitution, are not granted by the state or the Constitution but are stated to be inherent in the individual. Article 20 of the Constitution provides,

'(1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.

(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected,

upheld and promoted by all organs and agencies of Government and by all persons.'

55. It is the constitutional duty of this court, as set out in article 20 (2) of the Constitution, to uphold the right of the appellant to be tried on a criminal charge by an independent court as enshrined in article 28 (1) of the Constitution. Under article 2 (2) of the Constitution if any law or custom is inconsistent with the Constitution the Constitution must prevail. We find section 179 of the UPDF Act inconsistent with Article 28 (1) of the Constitution. We are obliged to uphold the Constitution rather than give effect to a provision of the law that is inconsistent with the Constitution. We order the re-trial of the appellant before the High Court of Uganda which is the court with the jurisdiction to try the offences which the appellant stands charged with.

56. As the Director of Public Prosecutions makes arrangement to commit the appellant to the High Court for trial we direct that the Director produces or causes the appellant to be produced before a magistrates court within 14 days from today to be formally informed of the charges that he faces. In light of the time the appellant has spent in custody since he was first arraigned for trial on these charges we direct both the DPP and the High Court to move with expedition to ensure that the appellant is re-tried without any further delay.

57. We need not point out that the appellant will be at liberty to pursue any rights he may be entitled to under Chapter 4 of the Constitution should that be deemed necessary.

58. As ground no.1 disposed of the appeal it is unnecessary to discuss the other grounds of appeal.

Signed, dated and delivered at Kampala this 8th day of November 2018.

Kenneth Kakuru
Justice of Appeal

Fredrick Egonda-Ntende
Justice of Appeal

Hellen Obura
Justice of Appeal