THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO.330 OF 2021

OBOTE WILLIAM::APPLICANT

VERSUS

ATTORNEY GENERAL ::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application by way of Notice of Motion against the respondent trying to challenge his imprisonment by way of judicial review for an order of mandamus as follows;

1. Unconditional release against invalid judgment under which he is held in custody.
2. Restrain retrospective application of natural life term to the qualified and limited life imprisonment imposed before the new rule came in to operation.

The grounds in support of this application are set out in the affidavit of Obote William dated 27th November 2021 which briefly sets out the background of the applicants case:

1. That the High Court Criminal Court Session No. 025/2008 of 21.04.2009 convicted the applicant in a 14 word concluding remarks for murder and sentenced him to life imprisonment invalidated by the authorised record of judgment of 15.04.2009 as judgment of court without formal pronouncement or delivery in open court: a procedural irregularity in breach of open justice principle under article 28(1) of the Ugandan Constitution and rendered judgment under which he held in custody is null and void.

2. That High Court Criminal Court Session No. 25/2008 of 21.04.2009 imposed qualified and limited life imprisonment as "sufficient time that would enable reform" upheld by the appellate courts but following judicial decision and amendment of criminal code that life imprisonment meant natural life, new rule was applied retrospectively to the judgment of high court upheld by the appellate courts enhancing the sentence much more severe than the intention of the trial judge rendering the courts sentence invalid.

3. That the Court of Appeal criminal appeal No. 258 of 2009 of 22.05.2014 and Supreme court criminal appeal No 12/2014 of 01.02.2017 upheld the defective judgment of high court tainting the basis of his continued detention for over 17 years.

The applicant filed his submission from prison to support his application. The applicant represented himself and wanted to attend court which this court denied since he had filed his submission.

ISSUES FOR DETERMINATION

Whether the application is competent?

The applicant has made several attempts to be released from prison by filing different applications in the High Court challenging his imprisonment. The first application was for habeas corpus which was dismissed by the high court and it was an abuse of court process since the applicant was a convict of murder and serving the sentence of life imprisonment.

The applicant has brought this 'confused' application trying to seek leave to apply for judicial review and also to challenge the judgment of the criminal court at Lira High Court which was upheld by Court of Appeal and Supreme Court. It is clear the applicant has nothing to do and he is trying out his lack to waste other people's time by filing all manner of hopeless applications in order to get out of prison by seeking endless production warrants.

The applicant is seeking to challenge a high court judgment which was upheld by both appellate courts. This is not tenable under our judicial system and it is clear that the same was supposed to be challenged in the appeal system of court of appeal and supreme court.

The Constitutional court has warned against challenging criminal proceedings in a civil court.

Similarly in the case of ***Dr. Tiberius Muhebwa vs Uganda*** *Constitutional Petition No. 09 of 2012* and also in *Constitutional Petition No. 10 of 2008* ***Jim Muhwezi & 3 Others vs Attorney General and Inspector General of Government****, the court cautioned against the stopping of criminal trials on allegations that the trial would not be free and fair*. In the latter case, court noted further as follows;

> *" The trial court is capable of fairly and accurately pronouncing itself on the matter without prejudice to the accused. Where any prejudice occurs the appeal system of this country is capable of providing a remedy. Was it to be otherwise, a situation would arise whereby anyone charged with an offence*

would rush to the Constitutional court with a request to stop the prosecution pending hearing his challenge against the prosecution. In due course, this court would find itself engaged in petitions to stop criminal prosecutions and nothing else. This could result into a breakdown of the administration of the criminal justice system and affect the smooth operation of the Constitutional Court"

It can be deduced from the above cases and by analogy, challenging criminal trials in a civil court will likely cause confusion in the criminal justice system.

The applicant was able to challenge the proceedings by way of appeal, to the Court of Appeal, then to the Supreme Court. This court would not entertain such applications which are intended to waste court's valuable time. The applicant's only remedy is to seek the prerogative of mercy from the President under Article 121 of the Constitution.

In the final result for the reasons stated herein above this application fails and is hereby dismissed with costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
30th/06/2023