THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

CIVIL DIVISION

Misc Cause No. 16 of 2021

IN THE MATTER OF ARTICLES 23 (1), (9), 44 (d) AND 50 OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1995

AND

IN THE MATTER OF SECTION 34 OF THE JUDICATURE ACT - CAP 13 OF THE LAWS OF UGANDA (AS AMENDED)

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS *AD SUBUCIENDUM* BY KYAGULANYI SENTAMU ROBERT

1. KYAGULANYI SENTAMU ROBERT **2. BARBRA KYAGULANYI ITUNGO**	**::::::::::::::**	**APPLICANTS**
	Versus	
1. ATTORNEY GENERAL **2. CHIEF OF DEFENSE FORCES (CDF)** **3. INSPECTOR GENERAL OF POLICE**	**::::::::::::**	**RESPONDENTS**

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

This is an application filed under Articles 23 (7), (9) and 44 (d) of **The Constitution of the Republic of Uganda**; Sections 34 (a) of **The Judicature Act** Cap 13; Rules 3, 8 and 13 of **the Judicature (Habeas Corpus) Rules** S.I. 13 - 6.

The applicants seek the following orders:

1. A writ of habeas corpus ad sub jiciendum be issued ordering/ requiring the Respondents, their servants, agents and/or officers acting under their orders to produce the bodies of Kyagulanyi Sentamu Robert and Barbra Kyagulanyi Itungo before this Honorable Court for appropriate orders.
2. Costs of the Application be provided for

The grounds on which this application is based are stated in the Notice of Motion and elaborated in the supporting affidavit of one Mr. Turyamusiima Geofrey. Both are reproduced here,

The grounds,

I. The 1st and 2nd Applicant have since 14/01 /2021 been confined at their home in Magere, Kasangati Town Council in Wakiso District, where security operatives, including The Police and UPDF officers have refused them to leave their home. The 1st Applicant was a Presidential Candidate in the just concluded National Elections.

2. The commanding officers of the said security agencies have not given any reasons for the detention of the Applicants at their home. The Applicants are being held/detained illegally by the Respondents and/or their servants, agents or persons acting under them at their home.

4. Since their arrest, the Applicants have not been allowed access to their lawyers, family, doctors or anyone from the outside world.

5, The Applicants have neither been produced in any court of law nor released by the Respondents.

6. The continued illegal detention of the Applicants is further infringing their right to personal liberty, among other rights, under the 1995 Constitution (as amended).

5. The ends of justice demand that the Application be granted.

Mr. Turyamusiima Geofrey swears as follows in his supporting affidavit,

1. That I am a male adult Ugandan citizen of sound mind and one of the lawyers of the applicants and also their close friend. I am well conversant with the facts relating to this application and I swear this affidavit in that capacity.

2. I am aware that the Applicants are unable to swear any affidavit on their own behalf so far as they have been refused from leaving their home and all people, including their lawyers, have been denied access to them or their home by the Respondents or their officers.

3. The Applicants cannot there even appear or take oath before any Commissioner for Oaths.

4. The 1st Respondent is the legal representative of Government and he is as such responsible for the acts of Government officials including the Uganda Police and the Uganda Peoples' Defence Forces.

5. The 2nd Respondent is the Chief of the Defence Forces in the Uganda Peoples' Defence Forces and therefore the Commander-incharge or the soldiers surrounding the Applicant's home.

6. The 3rd Respondent is the Inspector General of Police and the commander of the Police Officers surrounding the Applicants' home in Magere.

7. The 1st Applicant was one of the Presidential Candidates in the just concluded General Elections held on 14/01/2021.

8. On 14/01/2021, the Applicants cast their vote and went back to their home in Magere in Kasangati Town Council in Wakiso District.

9. In the evening of 14/01/2021, several soldiers and police officers surrounded the Applicants' home and refused them to leave the home for any other place.

10. Several people who have tried to access the Applicants or their home, including myself and his lawyers, have been denied access by the said officers.

11. No reason has been advanced by the commanders of the said officers for detaining the Applicants at their home or for denying them access to their lawyers or doctors.

12. The Applicants are being held/detained illegally by the Respondents and/or their servants, agents or persons acting under them.

13. That on 18/01/2021 Counsel Wameli Anthony, Benjamin Katana, Musisi George and Kalule Robert and I sought access to the Applicants and/or their home after a phone call from the Applicants but we were denied the access by the said officers.

14. The Applicants have neither been produced in any court of law nor released by the Respondents.

15. The continued illegal detention of the Applicants is infringing on their right to personal liberty.

The Respondents oppose this application and affidavits in reply were deposed. One by Brigadier Dr Godard Busingye for the Second Respondent and another by Assistant Inspector General of Police Ochom for the 3rd Respondent. Both affidavits will be reproduced here.

Brigadier Dr Godard Busingye stated as follows,

1. I am the Chief of Legal Services in the Ministry of Defence and Veteran Affairs and I depose this affidavit in that capacity.

2. I have been advised by Attorney's in the Attorney General's Chambers whose advice I verily believe to be correct and true that the application for *habeas corpus ad subjiciendum* is misconceived and improperly brought before this Honorable Court.

3. I know that the Applicants are not in the custody of the Uganda Peoples' Defence Forces.

4. I know that in this case, as in any part of Uganda where the UPDF is jointly deployed with the Uganda Police Force to maintain law and order, participation by the UPDF is in a supporting role. This is grounded in the Constitution and the Uganda Peoples' Defence Forces Act, No. 7 of 2005 and is solely on invitation by the Uganda Police Force who remain seized of the overall command and control.

5. That I swear the affidavit in opposition to the orders sought.

Assistant Inspector General of Police Edward Ochom swore as follows,

1. That I am the Director of Operation in the Uganda Police Force and depose the affidavit in that capacity.

2. That I have read the application and accompanying affidavit and the contents are denied.

3. That the 1st applicant, Hon Kyagulanyi Sentamu Robert is not under Police custody. He is at his residence with police giving him the necessary protection.

4. That the movements of the 2nd Applicant, Barbara Kyagulanyi Itungo and other members of her household have not been restricted in any way.

5. That the 1st Applicant has on several occasions organised processions and addressed mass gatherings in several places contrary to the Public Health (Control of COVID-19) Regulations S.I. 83 of 2020 and The Penal Code Act.

6. That the 1st Applicant was arrested with four others for flouting COVID-19 guidelines, detained at Nalufenya Police and later charged in Court on the 20th of November 2020.

7. That the arrest came after the 1st Applicant's consistent and blatant breach of COVID - 19 regulations and the Electoral Commission guidelines throughout his campaign trail.

8. That the actions of the Applicant in holding processions and organising mass rallies throughout his campaign trail has at all material times caused a serious risk to public health and safety.

9. That as a result of the 1st Applicant's defiance, the rallies resulted into riots, acts of looting, staging of illegal roadblocks, hate speech, robbing of motorists, undressing women, burning of tires, attacking the Grade I Magistrates Court in Wobulenzi and Katwe Police Post and death.

10. That property was destroyed including roads, government facilities like CCTV cameras in Mukono, motor cycles and motor vehicles in Reg Nos. UG 1313W, UAJ 972X, UG 2307C, UG 0304G, UG 0005O, UG 104Q, UG 2420C, UG 3452R.

11. That investigations have been sanctioned and are ongoing regarding the registered deaths arising out of these riots.

12. That 1050 rioters were arrested and 889 including the 1st applicant were charged. 722 remanded, 116 released and 113 released on police bond. 29 were cleared and released. 10 are in police custody pending court hearing.

13. That the 1st Applicant applied for and was released on bail on 20th November 2020 on the following conditions:

'The 1st Applicant being a Presidential candidate is hereby directed by this Court to strictly and hereto comply with the campaign guidelines for Presidential candidates including the standard Operating procedures to mitigate the effect of COvid 19 issued on July 22nd 2020 as well as standard operating procedures issued by the Ministry of Health and I will emphasise the following guidelines:

i) Campaign meetings should not have more than 200 people.

ii) All people attending the campaign meeting should wear their masks properly.

iii) The campaign meeting venue must have facilities for handwashing.

iv) The people attending the campaign meeting must maintain a social distance of at least 2 metres from each other

v) The accused will not have any processions to and from the campaign venue.

vi) Campaign meetings do not go beyond 6:00 pm on each campaign day.'

14. That the 1st Applicant jumped bail on the 18th of December 2020 and committed the following:

a) In Kyegegwa on the 23rd of November 2020, the 1st Applicant held a campaign meeting at Kibuye Primary school playground, witnesses by the DPC Kyegegwa, that had more than 400 people.

b) On 1st Decemeber 2020, the 1st Applicant refused the scheduled venue at Bukeeka C.O.U Primary School and opted for several stop overs in trading centres such as Kitimbwa, Bukoto, Kyampisi, Nazigo, Kangulumira and Kyunga Town. Each stop over attracted over 400 people. This was witnessed by the District Police Commander Kayunga.

c) On 8th December 2020, the 1st Applicant held a campaign meeting with over 2000 people at Boma ground Koboko. It was witnessed by District Police Commander Koboko.

15. that in his inaugural address at his home after his nomination, the 1st Applicant undertook to make Uganda ungovernable like Libya, Iraq and Sudan.

17. In a bid to curtail the 1st Applicants disobedience, the Uganda Police Force while exercising its lawful mandate in dispersing rallies was greatly interfered with.

18. That the National Unity Platform has been training its members and supporters on sustainability of riots in the event that their presidential candidate is not announced winner of the 2021 Uganda Presidential Elections.

19. That Dr Lina Zedriga, Vice Chairperson of NUP for Northern Uganda announced and declared that the party had a Plan B being sustaining riots and Plan C being insurrection and riots to capture State House.

20. That the 1st Applicant has in the past incited riots that have led to the unnecessary loss of lives and destruction of property.

21. The 1st Applicants movements outside of his home have been met with preventive action by the Uganda police Force with the aim of neutralising security threats that have been detected by the security organs.

22. That the restrictions on the 1st Applicant in respect to his movements are in the interest of protection of life and property.

23. It is not true that the 1st Applicant has been denied access to his lawyers, family, doctors or anyone from outside his home.

24. That on the 19th of January two of his lawyers known as Mr Mpuuga and Mr Wameli requested to meet their client and were not denied entry.

25. That the 1st Applicant declined to talk to them insisting that he preferred talking to the whole team of lawyers together.

26. That I have been advised by lawyers in the Attorney General Chambers that the 1st Applicants enjoyment of rights and freedoms are not limitless and is matched by his obligations and duties to abide by the law and not to abuse the freedoms and rights of others.

27. That the application for Habeas Corpus is misconceived and not properly before this Court.

28. That it is in the interest of justice, good conscience and public safety that the orders sought should not be granted. That this affidavit is sworn in opposition to this application.

Submissions

The parties made oral submissions. This are not be reproduced here but shall be referred to in resolving the issues.

Issues

1) Whether the applicants rights to personal liberty was infringed?
2) Whether the applicant is entitled to the remedies sought?

Resolution of Issues

Before delving into the main issue, a question arose regarding the legality of the affidavit in reply, of AIGP Ochom Edward. It is stated that the affidavit is a scanned copy and could not therefore have been sworn before a Commissioner for Oaths. Secondly that the affidavit bears no date which renders it a nullity.

The Respondent argued that this Court rely on the decision of the Supreme Court in **Male Mabirizi vs AG** *S.C.M.A. 7 of 2018* where it was held that held that a defect in the jurat or any irregularity in the form of the affidavit cannot be allowed to vitiate an affidavit in view of Article 126 (2) (e) of **the Constitution** and that a judge has the power to order that an undated affidavit be dated in court or that the affidavit be re-sworn and may penalize the offending party in costs.

In resolving this preliminary point, this Court will start with whether the affidavit is a scan and was not therefore signed before a Commissioner for Oaths. I have examined the signature of the affidavit on the court record. It is in black ink and is clearly not an electronic print. It bears an imprint of the pen pressure left when the deponent signed and for that reason the submission that it is a scan is dismissed.

The second question is the lack of a date on the affidavit. This Court will rely on the decision in **Mabirizi** (supra) where it was held,

Both the applicant and the Solicitor General relied on the case of **Kasaala Growers Co- operative Society vs Kakooza Jonathan & Another, Supreme Court Civil Application No. 19 of 2010** which draws a clear distinction between an affidavit which is defective and one which does not comply with the requirements of the law. The one which is defective is curable and the one which does not comply with the law is incurable. An affidavit which is undated is defective but is one that can be cured.

The holding goes on to state that,

In dealing with a defective affidavit, the case **of Hon. Theodore Ssekikubo & 3 Others vs The Attorney General & 4 Ors Constitutional Application No. 6/2013** followed the case of **Banco Arabe Espanol vs Bank of Uganda Civil Application No. 08 of 1998** where it was held that:

"… a general trend is toward taking a liberal approach in dealing with defective affidavits. This is in line with the Constitutional directive enacted in Article 126 (2) (e) of the Constitution … Rules of procedure should be used as handmaidens of justice but not defeat it. "

Relying on the above ruling I find that the lapse to date the affidavit was a mere defect which should not vitiate the affidavit. It is also true that as this matter is of considerable public interest it would serve the justice to have all the evidence on record before proceeding. The affidavit is admitted. For that reason the respondents will pay the costs for the defects.

The respondents also have a preliminary question of law, whether this application is amenable to the provisions of Section 34 of **the Judicature Act** which provides for the prerogative writ of *Habeas Corpus.* The respondent argued that the applicants were not under detention in any designated Government facility. Secondly that the application for a writ of Habeas Corpus cannot be used to protect or enforce other rights such as fair trial. That the applicant cannot use this application to challenge the restrictions that have been

imposed on him. For those reasons the application was misconceived and improperly before the Court and ought to be dismissed.

The applicant opposed this objection.

This Court finds that questions regarding the nature or extent of the restrictions imposed on the applicants can only be definitively resolved after a consideration of the evidence. For that reason it would take a finding on whether the restrictions stated have a bearing on the liberty of the applicants before resolving this issue. It cannot therefore be handled as a preliminary point of law. This position that has consistently been followed by the Courts as cited in several decisions. In **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696** the Court stated,

> A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

In **NAS Airport Services Ltd vs A.G. of Kenya [1959] EA 53,** it was held that though the object of a preliminary objection is expedition, the point of law must be one which can be decided fairly and squarely, one way or the other, on facts agreed or not in issue on the pleadings, and not one which will not arise if some fact or facts in issue should be proved.

The preliminary point here is therefore dismissed.

1) Whether the applicants rights to personal liberty were infringed?

I turn now to the substantive application.

It would be practical to deal first with the case for the 2nd Applicants. As filed, the Application and affidavit in support state that both applicants are restricted. It is the position of the Respondent averred in AIGP Edward Ochom's affidavit in reply that,

That the movements of the 2nd Applicant, Barbara Kyagulanyi Itungo, and other members of her household have not been restricted in any way.

It was also submitted by Counsel for the Respondents, Mr. Martin Mwambustya, that the 2nd Applicant, Barbara Kygulanyi Itungo, is not under any kind of restriction.

The application states that Barbara Kyagulanyi Itungo (2nd Applicant) is indeed restricted and prays for appropriate orders. The respondents deny any such restriction.

In view of the above this Court hereby issues an Order for the immediate restoration of Barbara Kygulanyi Itungo's full personal liberty.

Turning back to the application the pertinent facts as this Court discerns them are that the 1st Applicant was a Presidential Candidate in the just concluded Presidential Elections.

On the polling date, the 14th of January 2021, the 1st and 2nd Applicants went to cast their vote and thereafter returned to their home in Magere, Kasangati Town Council. That evening their homestead was surrounded by several Soldiers and Police Officers.

It was stated that during the campaign period, the 1st Applicant has been arrested and charged with several offences. A number of conditions were set before he was finally granted bail on the 20th of November 2020. The 1st Applicant flouted a number of these conditions. It was also suspected that the applicant was planning to instigate and fan insurrection.

The respondents have restricted the 1st Applicant's movements confining him to his home. Additionally, Lawyers who have tried to see or meet the Applicants have had to seek the prior consent of officers of the respondents before they are granted access to the applicants.

The respondents state that the 1st Applicant is not in custody but the Police is giving him the necessary protection.

It is in these circumstances that the Applicants have commenced this Application under Section 34 of **the Judicature Act** which stipulates,

The High Court may, at any time, where a person is deprived of his or her personal liberty otherwise than in execution of a lawful sentence (or order) imposed on that person by a competent court, upon complaint being made to the High Court by or on behalf of that person and if it appears by affidavit made in support of the complaint that there is a reasonable ground for the complaint, award under the seal of the court a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody the person deprived of liberty is; and when the return is made, the judge before whom the writ is returnable shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires;

A Writ of Habeas Corpus is also defined by 9th Edition of **Black's Law Dictionary** as,

> A writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal (*habeas corpus ad subjiciendum).*

The procedure for applications of this nature is regulated by **The Judicature (Habeas Corpus) Rules S.I. 13 - 6.** Ordinarily, as stipulated in Rule 3, the application should be filed and presented *ex parte.* This Court however, chose to proceed under Rule 4 which stipulates,

> (1) The court to which an application under rule 3 of these Rules is made ex parte …, or may adjourn the application so that notice of the application may be given to such person as the court may direct.
>
> (2) Where the court directs the service of the notice on any party, unless the court otherwise directs, there shall be at least four clear days between the service of the notice and the date named in it for the hearing of the application.

It was under these provisions that this Court directed the Respondents be served and the time for service be abridged for the hearing to proceed as it did.

That said, both sides have relied on the **Jovia Karuhanga vs The Inspector General of Police M.C. 86 of 2013** for a definition of the parameters of the writ of *Habeas Corpus.* It was stated by the Court that,

The purpose for a writ of habeas corpus *ad subjiciendum* is to review the legality of the applicant's arrest, imprisonment and detention and challenge the authority of the prison or jail warden to continue holding the applicant. The application is used when a person is held without charges or is denied due process. It ensures that a prisoner can be released from unlawful detention i.e. detention lacking sufficient cause or evidence or detention incommunicado. The detention must therefore be forbidden by the law. An application of this nature does not necessarily protect other rights such as entitlement to a fair trial.

It was held in **Constitutional Reference 7 of 1998; In the matter of Sheik Abdul Karim Sentamu & another Constitutional Reference 7 of 1998** that:

"The writ is considered to provide an assurance that personal freedom will always be protected".

In the instant case the Applicant is not in a gazetted detention centre but his own home.

The evidence here clearly shows that the applicant has been confined to his house since the 14th of January 2021. The respondents state that the restrictions are not custody but are to give the 1st Applicant necessary protection.

By their own admission, the respondents concede that the applicant's movements have been restrained by confining him to his home. Does that amount to restricting his liberty?

Liberty is defined by **the Black Law Dictionary** *8th Edition* as,

Freedom from arbitrary or undue external restraint, esp. by a government

Without dwelling on this legal definition, a lack of unrestrained movement or freedom to choose would fit a definition of lack of liberty.

Considering the above I find that the respondents have indeed had the personal liberty of the applicant curtailed. This court has the mandate under Section 34 of **the Judicature Act** to review or inquire into the legality of his continued confinement to his home as it amounts to a deprivation of personal liberty.

This Court is therefore acting well within its mandate to make this inquiry which answers the preliminary point of law set up at the beginning.

The justification given by the respondent is that because of security threats that have been detected by security the applicant's movement outside his home have been met with preventive action to protect life and property. That this action is premised on Section 24 of **the Police Act Cap 303** which provides that,

> (1) A police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person—
>
> (a) from causing physical injury to himself or herself or to any other person;
>
> (b) from suffering physical injury;
>
> (c) from causing loss or damage to property;
>
> (d) from committing an offence against public decency in a public place;
>
> (e) from causing unlawful obstruction on a highway;
>
> (f) from inflicting harm or undue suffering to a child or other vulnerable person, may arrest and detain that person.

The provisions of section 24 as stated here envisage the action of a Police Officer arresting a person whom the police officer believes is about to commit any of the acts listed in the Section. Under Section 14 of **the Criminal procedure Code Act** a Police Officer who makes any kind of arrest must without unnecessary delay take the arrested person either before a Magistrate or an Officer in Charge of a Police Station. Under Section 25 (1) of **the Police Act**, a Police Officer who arrests any person without warrant shall produce that person before a Magistrate within 48 hours.

It cannot properly be said that Section 24 would apply here as stated the Respondent in their submissions. Firstly the 3rd respondent states the Applicant is not under arrest. Secondly if he was, then he would have immediately been dispatched to a Police Station or produced before a Magistrate as required by the law. It is therefore true that if indeed

this was a preventive arrest the applicant would have been formerly arrested and detained at a police station or produced before a magistrate.

The more pertinent questions are the allegations that the National Unity Platform is training members to sustain riots and insurrection; and that the Applicant has in the past incited riots that have led to the unnecessary loss of life; that he promised to make Uganda ungovernable like Libya, Iraq and Sudan; that he disregarded COVID restrictions; that he flouted the conditions set for his bail.

The 3rd respondent stated the 1st Applicants movements outside of his home have been met with preventative action by the Uganda Police with the aim of neutralising the security threats.

The respondent submitted that the actions of the Applicant are intended to destabilise the peace in the Country. That the respondents are charged with ensuring the public safety and general right to life of Ugandans. That under Article 43 of the Constitution, in the enjoyment of rights and freedoms no person shall prejudice the fundamental rights of other or the public interest.

Mr Medard Segona for The Applicant submitted that these allegations constitute suspicion of crime which should be handled according to the due process of law. That they cannot form the justification for holding the applicant incommunicado.

This Court agrees that it is true these are all serious allegations of grave offences. In the circumstances, since the 3rd respondent states that it has the evidence, it would be proper to follow the due process of the law with regard with all the allegations made against the applicant. The options are to produce the applicant in Court to face trial or to lift the restrictions.

Due process has been defined as,

> The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a

fair hearing before a tribunal with the power to decide the case (see **Blacks Law Dictionary** 8th Edition).

Article 23 (1) of **The Constitution of the Republic of Uganda** stipulates that

> No person shall be deprived of personal liberty except in any of the following cases—
>
> (a) …
>
> (b) …
>
> (c) for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda;
>
> (d) for the purpose of preventing the spread of an infectious or contagious disease;

Article 23 (2) stipulates,

> A person arrested, restricted or detained shall be kept in a place authorised by law.

Article 23 (4) states

> A person arrested or detained—
>
> (a) …
>
> (b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

Article 23 (5) of the Constitution provides

> Where a person is restricted or detained—
>
> (a) …

(b) the next-of-kin, lawyer and personal doctor of that person shall be allowed reasonable access to that person; and

(c) that person shall be allowed access to medical treatment including, at the request and at the cost of that person, access to private medical treatment.

Article 23 (9) is,

The right to an order of habeas corpus shall be inviolable and shall not be suspended.

As the applicant has been held from the 14th of January on the allegations stated in AIGP Edward Ochom's affidavit, then the specific fundamental rights in Article 23 of the Constitution, reproduced above would apply with full force in this case. This way the public interest, including the greater well-being of society is properly balanced against the individual rights of the Applicant. If indeed he is a danger to society the due process of the law must be allowed to take its course.

In the Supreme Court in **Charles Onyango Obbo vs Attorney General Constitutional Appeal No. 2 of 2002** held,

> … protection of the guaranteed rights is a primary objective of the Constitution. Limiting their enjoyment is an exception to their protection, and is therefore a secondary objective. Although the Constitution provides for both, it is obvious that the primary objective must be dominant. It can be overridden only in the exceptional circumstances that give rise to that secondary objective. In that eventuality, only minimal impairment of enjoyment of the right, strictly warranted by the exceptional circumstance is permissible. The exceptional circumstances set out in clause (1) of Article 43 are the prejudice or violation of protected rights of others and prejudice or breach of social values categorised as public interest.

In **Hon. Sam Kuteesa V Attorney General Constitutional Petition No.46 Of 2011** it was held that,

> The subject of the preservation of personal liberty is so crucial in the Constitution that any derogation from it, where it has to be done as a matter of unavoidable

necessity, the Constitution ensures that such derogation is just temporary and not indefinite. The Constitution has a mechanism that enables the enjoyment of the right that has been temporarily interrupted to be reclaimed through the right to the order of habeas corpus which is inviolable and cannot be suspended, as well as through the right to apply for release on bail.

Section 34 (a) of **the Judicature Act** stipulates in part,

> … the judge before whom the writ is returnable shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires …

Having considered all the circumstances of this case, it is my finding that the continued indefinite restriction and confinement of the Applicant, to his home, is unlawful. In the result, it has been established that his right to personal liberty has been infringed.

The 1st issue is answered in the affirmative.

2) Whether the applicant is entitled to the remedies sought?

The applicant had prayed for a Writ of Habeas Corpus. This Court will proceed under Section 34 of **the Judicature Act,** as cited above, and Rule 6 of **the Judicature (Habeas Corpus) Rules** which stipulates,

> Without prejudice to rule 4(1) of these Rules, the court hearing an application for a writ of habeas corpus *ad subjiciendum* may, in its discretion, order that the person restrained be released, and that order shall be a sufficient warrant to the officer in charge of a prison, police station, public officer or other person for the release of the person under restraint

Having found, as I do, that the restrictions imposed on the applicant are unlawful, it is hereby ordered that they are lifted. Consequently, an order for the restoration of the personal liberty of the applicant hereby issues.

Secondly, the Respondent made a prayer for Applicant to comply with the Standard Operating Procedures with regard to COVID. This Court takes judicial notice of the virulent nature COVID 19 and the Public Health necessity to comply with the SOPS.

It is therefore hereby directed that the Applicant shall comply with the SOPS.

The applicant is granted costs of this application.

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Michael Elubu

Judge

23.1.2021