

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**INTERNATIONAL CRIMES DIVISION**  
**HCT-00-ICD-SC-0009-2023**

**UGANDA** .....  
**PROSECUTOR**

**VERSUS**

**A.1 NANSUBUGA NULIAT alias MAAMA BUMALI alias HAJJATI  
MUJJABILINA alias BITAMBIKA**

**A.2 MUWONGE FAISAL**

**A.3 NABUKENYA JALIA** .....  
**ACCUSED**

**BEFORE: HON JUSTICE SUSAN OKALANY**  
**CONFIRMATION OF CHARGES RULING**

**BACKGROUND**

[1]Nansubuga Nuliat alias Maama Bumali alias Hajjati Mujjabilina alias Bitambika (A1), Muwonge Faisal (A2) and Nabukenya Jalia (A3) are the accused persons indicted by the Director of Public Prosecutions for the following offences: ***Belonging to a Terrorist Organisation contrary to Section 11(1) (a) of Anti-Terrorism Act, 2002*** brought against all three accused, two counts of ***Aiding and Abetting Terrorism contrary to Section 8 of the Anti-Terrorism Act, 2002*** brought against A1 and ***Aiding and Abetting Terrorism contrary to Section 8 of the Anti-Terrorism Act, 2002*** brought against A1 and A3.

[2]It is alleged that the accused persons and others still at large between 2014 and 2021 belonged or professed to belong to a terrorist organisation to wit the Allied Democratic Forces (ADF).

On the second and third counts, it is alleged that A1 on 12<sup>th</sup> October 2021 and 20<sup>th</sup> October 2021 aided Bukenya Baorudin alias Badru alias Abdalla (hereinafter referred to as Bukenya) and Mutumba Sharif (hereinafter referred to as Mutumba) to convey information, communicate, and to convey and send mobile money to Kayongo Abbas (hereinafter referred to as Kayongo) knowing or having reason to believe that such support will be applied or used in connection with preparation or commission or instigation of acts of terrorism. In the fourth count, it is alleged that A1 and A3 in October 2021 in Mukono and Kampala Districts, aided and rendered support to Bukenya by keeping for him clothes for the ADF, knowing or having reason to believe that such support will be applied or used in connection with preparation for or commission or instigation of acts of terrorism.

[3]The prosecution in its summary of the case as well as the evidence disclosed to the accused persons and this court during the pre-trial hearing is that the accused persons between 2014 and 2021 belonged to ADF. It is alleged that during the aforementioned period, A1 was coordinating with and facilitating terrorist activities with known ADF members, to wit: Mutumba in the DRC and Bukenya in Uganda.

[4]It is further alleged that on 12<sup>th</sup> October 2021 A1 in collaboration with Bukenya went to the home of Kayongo in Kibibi Trading Centre in Butambala District to connect him to Mutumba who was in the DRC, and acted as a conduit between them, conveying information for the facilitation of ADF activities. In October 2021, A1 sent money using a mobile phone to Kayongo from Mutumba to facilitate terror activities.

A1 also received a polythene bag containing a military uniform from Bukenya which she gave to her neighbour to hide.

[5]A1 was arrested at her home on 28<sup>th</sup> October 2021 and was found with Bukenya's identity card and passport, two smart phones bearing telephone numbers 0703626555 and 0774450021, a letter addressed to her from Bukenya, Western Union transaction receipts in her names, among other items. She led the police to her neighbour's home where the military uniform given to her by Bukenya was recovered.

[6]Police investigations revealed that A3 was communicating with known ADF members including Bukenya and A1. When A3 was arrested, the prosecution alleges that her home was searched and two bags containing clothes with name tags of beneficiaries who were ADF members were recovered.

[7]The prosecution further alleges that police investigations revealed that A2 was also communicating with known ADF members such as Bukenya and the co-accused in this case. A2 was arrested in October 2021 and a mobile phone and sim card were recovered from him.

[8]Bukenya's home in Kibibi "A" LC1 Kiteza Ward, Kawolo in Lugazi was searched and the following items were found: five exercise books that contained handwritten notes about military training, handling and movement of arms and ammunition, information concerning security officers and agencies in Uganda and a counter book containing handwritten notes on military and police training, as well as a book containing radicalization notes, among other items.

[9]All the accused persons were medically examined on Police Form 24 and were found to be adults of sound mind.

### **LIST OF EXHIBITS**

[10] The following documents were identified as those that the prosecution intends to adduce in evidence:

1. PEID1 is a witness statement dated 31<sup>st</sup> October 2021 made by Nassimbwa Aisha, the daughter to Kayongo, stating that a one Mutumba sent 300,000 UGX to Kayongo, which she withdrew on his behalf.
2. PEID2 is a witness statement dated 28<sup>th</sup> October 2023 and made by Lunyolo Kamyati (A1's neighbour), which is a narration about how A1 asked her to keep a polythene bag and how it was recovered from her house.
3. PEID3 is a witness statement dated 31<sup>st</sup> October 2023, made by Aisha Namato, the mother of Nassimbwa Aisha and wife to Kayongo, which is a narration about how she got to know A1 and how her husband received 300,000 UGX from one Mutumba, an alleged ADF member.
4. PEID4 is a witness statement made on 28<sup>th</sup> October 2021 by Nalugemwa Shakira, a niece of Bukenya, which is a narration of the latter's plans to take his children and her for military training for purposes of terrorism.
5. PEID5 is a witness statement made on 2<sup>nd</sup> November 2021 by Nviiri Musa, son to Kayongo, narrating how he led the police to the place where his father was arrested.
6. PEID6 is a witness statement made on 31<sup>st</sup> October 2021 by Nabukenya Nazifa, a daughter of Bukenya and granddaughter of A1 on how her father took five of her brothers to work abroad and wanted to take her also, but she declined to go.
7. PEID7, a witness statement made on 1<sup>st</sup> November 2021 by Mbaseege Hindu, stating how the police arrested him to help them with the arrest of his sister, Sumaya Kayima.
8. PEID8 is a witness statement made on 22<sup>nd</sup> November

2021 by Nabukenya Amina, the mother of the maker of witness statement PEID 4, narrating how she knows Bukenya and A1.

9. PEID9 is a witness statement made on 27<sup>th</sup> October 2021 by Kayongo narrating how he got to know A1 and received 300,000 UGX from Mutumba.
10. PEID10, a witness statement made on 5<sup>th</sup> January, 2022, by Namusisi Teo, the LC Chairperson of Kibibi, the village where A1 was residing before her arrest, stating how she witnessed the search of A1's home.
11. PEID 11 is a witness statement made on 16<sup>th</sup> January 2022 by Mazinga Deo, the defence secretary of the area where A3's residence was located, narrating the events surrounding the search of A3's residence.
12. PEID12 is a witness statement made on 16<sup>th</sup> December 2021 by D/AIP Muhanya Ronald the police officer who arrested A1, stating how he together with other officers, went to the former residence of A1 and found A2 and A3 had already been arrested and how A2 led him to A1's house where she was arrested and items recovered from her house.
13. PEID13 is a witness statement made on 17<sup>th</sup> November 2021 by D/AIP Nawoza Elizabeth narrating how she recorded A3's charge and caution statement.
14. PEID14 is a witness statement made by D/IP Nakku Joy Mary narrating how she recorded A1's charge and caution statement.
15. PEID15 is a witness statement made on 13<sup>th</sup> December 2021 by Kizire Evaline, a scene of crimes officer in Lugazi police describing how the search carried out at Bukenya's home was conducted.

16. PEID16 is a witness statement dated 28<sup>th</sup> August 2023, made by D/IP Odyek Benedict recounting how he got involved with this case, particularly recording of the defence secretary's statement.
17. PEID17 is A2's plain statement made on 31<sup>st</sup> October 2021 wherein he narrates how he was arrested and what he knows about Bukenya.
18. PEID18 is A2's additional plain statement made on 2<sup>nd</sup> December 2021 which is a narration of when he last saw Bukenya and how A.1 asked him to remove his sim card from his phone to avoid trouble with police.
19. PEID19 is A2's charge and caution statement recorded in Luganda dated 23<sup>rd</sup> December 2021.
20. PEID20 is the English translation of A2's charge and caution statement stating his family history and how he was arrested.
21. PEID21 is A3's plain statement dated 30<sup>th</sup> October 2021, recounting among other things, how she received the sack of clothes that was found by the police at her home.
22. PEID22 is A3's charge and caution statement dated 17<sup>th</sup> November 2021 restating what she said in her plain statement.
23. PEID23 is A1's plain statement dated 28<sup>th</sup> October 2021, describing her relationship with Bukenya and how she was arrested.
24. PEID24 is A1's charge and caution statement, recorded in Luganda dated 16<sup>th</sup> November, 2021.
25. PEID25 is the English translation of A1's charge and caution statement describing her dealings with Bukenya and how she was arrested.

26. PEID26 is a search certificate of Bukenya's home, showing the items recovered from the said home, which include an A4 ruled paper book containing radicalistic notes, exercise books containing hand written notes about military training, the handling and movement of arms and ammunition as well as information concerning security officers and agencies in Uganda.
27. PEID27 is a call data record from Airtel Uganda in respect of telephone no. 0700828579, registered in the names of Kayongo.
28. PEID28 are mobile money data sheets compiled by Airtel Uganda for telephone No. 0700828579 registered in the names of Kayongo.
29. PEID29 is a call data sheet showing calls received and made from telephone No. 0700166380, which is alleged to be A3's phone.
30. PEID30, dated 15<sup>th</sup> December 2011, is a mobile money statement and call data analysis of Kayongo's telephone number stating that Kayongo received 300,000 UGX, which he withdrew.
31. PEID31 is a search certificate of A1's home dated 28<sup>th</sup> October 2021. It lists the items recovered from the said home, which include: Bukenya's East Africa Passport and national identity card, a letter addressed to A1 by Bukenya, western union money transfers receipts in which A1 was the receiver of funds.
32. PEID32 is a search certificate in respect of Lunyolo Kamiyat's home, dated 28<sup>th</sup> October 2021, showing that a military back pack containing a trouser described as a semi army green trouser similar to the UPDF uniform was recovered from the house.

33. PEID33 are four photographs of items recovered from the residence of A1 marked A-D.
34. PEID34 is a photograph taken on 28<sup>th</sup> October 2021 of the area chairperson Kikubankima village with A1, while signing the certificate of search of A1's premises.
35. PEID35 is another photo taken on 28<sup>th</sup> October 2021 of A1 with the area chairperson while signing the certificate of search of A1's premises.
36. PEID36 is a photo taken on 28<sup>th</sup> October 2021 of three items: a bag, a trouser described as semi-army green and a plastic white and blue bag.
37. PEID37 is a photo, taken on 28<sup>th</sup> October 2021, of the bedroom of A1's neighbour where the bag containing a "semi-army green" trouser was found.
38. PEID38 is a photo taken on 28<sup>th</sup> October 2021 of the national identity card and passport of Bukenya.
39. PEID39 is a photo taken on 28<sup>th</sup> October 2021 of the general view of the building containing the residence of A1 at Kikubankiima Mukono.
40. PEID40 is a photo taken on 28<sup>th</sup> October 2021 of the middle view of the residence of A1.
41. PEID41 is a photo taken on 28<sup>th</sup> October 2021 during the search exercise of A1's the bedroom.
42. PEID42 are photos of the sack and bag found at A3's home.
43. PEID43 is a photo of a sack and clothes tied in a 'lesu' cloth recovered from A3's home.
44. PEID44 are notes on pages of exercise books recovered from A3's home.

45. PEID45 is a crime scene search report dated 16<sup>th</sup> December 2021 concerning the conduct of the search of A1's home.
46. PEID46 is an exhibit record of items recovered from A1's home dated 28<sup>th</sup> October 2021.
47. PEID47 is an exhibit record dated 01<sup>st</sup> November 2021 of the items recovered from Bukenya's home.
48. PEID48 is an exhibit record dated 30<sup>th</sup> October 2021 of the items recovered from A3's home.
49. PEID49 is the medical examination report (PF 24) of A1, dated 20<sup>th</sup> November 2021, which shows that the accused was of a normal mental state at the time of her examination and had no injuries on her body.
50. PEID50 is the medical examination report (PF 24) of A3, dated 20<sup>th</sup> November 2021, which shows that she was mentally normal and had no injuries on her body.
51. PEID 51 is a medical examination report (PF 24) of A2 dated 20<sup>th</sup> November 2021, which shows that he was of a normal mental state with no bruises.
52. PEID52 is a court order issued to the Head Cyber Crime Unit to inspect and extract information from DVDs, specified mobile phones and sim cards connected to this case dated 16/11/2021.
53. PEID53 is an affidavit in respect of an application for a court order made by D/ASP Lusambu Davis to the Makindye Chief Magistrate's Court, for the inspection, extraction, analysis and preparation of a report in relation to exhibits of DVDs, specified mobile phones and sim cards related to this case, dated 16/11/2021.
54. PEID54 is a court order issued to the Head Cyber Crime Unit to allow D/C Twongo Richard to inspect, analyse and

prepare a report in relation to Exhibit DVR Model UK Plus dated 9/11/2021.

55. PEID55 is an affidavit in respect of application for a court order made by D/C Twongo Richard to the Makindye Chief Magistrate's Court, for the inspection, analysis and preparation of a report in relation to a specified mobile phone dated 9/11/2021.

56. PEID56 is a written request for imaging/extraction and analysis of DVDs, specified mobile phones and sim cards dated 23/11/2021, from D/ACP Olugu Francis, the Ag. Deputy Director CID/SID to the Director Forensic Services, Uganda Police Force.

57. PEID57 is a written request for imaging extraction and analysis of specified mobile phones and sim cards dated 4/11/2021, from D/ACP Olugu Francis, the Ag. Deputy Director CID/SID to the Director Forensic Services, Uganda Police Force.

## **REPRESENTATION**

[11] Ms. Jacquelyn Okui was prosecution counsel, while Mr. Geoffrey Turyamusiima represented the accused on state brief.

## **BURDEN AND STANDARD OF PROOF**

[12] It is trite law that the prosecution bears the burden to prove all the elements of the offence charged, except in specific offences, which are not charged in this case. As I have already opined in my previous decisions, particularly in ***Uganda Vs Miria Rwigambwa HCT-00-ICD-SC-0006-2021***, and ***Uganda Vs Nsungwa Rose Karamagi HCT-00-ICD-SC-0007-2021***, the standard of proof in a pre-trial hearing is not stipulated by the ICD Rules or in the High Court

***(International Crimes Division) Practice Directions, 2011***, which are the rules providing for trial procedure in the ICD and which should have provided for the standard in pre-trial hearings.

[13] I have decided in those cases that the court would in such circumstances apply the ICC standard, which is the standard of substantial grounds to believe that the accused committed the crimes charged, as is provided for in Article 61(7) of the Rome Statute, Uganda having domesticated the Rome Statute and established this court as a complementarity court to the ICC. Since there is a lacuna in our laws and Uganda is bound by all its obligations under the Rome Statute the application of the relevant provisions of the ICC Rules of Procedure and Evidence *mutatis mutandis*, to fill the said procedural gap in the laws is within the powers of this court in the interests of justice. In my view therefore, the application of the Rome Statute standard does not thus prejudice the rights of the accused if the charges are confirmed, or the prosecution's case if the charges are dismissed. The accused still has the chance to present their respective cases at the trial, if the trial court finds that they have *prima facie* cases to answer. As for the prosecution, if the charges are dismissed for failing to meet the pre-trial standard of proof, the DPP still has the chance to find better evidence considering that a dismissal at this stage is not an acquittal. Her office may present the case again to this court for a fresh pre-trial hearing on newly obtained evidence.

[14] The standard of substantial grounds to believe is lower than the standard of a *prima facie* case, used by our courts to

determine whether an accused person should offer a defence to an indictment or not, at the closure of the prosecution's case.

[15] The concept of "substantial grounds to believe", was defined in the judgement of the European Court of Human Rights (ECHR) of 7th July 1987 in ***Soering v. United Kingdom, Application No. 14038/88*** (cited in the case of ***The Prosecutor Vs Thomas Lubanga Dyilo, ICC-01/04-01/06-803-tEN 14-05-2007 1/157 SL PT***) as meaning that "substantial grounds have been shown for believing". The joint dissenting opinion appended to the judgement in ***Mamatkulov and Askarov v. Turkey***, of 4<sup>th</sup> February 2005, (***Applications Nos. 46827/99 and 46951/99***) by Judges Bratza, Bonello and Hedigan was quoted, in which "substantial grounds to believe" were defined as "strong grounds for believing".

[16] The ICC Pre-trial Chamber II in its decision of 9<sup>th</sup> December 2021 on the confirmation of charges against ***Mahamat Said Abdel Kani, ICC-01/14-01/21***, under paragraph 38 held that the evidentiary standard applicable at this stage of the proceedings requires the existence of substantial grounds to believe that the person committed the crimes charged. This is a lower standard than that required at trial, and is met as soon as the prosecution offers concrete and tangible proof demonstrating a clear line of reasoning underpinning the specific allegations. [Emphasis mine]

[17] Furthermore, while evaluating evidence presented before it, the role of the court was stated in the case of ***Mahamat Said Abdel Kani***, supra, under paragraph 40, as follows: "to

avoid any pre-determination of issues or pre-adjudication regarding the probative value of evidence, the decision must only address what the Chamber considers necessary and sufficient for its determination on the charges – namely, whether there is sufficient evidence to establish substantial grounds to believe that the accused committed the crimes charged and therefore that the case brought by the Prosecution warrants a trial.”

[18] The Pre-trial chamber II further opined that the specific and limited function of the confirmation proceedings also calls for a style and structure of the decision under *Article 61(7)* of the Statute, which is as simple and straightforward as possible; this also with a view to meaningfully implement the principle that the confirmation hearing is not, nor should be seen or become, a ‘mini-trial’ or ‘a trial before the trial.’ (See paragraph 42 of the Mahamat Said Abdel Kani decision).

[19] Consequently, I must determine whether the evidence disclosed by the prosecution in this case is sufficiently strong to move me to confirm the charges and present the accused to the Trial Court for the hearing of the said evidence. Clearly, from these authorities, the standard of **substantial grounds to believe** is a lesser one than the standard of **prima facie case** that is required by courts to put an accused person to his/her defence.

#### **FINAL SUBMISSIONS ON CONFIRMATION OF CHARGES**

[20] On 25<sup>th</sup> October 2023, the court instructed Prosecution to file its submissions in support of its case by 15<sup>th</sup> November 2023, the defence was to reply by 6<sup>th</sup> December 2023 and any

rejoinder by state counsel was to be filed by 13<sup>th</sup> December, 2023. None of the parties complied with these instructions and neither did they explain why the orders of this court were ignored by them. Regardless of that conduct by learned counsel, this court still has a duty to pronounce itself on the charges.

## **DETERMINATION**

### ***COUNT 1: Belonging to a Terrorist Organisation contrary to Section 11(1)(a) of the Anti-Terrorism Act, 2002.***

[21] This count is preferred against all the accused persons.

[22] ***Section 11(1)(a) of the Anti-Terrorism Act, 2002*** provides that a person who belongs or professes to belong to a terrorist organisation commits an offence.

[23] Under this count, the case of ***Uganda v Hussein Hassan Agade & 12 Ors (Criminal Session 1 of 2010) [2016] UGHCCRD 5*** lists the elements that the prosecution must prove as follows:

1. Existence of a terrorist organization;
2. The terrorist organization must be listed in the Act.
3. The Accused person must belong, or profess to belong, to a terrorist organization listed in the 2nd Schedule to the Act.

[24] A terrorist organisation has been defined under ***Section 2 of the Anti-Terrorism Act, 2002*** as an organisation specified in the second schedule of the Act. According to the charges brought against the accused by the prosecution, the accused allegedly belong or profess to belong to the ADF. ADF is a terrorist organisation listed third in the 2<sup>nd</sup> schedule to the

Act. By virtue of the fact that it is listed in the schedule of the **Anti-Terrorism Act, 2002** prima facie proves the element of its existence. The first two elements of the offence have been established to the required standard.

[25] Moving to the third element of belonging or professing to belong to a terrorist organisation. The word 'belong' is not defined in the Act. However, in the case of **Hon. Theodore Ssekikubo and others v. AG and 4 others Constitutional Court Appeal No. 1 of 2015**, the court held that where the words of a statute are plain, clear and unambiguous, those words must be interpreted using the literal rule of statutory interpretation. The words therefore should be assigned their ordinary meaning. According to the Merriam-Webster Dictionary, one of the meanings of the word to belong is to be a member of club, organisation or set.

[26] The evidence adduced to prove this element is the witness statement of Nalugemwa Shakira (PEID4) in which she states that she overheard Bukenya telling A1 that he was planning to take all his family members to be trained in military tactics so that they could return to terrorise Uganda. The witness further states that A1 was reluctant to let her go which fact is also corroborated by the witness statement of Nabukenya Nazifa (PEID6). The said evidence does not show whether Bukenya intended to train them under the ADF terrorist organisation. Upon evaluating the evidence brought by the prosecution, I do not find sufficient evidence to establish substantial grounds to believe that the accused persons belong to or profess to belong to the ADF.

[27] Furthermore, the prosecution's evidence is that the accused

persons were talking to known ADF members, to wit: Bukenya and Mutumba. There is however no evidence adduced to show that the persons that the accused are alleged to have been communicating with were or are ADF members. Even then, the communication between A1, A2 and Bukenya is explainable on the account that A1 is the mother of Bukenya and has the custody of the latter's children, whereas A2 is her son and brother to Bukenya.

[28] By virtue of this discourse, due to the insufficient evidence adduced by the prosecution, I decline to confirm this charge against all the accused.

***COUNTS 2 & 3: Aiding and Abetting Terrorism contrary to Section 8 the Anti-Terrorism Act, 2002.***

[29] I have discussed counts 2 and 3 together due to the interrelatedness of the particulars of the offence under these counts, and the fact that they have been charged against the same person, A1.

[30] ***Section 8 of the Anti-Terrorism Act, 2002*** provides that any person who aids or abets or finances or harbours, or renders support to any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism, commits an offence and shall, on conviction, be liable to suffer death.

[31] Under Count 2, it is alleged that A1 aided Bukenya to convey information and communication to Kayongo, knowing or having reason to believe that such support will be applied or used in connection with preparation or commission or

instigation of acts of terrorism. This count is based on the fact that A1 informed Kayongo that his son Mutumba was still alive, based on information that she had received from her own son Bukenya.

[32] Under Count 3, the prosecution alleges that A1 aided Mutumba, a member of the ADF, to convey or send mobile money to Kayongo knowing or having reason to believe that that money would be applied or used in connection with preparation or commission or instigation of acts of terrorism.

[33] Kayongo's wife Aisha Namato in PEID3 states that A1 went to their home and played to them recorded WhatsApp messages from their son Mutumba. A1 gave her and Kayongo a telephone number which she claimed was of their son. They subsequently communicated with their son Mutumba on a call, although they were not sure that he was the one speaking with them, given that he appeared not to be fluent in Luganda and also spoke in Kiswahili. After one week, 300,000/- was deposited on her husband's Airtel phone number. A1 called her husband to confirm whether he had received the said money from their son Mutumba. Two weeks later, her husband was arrested for communicating with A1.

[34] On his part, Kayongo in his statement PEID9 states that A1, his former neighbour visited his home on or about 12/10/2021 and informed him that his son Mutumba whom he had not seen for 30 years was alive. He shared the good news with his family members. He informed A1 that he was planning to go to Mulago Hospital for eye treatment. Five days later, he received 300,000/- on his Airtel phone number. A1 subsequently called him to confirm if he had received that money and informed him that the said money had been sent

to him by Mutumba. He withdrew it and used it for his medical treatment. PEID28 is a mobile money data sheet which confirms that Kayongo received the said amount of money on his Airtel phone number. PEID 30, a mobile money data and call analysis report states that the phone number that sent the money is registered in the names of an agent, Sisile and Daughters Business Soln.

[35] A1 in her defence in regard to the two counts, in PEID23 stated inter alia that her son Bukenya whom she knew to be working as a detective with the government of Uganda telephoned her, asking her to trace for the parents of Mutumba who had disappeared. He sent her 80,000/- to use for transport to Butambala District where he said she would find Mutumba's parents. He sent her a Whatsapp voice note in which Mutumba was speaking and confirming the fact that he was still alive. He also sent her a photograph of Mutumba, his two wives and children. She travelled to the home of Kayongo and delivered the news that their son was alive. Mutumba later called her expressing his excitement for her linking him with his family. When Kayongo later called her asking if Mutumba would send him some money, she asked him to be patient and informed him that Mutumba had called her excited about the fact that she had linked him to his family. She however did not follow up to find out if Kayongo received the money.

[36] I have looked at and analysed the call data and mobile money data records of Kayongo's phone number (PEID27 & PEID28 respectively). The records reflect that he received 300,000 UGX at 08:40 am and withdrew it at 13:22:09 hrs. Between the time that he received the money and withdrew it, he

received no call. The only call he received that day was from 0752637441 at 13:22:47 hrs, a number which from the evidence available on the file, is not A1's number. The call data records do not show that A1 called Kayongo that day. I am therefore constrained to believe her account of the events.

[37] I find that the prosecution has not adduced enough evidence to establish substantial grounds to believe that A1 conveyed or sent mobile money to Kayongo. I also find that A1's conveying to Kayongo the information that his son, Mutumba was still alive, based on information given to her by Bukenya was not an act of aiding or abetting terrorism on its own. There should have been other evidence showing that Mutumba was engaged in terrorist activities or was a member of the ADF. In any case, whereas the prosecution alleges that both Bukenya and Mutumba are known ADF members, there is no evidence adduced to this court to prove this fact as I have already found in respect of Count 1 above. By virtue of this finding, I decline to confirm both Counts 2 and 3 against A1.

***COUNT 4: Aiding and Abetting Terrorism contrary to Section 8 the Anti-Terrorism Act, 2002***

[38] Under this count, it is alleged that A1 and A3 aided and rendered support to Bukenya Badru by keeping clothes for ADF knowing or having reason to believe that such support will be applied or used in connection with preparation or commission or instigation of acts of terrorism.

[39] In regards to A3, her plain police statement (PEID24) is to the effect that Bukenya on giving her the clothes in issue

informed her that they were for Muslims. The relevant exhibit record PEID48, shows the items recovered from A3's home as: children's, men's and women's clothes, curtains, bedsheets, mosquito nets and instructions on how to distribute the same. Having examined that evidence adduced by the prosecution in totality, especially in regard to its insufficiency in establishing that Bukenya and Mutumba are ADF members and that the accused persons were collaborating with ADF members, I do not find sufficient evidence to establish substantial grounds to believe or show that A3 aided Bukenya by keeping clothing items for onward transmission to the ADF.

[40] It is worth noting that over 159 calls were recorded to have been made between A1 and A3 using their phone numbers. A3 states in her plain statement that she was once a lover of Bukenya, the son of A1. That fact alone does not explain why A1 and A3 were communicating frequently. Unfortunately, the adduced evidence of the prosecution does not explain the said communication between A1 and A3.

[41] Concerning A1, the maker of PEID4 states that she overheard Bukenya telling A1 that he wanted to take all his family members for military training and that upon return they would terrorise Uganda. A1 in her plain statement PEID23 states that her son Bukenya had once asked her to send his son Saifula Bukenya abroad. She agreed, gave him 2,000/= and sent him to Mukono stage as requested. Since then she had never heard from the boy. He also wanted her to send him his daughter Nazifa Nabukenya but she declined. She believes that Bukenya had been taking people, including his children to the bush to fight government. With that knowledge, A1 received a bag containing what is described in

the prosecution exhibits as a semi army green uniform which she kept. A1 further stated in her plain statement that she only got rid of that bag the day before she was arrested, after Bukenya called and instructed her to remove all items that could be associated with terrorism. She complied by taking the military bag to her neighbour Lunyolo Kamiat.

[42] These facts show that A1 aided Bukenya Badru to keep clothing for him knowing or having reason to believe that he was engaged in subversive activities against the government of Uganda and that such items would be used in connection with illegal acts. This fact notwithstanding, the evidence adduced by the prosecution still falls short of establishing which terrorism outfit the said Bukenya kept with A1. I have already opined above that the evidence does not show that the said Bukenya was working with or for the ADF, and considering the fact that the terrorist organization named in Count 4 is the ADF, the said charge remains unproved for the purpose of confirming it. The particulars of the charge read as follows: A1 in the month of October 2021 in Mukono District and at Nalukolongo in Kampala District aided and rendered support to Bukenya by keeping clothes meant for onward transfer to the ADF, knowing or having reason to believe that such support will be applied or used for or in connection with preparation o commission or instigation of acts of terrorism.

[43] In the result, by virtue of the above discourse, I decline to confirm the charge brought against A1.

[44] Before I take leave of this matter, I wish to note that I could not rely on the charge and caution statements of the accused, due to the fact that when recording those statements, they were cautioned and charged under Section 7(2)(a) of the Anti-

Terrorism Act, 2002, which provides as follows: “a person commits an act of terrorism who, for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out an act of intentional and unlawful manufacture, delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss.”

[45] The accused persons were not cautioned and charged with the current charges. In any case, the said statements as were recorded are not confessions as the accused denied the charges.

[46] Therefore, all counts in the indictment are dismissed for want of sufficient evidence to establish substantial grounds to believe that the accused committed the crimes charged. The prosecution should find better evidence and then produce the accused for fresh pre-trial proceedings. I so order.

Susan Okalany

**JUDGE**

**22<sup>nd</sup> January 2023**

