

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CRIMINAL DIVISION]

SESSION CASE NO. 335 OF 2025

UGANDA ===== PROSECUTION

VERSUS

A1 COL. (RTD) DR.KIZZA BESIGYE

A2 HAJJI OBEID LUTALE ===== ACCUSED

A3 RO/12743 CAPTAIN OOLA DENISH OYAA

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING

Background

This is an oral application for constitutional reference.

I carefully listened to the submissions of both parties in respect of the three questions of law to be referred to the Constitutional Court for interpretation.

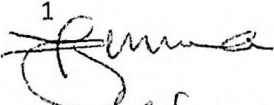
The brief background for the constitutional reference is that the Prosecution made full disclosure today 1st / 6/2026.

Thereafter, this honorable court made directions for purposes of managing and planning the trial. Court made directions that parties should come for preliminary hearing on 8th/6/2026 which in my view was convenient to hold a preliminary hearing to establish whether parties have agreed on facts or documents.

To avoid further delays in this matter, Court directed the prosecution to prepare its witnesses to come and commence the trial on 11th/6/2026.

It is on that point that Counsel for the defence made an application for reference to the Constitutional Court for interpretation.

The defence Counsel proposed and framed the following questions of law for constitutional reference;

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11/6/2026

1. Whether in the plain and ordinary meaning of Article 28(3) (c) of the Constitution, a period of 7 days for preliminary hearing is adequate time?
2. Whether directions of Court for Counsel to access the accused persons on weekends and public holidays is inconsistent with Article 28(3) (c) of the Constitution?
3. Whether the act of fixing commencement of the trial before the conclusion of the preliminary hearing is inconsistent with Article 28 and 44 of the Constitution?

Determination of Court.

It is now settled law that references to the Constitutional Court fall under the ambit of Article 137 of the Constitution.

The reference to the Constitutional Court is subject to the determination by the trial Judge as to whether there is a question for interpretation of the Constitution. (**See: Sheik Abdul Karim Sentamu and Another (Constitutional Reference No. 7 of 1998) UGCC5.**)

For Court to decide to make a reference, it must be first satisfied that a prima facie case exists or has been made out by the requesting party.

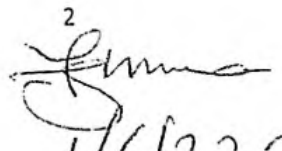
For the proposed question of law No.1; Court made directions that after the full disclosure today 1st of June, 2026, parties should come for preliminary hearing on 8th /6/2026. In my view, one week is adequate time for parties to come for preliminary hearing.

For question of law No.2; Court also found it necessary to inquire from the officer from Luzira if there are exceptions of allowing the lawyers to access their clients over the weekends. **ASP Timothy Wasike** told court that there are exceptions where lawyers are allowed to access their clients over the weekends.

It is on that basis that this Court directed the Deputy Registrar of this Court to write to prisons to allow lawyers to access the accused persons over the weekends and public holidays for purposes of a fair trial in this case.

In respect of question of law No.3; it is also my considered view that for proper management and planning of this case, court directed the prosecution to prepare its witnesses for commencement of the hearing on 11th/6/2026.

The above directions in my view don't violate any right of the accused persons

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11/6/2026

It should be noted that, although the full disclosure was made today 1st June, 2026, however, the disclosure was specifically in respect of the identities of the six witnesses which the prosecution had concealed. Otherwise, from the court record, the prosecution made the first disclosure on **21st of January, 2026**. The second disclosure was made on **4th of March, 2026** and the redacted disclosure was made on **11th of March of 2026**.

All this time in my view, the defence was in possession of all the facts and documents to enable them prepare for preliminary hearing which this court has fixed for 8th of June, 2026.

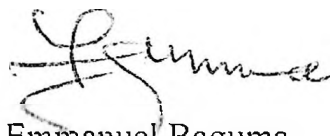
From the foregoing, it is this Court's opinion that the questions of law proposed and framed by Counsel for the accused persons (A1 and A2) for interpretation does not involve substantial questions of law for interpretation of the Constitution. This court made directions which are very clear and for proper management and planning of this trial. Otherwise, it would mean referring all directions of court to the Constitutional Court for interpretation.

This Court is not satisfied with the questions of law proposed and framed for constitutional interpretation.

In conclusion, Counsel for A1 and A2 have not made out prima facie questions of law to warrant reference to the Constitutional Court for interpretation.

I accordingly direct parties to come for preliminary hearing on **8th of June, 2026** at 11:00AM and the prosecution should still prepare to commence its case on **11th of June, 2026**.

Dated, signed, sealed and delivered by emails and ECCMIS on 1st day of June, 2026



Emmanuel Baguma
Judge