


Division Rukungiri Municipality in Rukungiri District for the 1st Applicant and Kisigula Village Cell Mutundwe Ward Gombolola Ssabagabo Makindye Wakiso District for the 2nd Applicant;

4. The offences with which the Applicants are charged with are only bailable by this Honourable Court;
5. The Applicants have been on remand at Luzira Government Prison for three hundred and seventy-six days and have no control over how long the Constitutional Petition will take to be heard and determined;
6. The Applicants enjoy the constitutional right of presumption of innocence and have good antecedents demonstrating their respect for the law and are willing to comply with all reasonable conditions set for their admittance to bail;
7. The Applicants are of advanced age and have substantial sureties who are willing to ensure compliance with bail conditions once the Applicants are released on bail;
8. It is fair and just that Criminal Session Case No. 335 of 2025 is stayed and that the Applicants are admitted to bail and released accordingly pending resolution of their Constitutional Petition.

In reply, the State opposed the application through the affidavit in reply sworn by **MR. KYOMUHENDO JOSEPH**, a Chief State Attorney in the Office of the Director of Public Prosecutions- Kampala. The details of the opposition are on record and the gist briefly is that;

1. The Applicants are not law abiding citizens as the criminal charges against them emanate from participation in unlawful activities;
2. The 1st Applicant has on several occasions through the mainstream and social media, preached a message of defiance with the intention of inciting an uprising against the legitimate government of Uganda. The violent and unlawful means of governance that are advocated for/ pursued by the Applicants, have a direct negative impact of disrupting peace and security of the people of the Republic of Uganda and their property;
3. There are no matters or questions of law disclosed in the said Constitutional Petition that require Constitutional interpretation;

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4. The Applicants have not demonstrated any exceptional circumstance(s) or prevailing public interest to warrant a stay of prosecution of Criminal Session Case No. 335 of 2025 and this Court has already pronounced itself on stay of proceedings before it;
5. The reliefs sought are the same sought vide Criminal Application No. 282 of 2025, save for stay of proceedings in Criminal Session No. 335 of 2025;
6. The Applicants have been on remand for 9 (nine months) and 18 days and not three hundred and seventy-six days, as alleged;
7. The offences of treason and misprision of treason with which the Applicants are charged with carry a maximum sentence of death and life imprisonment respectively upon conviction. Given the nature and seriousness of the charges against the Applicants, there is a flight risk and a high likelihood of absconding if released on bail;
8. The Applicants have not demonstrated any ground to warrant stay of the criminal proceedings. It is fair and in the interest of justice that the application is dismissed.


In rejoinder, the Applicants reiterated their averments in chief and further contended that, the acts or omissions complained about in the Petition present exceptional circumstances or public interest that warrant a stay of proceedings in Criminal Session Case No. 335 of 2025 so as to first allow the Court of Appeal sitting as the Constitutional Court to hear and dispose of the Petition.

Representation

The Applicants were represented by Counsel Martha Karua SC, Elias Lukwago, Ernest Kalibala, Fredrick Mpanga, Farouk Kamulegeya, Apolo Katumba, Wanda Ronald Samuel, Proscovia Kunihira, Abubaker Ssekanjako, Tobias Khafuswa and Bryan Turinawe, while the Respondent was represented by Thomas Jatiko, Assistant Director of Public Prosecutions, Richard Birivumbuka, Chief State Attorney and George Bigira, Senior State Attorney.

Submissions by Counsel for the Applicants

In summary, Counsel for the Applicants submitted that this court has inherent powers to stay and grant bail. Counsel referred to the case of Charles Onyango Obbo and


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Andrew Mujuni Mwenda V. Attorney General, Supreme Court Constitutional Appeal No. 02 of 2002. Counsel submitted that this court has the discretion which can be exercised judiciously to grant the remedies sought.

Counsel submitted that the constitutional issues should be resolved first to guarantee a fair trial. That the petition is of great importance to both the Applicants and the public since it touches the issues of the right of fair hearing.

Counsel submitted that the Applicants are of the view that they may not get a fair hearing and they want the Constitutional Court to make some declarations on the issues of fairness of the trial.

On the second prayer for release on bail, counsel submitted that bail is a temporary release pending trial and that the trial can proceed when the Applicants are on bail. That what court is concerned with is whether the Applicants will attend trial or will not abscond.


Counsel submitted that the first Applicant has previously been granted bail on treason charges and has always returned to court. Counsel submitted that the Applicants have demonstrated that they have a permanent place of abode and presented all the necessary documents. That the 1st Applicant presented three sureties, while the 2nd Applicant presented two sureties. Counsel submitted that all the sureties were substantial.

Counsel concluded that when you stay the application, it follows that the Applicants should be released on bail since they are presumed to be innocent. Counsel referred to the case of Gen David Sejusa V. Uganda and several other authorities which court has put into consideration.

Counsel invited this court to stay the proceedings in Criminal Session Case No. 335 of 2025 and release the Applicants on bail.

Submissions by the Respondent

Mr Richard Birivumbuka, Chief State Attorney opposed the application and submitted that the Applicants want this honourable court to read Constitutional Petition No. 031 of 2025 and assume all the contents therein to be true. That since the application was filed in the court higher than this court, and it has control over the petition which was filed there, it would be prudent for the Applicant to seek stay from the same court. That

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it is the Constitutional Court which has a duty to determine the chances of success of the Constitutional Petition No. 031 of 2025 and it is wrong for the Applicants to seek for stay in this court. He argued that the defense is using legal tactics deliberately to halt the proceedings.

He submitted on the history of the case and argued that the Applicants are using delaying tactics to frustrate the trial.

On the issue of bail, he submitted that the sureties are not substantial and did not prove to court that they meet court obligations. He invited court to find the sureties not substantial since they are all politically aligned to the 1st Applicant as their leader making it difficult to compel him to appear in court.

He submitted that the Applicants are facing serious offences of treason and misprision of treason that if released on bail, they are likely to commit other offences, especially the 1st Applicant. That granting bail is discretionary and depends on the circumstances of each case.

He submitted that the prosecution has always been ready to proceed with the case but the Applicants kept frustrating the process. He referred to several authorities for stay of proceedings and denial of bail which court put into consideration.

In conclusion, he prayed that the application for stay of proceedings and release on bail be dismissed since the Applicants have not met the required conditions.

Determination of Court

I have put into consideration the oral submissions of both parties and the crux of this application is;

1. Stay of **Criminal Session Case No.335 of 2025** pending determination of Constitutional Petition No.031 of 2025 and
2. Release of the Applicants on bail.

From the onset, I find it necessary to draw a clear distinction between stay of proceedings as a result of a **constitutional reference** and **constitutional petition**.

In the case of *Charles Onyango Obbo & Andrew Mwenda v Attorney General, Supreme Court Constitutional Appeal No. 2 of 2002*, Mulenga (JSC) opined that-

“Under Article 137, any person may access the Constitutional Court in one of two ways. First, a person may petition the Constitutional Court directly for a declaration that any law, act or omission is inconsistent with, or in contravention of a provision of the Constitution. Secondly, a party to any proceedings in a court of law, in which a question arises as to the interpretation of the Constitution, may request court to refer the question to the Constitutional Court for decision. Clause (7) of Article 137 provides that in either case, the court -

*“shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.” **Where a court refers a question that arises in proceedings before it, it must await the decision of the question by the Constitutional Court, and “dispose of the case in accordance with that decision.”** Emphasis added. This case was equally relied on by counsel for the Applicants in their oral submissions.*

In the instant application, it is not in dispute that the Applicants have petitioned the Constitutional Court directly by petition which does not warrant an “automatic stay” but rather, the injunctive remedy sought in this application is discretionary and must be exercised judiciously. It is therefore not true that the stay is automatic as Counsel Erias Lukwago labored so much to convince court. (See: ***James Isabirye V Attorney General and IGG (Miscellaneous Application No 02 of 2007) [2007] (UGCA 3)***).

This position of the law was stated in ***Constitutional Court in the Constitutional Petition Application No. 50 of 2012, Geoffrey Kazinda V Attorney General***, where it was observed that-

“However, where a party to the proceedings before a court of law, petitions on his/her own to have the Constitutional Court determine some question to do with the proceedings before that court of law, it does not automatically follow that the court has to stay the proceedings before it pending the determination of the question a party to the proceedings petitions the Constitutional Court to determine.

In such a case, the issue of whether or not to stop the proceedings pending the determination of the petition appears to be left to the discretion of either the trial court or the Constitutional Court.”

In the case of ***Omar Awadh Omar & 10 others v Attorney General Consolidated Constitutional Petition No.55 & 56 of 2011***, the learned Justices of the Constitutional Court guided that the discretion to stay criminal proceedings must be exercised sparingly and carefully with consideration of the gravity and seriousness of the offences.

Section 17(2) of the Judicature Act Cap 16 provides that-

(2) With regard to its own procedures and those of the Magistrates' Courts, the High Court shall exercise its inherent powers—

(a) to prevent abuse of process of the court by curtailing delays, in trials and delivery of judgement including the power to limit and discontinue delayed prosecutions;

(b) to make orders for expeditious trials;


(c) to ensure that substantive justice shall be administered without undue regard to technicalities

Section 61 of the Trial On Indictment Act brings out the issue of pleading to indictment. It clearly states that-

“The accused person to be tried before the High Court shall be placed at the bar... and the indictment shall be read over to him or her...and the accused person shall be required to plead instantly to the indictment...”

Basing on the above authorities and the sections of the law, in simple terms, plea taking enables court to ask an accused person if he or she admits or denies the charges. A stay of proceedings in my view even if it was to be granted, it would make sense after the Applicants have taken plea, and court is in position to know whether the accused has admitted or denied the charges other than halting plea taking.

According to the court record, the Applicants were committed on 29th May, 2025 and the matter was fixed for plea taking on 1st September, 2025, but to date the Applicants

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have never taken plea. Instead, they resorted in filing applications after applications, making the process of plea taking difficult.

It is therefore my view and opinion that for the interest of justice to both parties, the Applicants should proceed to take plea. If they so wish, they can apply for bail at any later stage if there is any delay in hearing of their case. I am aware and alive to the constitutional right of presumption of innocence of the Applicants until proven guilty.

In the final result, and for the reasons stated above, this application for stay of proceedings in **Criminal Session Case No. 335 of 2025** and releasing the Applicants on bail is dismissed.

I will therefore direct that the Applicants first proceed to take plea immediately.

Dated, signed, sealed and delivered in open court on this **29th** day of **December 2025**



Emmanuel Baguma
Judge