

National News

A dramatic courtroom exchange unfolded as Fredrick Mpanga, a member of Dr Kizza Besigye's defence team, fiercely opposed the state's bid to conceal the identities of key witnesses in an ongoing treason trial, subjecting Chief State Attorney Joseph Kyomuhendo, last Thursday, to an intense cross-examination that laid bare questions over the legal grounding of the witness protection request. Below is an abridged version of the proceedings.

BY JULIET KIGONGO

Representations in court

The session was presided over by Justice Emmanuel Baguma. The defence lawyers for A1 (Kizza Besigye) and A2 (Obied Lutale) were Mr Ernest Kalibala, Mr Frederick Mpanga, and Mr Elias Lukwago. Capt Denis Oola was represented by Mr Simon Nsubuga. The state was represented by Mr Richard Birivumbuka, the Chief State Attorney, and George Bighwa, a Senior State Attorney.

Cross-examination of Kyomuhendo

Birivumbuka: Before the matter was adjourned, the court made directions that two or three attorneys would examine Kyomuhendo to avoid wastage of time. As stated, we also ask the court to prohibit live streaming and other unregulated media. The witness should also proceed without taking an oath since he did so in the affidavit.

Justice Baguma: Can we just proceed with cross-examination? I have guided that he takes oath.

Mpanga: First, let me get the particulars again?

Kyomuhendo: My lord, I am Joseph Kyomuhendo, a chief state attorney from the office of the DPP (Directorate of Public Prosecution). I am 42 years old.

Mpanga: What is your religion?

Kyomuhendo: I am Anglican.

Mpanga: You have been a prosecutor for 15-16 years; am I right?

Kyomuhendo: You're correct.

Mpanga: Your experience in that area has made you the head of the Anti-Corruption Unit at the DPP. Am I correct?

Kyomuhendo: I do not know because there are people who have been there longer, and they have not been in charge.

Mpanga: Currently, are you the head of the Anti-Corruption Unit of the DPP?

Kyomuhendo: Yes, I am.

Mpanga: In the agency about yourself, you also present yourself as a champion of justice; am I correct?

Kyomuhendo: A prosecutor is a champion of justice, yes.

Mpanga: Am I talking about you?

Kyomuhendo: I am a prosecutor.

Mpanga: You are also a lawyer, you are an advocate, correct?

Kyomuhendo: Yes, I am an advocate.

Mpanga: A prosecutor for a long period, correct?

Kyomuhendo: Correct.

Mpanga: You are an officer of the court,

Besigye's lawyer schools State prosecutor on witness protection



Chief State Attorney Joseph Kyomuhendo is cross-examined. PHOTO/JULIET KIGONGO

correct?

Kyomuhendo: Correct.

Mpanga: So you came here as an expert in the matters in which you are testifying in this court, am I correct?

Kyomuhendo: It is the court that determines whether I am an expert or not. **Mpanga:** Are you an expert in the area of prosecuting and witness protection?

Kyomuhendo: My lord, I cannot say I am an expert, however...

Mpanga: No, Mr Kyomuhendo, are you an expert or not? Which one are you?

Kyomuhendo: I have practiced it now for a period of seven years.

Mpanga: I repeat, are you an expert or not?

Kyomuhendo: I am an expert.

Mpanga: Are you testifying as a witness of facts or as a witness of law, correct?

Kyomuhendo: I am testifying as a witness of law, my lord.

Mpanga: So you are not testifying as a witness of fact, correct?

Kyomuhendo: I beg your pardon.

Mpanga: Are you testifying as a witness of fact and law?

Kyomuhendo: Where facts come in, I can merge them into law.

Mpanga: I repeat, are you testifying as a witness of fact and law?

Kyomuhendo: My lord, I am here to testify about witness protection and the threats that have been made out to some of our witnesses.

Justice Baguma: No, clarify if you are testifying as a witness of law or facts. That is all.

Kyomuhendo: Both, my lord.

Mpanga: This application is supported by your affidavit, and you have an affidavit in rejoinder, correct?

Kyomuhendo: Correct.

Mpanga: You are aware that in an application, the only evidence that supports an application is what is contained in the affidavit in rejoinder, am I correct?

Kyomuhendo: Correct.

Mpanga: You are aware that in an

CONTENTION

Mpanga: Do you agree that Article 28 has been broken down substantially in the Constitution into sub-articles?

Kyomuhendo: Yes, it has been broken down.

Mpanga: Do you agree that none of the sub-articles in that article point to witness protection?

Kyomuhendo: I do not agree. **Mpanga:** If given to you, would you show us the article that points to witness protection?

Kyomuhendo: I will definitely take you to the clauses that provide the right to the accused to prepare his defense, which does not include the right to disclosure or obligation to disclosure on the side of the state.

Kyomuhendo: You are correct. **Mpanga:** Now this application is about witness protection, am I right?

Kyomuhendo: Correct.

Mpanga: And for the years you have practiced being 15 or 16.

Kyomuhendo: It is 15, I will make 16 in the month of July.

Mpanga: You confirm that there is no constitutional provision, there is no statutory provision, and no subsidiary legislation that provides for witness protection in Uganda, am I correct?

Kyomuhendo: You are not correct. **Mpanga:** Point us to the statute that provides us with witness protection in Uganda in a matter like this one.

Kyomuhendo: My lord, Article 28 of the Constitution provides a right to a fair hearing which has various components and my lord that article was interpreted by Constitutional Court in the case of Suni Yuni Vs Attorney General, where the court interpreted and held that whereas an accused person has a right to a fair trial, which among others includes preparing for their defence, the right to disclosure is not absolute. It is subject to witness protection, protection of state witnesses, and protection of informers. Just like it is with witness protection, there is no constitutional provision that provides for the right of disclosure or the due obligation of disclosure. It is that court that gave the right and directed all prosecution agencies that whenever an accused person is under trial, the state is under an obligation to disclose the evidence. But my

Kyomuhendo: Please throw more light. **Mpanga:** As a prosecutor, it is not your first involvement in the prosecution involving A1, am I correct?

Kyomuhendo: Yes, you are correct. **Mpanga:** So, in this case, again for emphasis, to support your application, reference is made to the affidavit in support and the affidavits in rejoinder only, am I correct?

Kyomuhendo: Correct. **Mpanga:** Again, for purposes of clarity, this is not your first encounter with a matter involving A1 (Kizza Besigye), am I correct?

Kyomuhendo: Please throw more light. **Mpanga:** As a prosecutor, it is not your first involvement in the prosecution involving A1, am I correct?

Kyomuhendo: The three accused persons.

Mpanga: So, in this matter, who is the accused person entitled to those facilities?

Kyomuhendo: The three accused persons.

Mpanga: You are aware that you are a witness for the state against the accused persons?

Kyomuhendo: If the matter of law touches the accused person, I have to state it; if the position of the law touches the accused person, I have to state it.

Mpanga: Let me ask you, Mr Kyomuhendo, do you know the reason for cross-examination?

Kyomuhendo: Yes.

Mpanga: You are aware that when under cross-examination, unless asked to explain, you give straight answers. Am I right?

Kyomuhendo: No, you are not.

Mpanga: You are aware that if you want to explain or clarify that is done in re-examination, am I correct?

Kyomuhendo: False.

Mpanga: So, you do not clarify through re-examination?

Kyomuhendo: I can clarify, but I also do not want to be gagged in cross-examination.

Mpanga: So, I am going to give you Article 28, which has sub-articles up to 2g for you to clarify. Where is the witness protection?

Kyomuhendo: My lord, I can find it under.

Mpanga: Have you heard the question?

Kyomuhendo: I can find it under.

Mpanga: Mr Kyomuhendo, please answer the question.

Kyomuhendo: I have heard the question and am going to give you the answer if you wait for it. It is 2c.

Mpanga: Could you read it and point to the witness protection amidst this context?

Kyomuhendo: To be given adequate time and facilities to prepare for his or her defence.

Mpanga: Who is to be given the facility?

Kyomuhendo: The accused person.

Mpanga: So, in this matter, who is the accused person entitled to those facilities?

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Mpanga: Further cross-examination of Kyomuhendo to continue tomorrow.

lord, it is not absolute; there are exceptions.

Mpanga: Have you finished?

Kyomuhendo: Yes.

Mpanga: Do you agree that none of what you have referred to is a statutory provision?

Kyomuhendo: I do not agree because I started from the statute, the Constitution, and ended up with the interpretation of that statutory provision, Article 28.

Mpanga: Do you agree that Article 28 has been broken down substantially in the Constitution into sub-articles?

Kyomuhendo: Yes, it has been broken down.

Mpanga: Do you agree that none of the sub-articles in that article point to witness protection?

Kyomuhendo: I do not agree.

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Kyomuhendo: I will definitely take

to the clauses that provide the right to the accused to prepare his defense, which does not include the right to disclosure or obligation to disclosure on the side of the state.

Mpanga: My lord, I have to take the witness back. Are you aware that in this case you are not testifying for the accused?

Kyomuhendo: My lord, I am testifying.

Mpanga: Are you aware that you are a witness for the state against the accused persons?

Kyomuhendo: If the matter of law touches the accused person, I have to state it; if the position of the law touches the accused person, I have to state it.

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