



Inter partes Court Hearing at the East African Court of Justice (EACJ), with the Government of South Sudan in the case of Kerbino Wol Agok

Today, Monday 25th March 2019, the First Instance Division of the East African Court of Justice (EACJ) heard oral submissions from both parties, following the Summons to the Minister of Justice of the Government of South Sudan (GoSS) to appear before it in the case of prominent South Sudanese businessman and philanthropist, Mr. Kerbino Wol Agok. The Summons had been issued in Application No. 20 of 2018, arising from Reference No. 19 of 2018.

Coram: The Judges that heard the Application were: (1) Lady Justice (Ms.) Monica Mugenyi, Principal Judge (from Uganda); Justice Dr. (Mr.) Faustin Ntezilyayo, Deputy Principal Judge (from Rwanda); (3) Mr. Justice Fakihi Jundu (from Tanzania); (4) Mr. Justice Audace Ngiye (from Burundi); and (5) Mr. Justice Charles Nyachae (from Kenya)¹

Applicant's Counsel: (1) Mr. Donald Deya, Advocate and (2) Mr. Nelson Ndeki, Advocate. The Applicant has two, external pro bono Counsel who were not present in Court today but are part of the team, i.e. Ms. Roseline Odede, Advocate (Nairobi, Kenya) and Mr. Paul Kaunda, Advocate (Shinyanga, Tanzania).

Respondent's Counsel: Mr. Biang Pieng Kuol, Consul General and Chief Registrar of Companies, Ministry of Justice and Constitutional Affairs, Government of South Sudan (MoJCA, GoSS)

Kerbino has been arbitrarily detained by the National Security Service (NSS) of South Sudan from 27th April 2018 to date, making 11 months in custody. Only last Thursday, 21st March 2019, was Kerbino and 6 other persons taken before a 3-Judge Bench of the High Court in Juba. Even then, the Prosecution did not table any Charge Sheets or other formal document showing what the Persons were being accused of. They merely cited some sections of the Penal Code and the National Security Service (NSS) Act. Further, despite the provisions of the Revitalised Agreement for the Resolution of Conflict in South Sudan (R-ARCISS) and a Decree issued by President Salva Kiir Mayardit last September requiring the release of political detainees and prisoners of war, Kerbino and others in a similar situation have not been released.

Pan African Lawyers Union as represented had the following prayers to Court against the Respondent:

- i. Provide assurance to the Honourable Court that the Respondent will immediately allow access to Mr. Wol by his family, friends, associates, legal counsel and doctors;
- ii. Provide the Honourable Court with the reasons for the arrest and continued detention of Mr. Wol;

1. ¹ The 1st Instance Division has a 6th Judge, i.e. Justice Dr. (Mr.) Justice Charles Oyo Nyawello. But he did **not** form part of the Bench that has been hearing this matter.



- iii. Provide the Honourable Court with reasons for the freezing of Mr. Wol's personal and corporate bank accounts, the CONFISCATION of monies therein and the closure of Mr. Wol's businesses.
- iv. The Respondent either releases Mr. Wol or arraigns him before a competent, impartial and effective Court or Tribunal;
- v. Pending the determination of the instant Reference, the Respondent, with immediate effect, reverses the closure of Mr. Wol's businesses and personal and corporate bank accounts;
- vi. The Honourable Court be pleased to issue further or other Orders as it deems fit and just under the circumstances.

The Representative of the Respondent State claimed orally that Mr. Wol has now been properly arraigned before the Court in South Sudan asked the EACJ to grant them time to allow them finish the process. However, he only made this plea orally as the Respondent did not file any Affidavits or even submit copies of the Charge Sheets.

The Court will deliver its Ruling on this Interim Application (Application No. 20 of 2018) in due Course. Meanwhile, the main Case (Reference No. 20 of 2018) will also proceed.

About PALU

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For comments or queries, email: secretariat@lawyersofafrica.org

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