

Updates on the High Court Ruling of Ex-LRA Commander Thomas Kwoyelo

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Summary

On 25 January 2011, ex-LRA commander Col. Thomas Kwoyelo appeared before the High Court of Uganda in Kampala. Presided by Justice Vincent Tiwangye Zehurikirize, the Court ordered the Amnesty Commission and the Directorate of Public Prosecution (DPP) to grant Kwoyelo a certificate of amnesty and immediately release him.

Background

Thomas Kwoyelo first appeared before the International Crimes Division (ICD) of the High Court of Uganda on 11 July 2011 under allegations of 53 counts of crimes against humanity and war crimes committed during his involvement with the Lord's Resistance Army (LRA). On 22 September 2011, the matter was referred to Uganda's Constitutional Court, which ruled that Kwoyelo was entitled to amnesty in line with Uganda's Amnesty Act of 2000. This ruling was re-enforced by a Court of Appeal ruling on 10 November 2011, following an appeal to stay his release by the Attorney General. On 11 November 2011, the ICD ceased his trial but deferred his release to the DPP and the Amnesty Commission. On 17 November 2011, the DPP wrote a letter to the Amnesty Commission, stating that Kwoyelo could not be released from remand at Luzira Prison because he had pending charges against him that rendered him ineligible for amnesty. Upon receiving this news, Kwoyelo's lawyer, Caleb Alaka, filed an application in the High Court seeking orders to compel the DPP and Amnesty Commission to grant him amnesty, issue him with an amnesty certificate and release him from custody.

January 25th Ruling

On the morning of 25 January, Kwoyelo arrived at the High Court premises, accompanied by two prison officers and a pick-up truck full of agents of the Joint Anti-Terrorism Task Force (JATT). Approximately 40 minutes later, he entered the court room and waited for Justice Vincent Tiwangye Zehurikirize to make a ruling on another case before proceeding to his. After Kwoyelo stepped in the dock, Justice Zehurikirize notified the court that Senior Principal State Attorney Joan Kagezi was being represented by Adongo Imelda, while Caleb Alaka, the lawyer of the applicant (Kwoyelo), was being represented by Julius Alisonga.

The ruling took approximately 28 minutes to deliver, during which Kwoyelo was not afforded a Luo-speaking interpreter. Justice Zehurikirize first provided a background on the grounds for the application by Alaka, including that Kwoyelo applied for amnesty in 2010 while in prison. He then referred to the abovementioned rulings of the Constitutional Court, Court of Appeal and ICD. At this point, the judge read the provisions contained within the Amnesty Act. He then continued to disclose the DPP's reported rationale for not granting the applicant amnesty, namely that the DPP advised the Amnesty Commission that the applicant does not qualify for amnesty; that the ICD ruling only told the Amnesty Commission and DPP to act, but did not specify how; and that the DPP does not grant amnesty and cannot be compelled to do what is not within its mandate. In addition, Justice Zehurikirize revealed that the DPP claimed that the application by Kwoyelo's lawyers was submitted before a wrong court and should have been submitted to the Supreme Court or the Constitutional Court.

In response to this, Justice Zehurikirize made the following ruling:

1. The application to hear this case was made to the correct court, as the High Court exercises its supervisory decision on inferior courts, tribunals and others bodies.
2. Because the Constitutional Court clearly stated that the applicant was entitled to amnesty, and all of the 53 charges against him occurred when he was engaged in rebellion, by denying amnesty to the applicant both the DPP and Amnesty Commission abdicated the duties they were to perform by virtue of Section 3 of the Amnesty Act.
3. **For all of the above reasons, under an order of mandamus, the chairman of the Amnesty Commission and the DPP shall grant Kwoyelo the certificate of amnesty and effect his immediate release.**

At the time of this publication, Kwoyelo has not been served an amnesty certificate and is still in custody. For comments or questions related to this update, please email info@justiceandreconciliation.com. For breaking news on this trial and others, visit www.justiceandreconciliation.com. For a complete analysis of the case of Thomas Kwoyelo, stay tuned for the release of JRP's upcoming publication, *Kwoyelo: Victim or Villain? Col. Thomas Kwoyelo and the Quest for Justice in Northern Uganda*.