

**DATE:** 13<sup>TH</sup> FEBRUARY ,2025

**TO:** WOMEN'S PROBONO INITIATIVE

**FROM:** DR. JOYCE NALUNGA BIRIMUMAASO

**TOPIC:** THE IMPACT OF THE KABAZIRUKA CASE ON WOMEN AND  
**GENDER:**

**KEY NOTE ADDRESS:**

**SPECIAL APPRECIATION:**

- H.E the President of Uganda for recruiting more women justices in the supreme Court.
- The Chief Justice Alfonse Winyi Dollo & all the justices of the Supreme Court for such a profound, unprecedented Decision impacting the entire justice system in Uganda.
- Especially, the Distinguished Female Justices that made us so proud. ( Hon..J. Mwondha,J Percy Tuhaise, Hon..J Mugenyi Monice, Hon. J. Elizabeth Musoke
- WPI for hosting this space and caring to have women knowledgeable. (Ms. Primah Kwagala)
- The panelists ready to discuss the paper.

**PREAMBLE:**

The Kabaziguruka **CONSTITUTIONAL APPEAL NO. 02/2021** arises out of a petition dated 1<sup>st</sup> July 2021 in Constitutional Petition No. 45 of 2016. It is instituted under Article 137 (1) & (3) in the Constitutional Court. In essence, the appeal and cross appeal are against the majority decision of the learned Justices of the Constitutional Court regarding the competence of the military Courts, their ability to render a fair hearing, offences triable in military Courts, and persons subject to the jurisdiction of the military Courts in Uganda.

**BACKGROUND**

When Kabaziguruka filed the said Constitution Petition in the Constitutional Court, he was a civilian and Member of Parliament representing the people of Nakawa Municipality, Kampala Capital City Authority (KCCA) in the 10<sup>th</sup> Parliament, and shadow Minister for KCCA.

He filled the petition against the backdrop of events following his arrest, whereupon he was arraigned before the General Court Martial (GCM), and charged, along with others, with offences under the Uganda People's Defence Force (UPDF) Act.

He objected to his trial in the GCM, contending that he was not subject to military law as he had no military connection and that the GCM was not a competent Court under the Constitution to try any of the offences with which he was charged; but, the GCM overruled his objection.

He filed the petition in the Constitutional Court challenging the provisions of the UPDF Act No. 7 of 2005, which he singled out in the petition, and acts of the UPDF of arresting, detaining and remanding him to prison in relation to the charges against him, as being inconsistent with the Constitution. The proceedings in the GCM against the Respondent were stayed by an order of the Constitutional Court.

The Constitutional Court, partly allowed the appeal in its majority decision.

The Appellant (AG) being dissatisfied with the decision of the Constitutional Court appealed to the Supreme Court.

The Respondent for his part, cross appealed against the decision allowing civilians, in certain cases, to be tried in the Military Courts.

**The Grounds of Appeal were.**

1. *The learned majority Justices of the Constitutional Court erred in law in finding that ss. 2 and 179 of the UPDF Act are in contravention of Articles 28 (1) and 44 (c) of the 1995 Constitution and that the GCM is only competent to try military disciplinary offences under Part VI of the UPDF Act.*
2. *The learned majority Justices of the Constitutional Court erred in law and fact in determining that the GCM cannot be impartial or independent; is inconsistent with Art 28 (1) of the 1995 Constitution of Uganda, and does not apply the principles therein to person's subject to military law.*
3. *The learned majority Justices of the Constitutional Court erred in law and fact*

*in determining that charging and arraigning the Petitioner before the GCM was inconsistent with Art 28 (1) and 44(c) of the Constitution.*

- 4. The learned majority Justices of the Constitutional Court erred in law in finding that section 119 (1) (h) of the UPDF Act is inconsistent with Art. 28 (1) and 44 (c) of the Constitution.*

The Appellant prayed that the appeal be allowed, the decisions of the learned Majority Justices of the Constitutional Court cited be set aside, and the Appellant be awarded costs of the appeal.

**THE CROSS APPEAL:**

The Respondent cross appealed on the following ground:

- 1. That the learned majority Justices of the Constitutional Court erred in law in holding that a civilian can be charged before Military Courts as an accomplice together with a person subject to military law.*

He thus prayed that the cross appeal be allowed, and part of the decision of the majority Justices that he has impugned be set aside or reversed.

**SUPREME COURT DECLARATIONS:**

**GROUND 1, 2, 3 AND 4 FAILED AND CROSS APPEAL SUCCEEDED.**

1. Declared that the General court martial (GCM) and other military courts established under the military justice system are competent as courts with specialized jurisdiction as per the Constitution; Further declared that the STA (Summary Trial Authorities) and UDC (Unit Disciplinary Courts) are not recognized courts but military tribunals. Emphasizing MCs (Military Courts) have jurisdiction solely over cases that are related to military service and discipline of members of the UPDF.
2. Declared unconstitutional the impugned provisions of UPDF Act which establish and grant STA and UDC in exercise of judicial power of detention and imprisonment of any person tried by them as they contravene Art.23,126 and 29 91) (d) Constitution. UPDF Act (S.191(3), S.195 (3) & (4) and S.179)
3. Declared unconstitutional the provisions of the UPDF Act constituting and providing for the trial procedure of the GCM, DCM, CMAC do not

contain any or sufficient constitutional guarantees and safeguards for them to exercise their judicial functions with independence and impartiality which is prerequisite for fair hearing provided for under Constitution Articles 21, 28, 44 and 128.

4. Declared unconstitutional the provisions of section 119 (i)(g) now 117(1) (g) of UPDF Act under which civilians are charged and arraigned in GCM contravenes Articles 28 (1), 44 (c) and 21 of Constitution.
5. Declared unconstitutional s.119 (1) (g) UPDF Act as far as it extends to civilians who have allegedly aided and abetted the commission of a service offence, or ordinary criminal offence in which a person subject to military law is a principal offender.
6. Declared unconstitutional all the Sections of the UPDF Act which confer blanket jurisdiction of civilians on Court martials to try civilians. (ss. 2, 179, 119, 117 of the UPDF Act).
7. Declared unconstitutional the jurisdiction conferred on the GCM under the Act (s.2, 170, 119, 177 & 117) to try persons subject to military law for civil and, or non-disciplinary offences committed in Uganda; as they contravene art 209 & 210 Constitution .

### **THE SIGNIFICANT IMPACT OF CASE ON WOMEN**

1. This case is so significant to Ugandans and definitely impact all women but specifically women in military or service and even stretches to those interested in joining military service in different spaces. It lays down the requisite fabric for justice in the military justice system. Undoubtedly, has a profound impact on gender as follows;
2. Military courts generally have significant impacts on military women, particularly in contexts where they are used to try civilians, including women activists, journalists, and those in conflict zones. Therefore, this case impact can be analyzed across legal, social, and human rights dimensions.
3. **Promotes Constitutional observance** which serves important purposes which include upholding the Rule of Law in MCs where all individuals especially military women and the UPDF as an institution acts within the framework of the law maintaining order and justice.

4. **Prohibits maladministration of justice** within MCs which greatly affects vulnerable women in service. By the Kabaziguruka case limiting MCs jurisdiction to a specialized jurisdiction goes a long way to protect military women suspects.
5. **Protecting rights and freedoms.** The case safeguards military women fundamental rights to fair trial within an independent and impartial court. It promotes the Constitutional right to fair trial, independence and impartiality of MCs.
6. **Legal and Procedural justice system Impacts.** This case challenges the outright Lack of Transparency & Due Process prevalent in MCs: Military courts often operate with limited transparency, and women accused or tried in these courts may not receive fair trials due to secrecy and lack of independent oversight. The Kabaziguruka case declaring that MCs lack any or sufficient safeguards for fair hearing and advising on legal reforms will accordingly protect women accused or tried in such courts.
7. **By promoting strict adherence to fair trial and fair hearing the case will touch the apparent restricted Legal Representation of women in MCs:** Women accused persons may have limited access to legal counsel, making it difficult for them to defend themselves adequately.
8. *This case emphasizing the critical need of MCs to meet the constitutional requirement of independence and impartiality as a criteria for fair hearing line exercise of judicial power benefits women in service and female military personnel.* It gives them confidence to seek legal redress and deters crime.
9. **Fair trial allows upholds justice in sentencing & prohibits Gender Bias:** Military Courts and tribunals sometimes impose harsher punishments, particularly in authoritarian or conflict-prone regions, disproportionately affecting women involved in capital offences, aggressive activism, petty offences or humanitarian efforts. This case barring MCs to try capital offences in a way favors women.
10. **Promotes and advances Human Rights promotion and observance in**

**trials within MCs.** Through emphasizing that all persons (including military women) subject to military law are entitled to a non-derogable right to a fair hearing.

**11. Reduces the prevalent vulnerability to abuse with the military justice system which greatly affects women:** Military women detainees in military custody may be at higher risk of sexual violence, harassment, and mistreatment, with limited accountability mechanisms.

**12. Promotes institutional transparency and good governance in military justice institutions.** As regards legal training of military justice actors, security of tenure, capacity building of the military and gender mainstreaming of the military courts. Female military personnel will seek redress in a well-structured military justice system. Women will easily report sexual harassment or abuse.

**13. Psychological & Social Consequences.** A just and fair trial mitigates such consequences like trauma, social stigma and mental wellness.

**14. Broader Implications for Women recruitment in the military as a safe.**

### **Conclusion**

Military courts, well institutionalized as advised by the Chief Magistrate in this case will enhance the institutional capacity of UPDF to dispense justice in a well-structured system. Ensuring civilian judicial oversight, gender-sensitive legal protections, and adherence to international human rights standards which is essential to mitigate these impacts.

**THANK YOU~!!!!**

**DR. JOYCE NALUNGA BIRIMUMAASO**