

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL APPEAL NO. 012 OF 2021
(ARISING FROM CRIMINAL CASE NO. CO-103/2020)

5 **1. ALINDA PETER**

2. RWAHEERU CYPRIANO

3. BEATRICE NYINOMBI ::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE HON. JUSTICE VINCENT WAGONA

JUDGMENT

Introduction:

The appeal arises from a point of law raised before His Worship **KULE MOSES**
15 **LUBANGULA**, the Chief Magistrate of Fort Portal to the effect that Criminal
Case No. CO-103/2020 be stayed pending the hearing and disposal of **HCT – 01 –**
CV – CS – 20 of 2019, Juma Hussein Vs. Beatrice Nyindombi Karanja which
was overruled by the Chief Magistrate on the 26th day of October 2021 in his ruling
where he dismissed the point of law. The appellants being aggrieved with the said
20 decision lodged an appeal to this Court and framed the following grounds of
appeal;

(a) The learned trial Chief Magistrate erred in law and fact when he held
that Criminal Case No. CO-103/2020 cannot be stayed pending the
hearing and disposal of Civil Suit No. HCT – 01 – CV – CS 20/2019.

25 (b) The learned trial Chief Magistrate erred in law and fact when he failed
to stay Criminal Case No. CO-103/2020 pending the hearing and

disposal of Civil Suit No HCT – 01 – CV- CS 20/2018 to prevent abuse of Court process.

(c) The learned trial Chief Magistrate erred in law and fact when he held that proceedings with the prosecution of Criminal Case No. C0-103/2020 while the hearing and disposal of HCT – 01- CV- CS 20/2020 is ongoing does not occasion an injustice to the appellants.

Background:

The appellants were charged with three counts before the Chief Magistrate’s Court of Fort Portal on the 2nd day of February 2021. On count one, the 1st and 2nd appellants were jointly charged with forgery contrary to section 342 and 347 of the Penal Code Act. It was alleged that the 1st and 2nd Appellants between February 2016 and October 2019 at Fort Portal in Kabarole District forged the minutes of Kabarole District Land Board meeting KDLB MIN 06/02/2016 held on 9th February 2016. On Count 2, the 3rd Appellant was charged with Forgery contrary to section 342 and 347 of the Penal Code Act. It was alleged that the 3rd Appellant in the month of January 2016 in the Districts of Kampala and Kabarole, forged a transfer form for land comprised in lease Register Volume 1222 Folio 06 Plot 107 Block 45 at Harugongo in Kabarole District. On Count three, the 3rd Appellant was charged with uttering a false document contrary to section 351 of the Penal Code Act. It was alleged that the 3rd Appellant between the month of January and February 2016 at the Ministry of Lands, Housing and Urban Development in Kampala District knowingly and fraudulently uttered a false document to wit; forged land transfer form to the Commissioner Land Registration. On count 4, the 3rd Appellant was charged with Fraudulent Procurement of a certificate of title contrary to section 190 (1) of the Registration of Titles Act. It was alleged that the

3rd Appellant between the month of January and February 2016 at the Ministry of Lands Housing and Urban Development in Kampala District, fraudulently procured for herself a leasehold certificate of title for land comprised in Lease Register Volume 1222 Folio 06, Plot 07, Block 45 at Harugongo in Kabarole District.

At trial after hearing the first witness, the appellants' counsel raised a point of law contending that the proceedings in the criminal trial should be stayed pending the disposal of Land Civil Suit No. 0020 of 2019 which exists between Huma Hussein the complainant and the accused persons. The Point of Law was overruled by the trial Chief Magistrate hence this appeal.

Representation:

M/s Joshua Musinguzi Associated Advocates and M/s Ngamiye Law Consultants and Advocates represented the Appellants while Harriet Adubango, Chief State Attorney in the Office of the Director of Public Prosecution represented the Respondents. Both parties proceeded by way of written submissions which I have considered.

Appellants' Submissions:

On Ground 1, the Learned Counsel for the appellants submitted that the learned trial Chief Magistrate erred in law and fact when he held that Criminal Case No. CO-103 of 2020 cannot be stayed pending the hearing and disposal of Civil Suit No, 20 of 2019. Counsel cited the decision of Hon Lady Justice Margaret Mutonyi in *Hajjati Safina Mugale Kakungulu Vs. Uganda, HCT -00-CR-0001 of 2022* where she observed inter-alia that the criminal proceedings before the lower court

arising out of a land dispute pending before the land division Vide Civil Suit No. 980 of 2018 where the applicant was the 5th defendant was irregular and illegal because it amounted to persecution and an abuse of court process. That court couldn't sanction such illegality. Counsel submitted relying on the said authority, that both cases in the Chief Magistrate's Court and in the lower Court are based on the same land dispute and given the fact that there is a pending civil suit vide HCT – 01- CV – CS – 20 of 2019 between the complaint in the criminal case the appellants herein, it amounts to an abuse of court process and thus the criminal proceedings ought to be stayed. It was contended that the Respondent has the opportunity to continue the proceedings after the disposal of the Civil Suit since she is not bound by the law of limitation. Counsel thus asked court to stay the criminal Proceedings and allow the appeal.

Grounds 2 and 3 were argued concurrently where counsel for the appellants argued that staying proceedings does not imply that they are illegal or constitute an interference with the operations of the Respondent's Counsel (DPP). That the appellants' contention is in relation to criminalizing a land matter and that to avoid conflicting judgments thus the criminal proceedings in the lower court ought to be stayed. Counsel relied on the case of *HajjatSafina (supra), Nkalubo Augustine Vs Uganda Misc. Application No. 27 of 2020 and Okello Oris Atana Vs. Uganda, Crim App No. 0035 of 2013*. It was submitted that since the dispute in the Civil Suit is about the same land and the forgery and fraud complained of in the criminal case, that it was in the interests of justice that the criminal proceedings are stayed until the disposal of Civil Suit Vide HCT – 01 – CV – CS No. 20 of 2019 and the appellants prayed that the appeal is allowed.

Respondent's submissions:

In response counsel for the Respondent made an omnibus reply to all the grounds of Appeal. She argued that the trial Chief Magistrate rightly observed that court was alive to the fact that institution of criminal proceedings against the accused persons by the complainant does not in any way amount to questioning of the civil proceedings before the High Court. That literally the pending civil suit between the two parties cannot be a bar to criminal prosecution. That the civil suit is against the 3rd accused person and not the 1st and second accused persons and that the remedy offered in civil actions are not in any way contradictory with the remedies the prosecution seeks in the criminal case.

It was submitted that that it is not a correct position of the law that where a civil suit is pending between two parties, no criminal proceedings may be instituted against one of the parties arising from the same facts. That the Civil case in the High Court is premised on fraud while in the instant case, the prosecution intends to prosecute the accused persons for an alleged illegal action including forgery and there is no correlation nor interference whatsoever with the civil case.

Counsel for the Respondent invited court to the Supreme Court decision of ***Kulata Basangwa Vs. Uganda Muslim Supreme Council Criminal Appeal No.3 of 018*** where the Supreme Court held that it cannot be a correct proposition of the law that where a civil suit is pending between two parties, no criminal proceedings may be instituted against one of the parties arising from the same facts. She submitted that there was no error of law or fact in the finding of the trial Chief Magistrate to warrant the appellate court to interfere with the findings of the lower court.

Learned counsel further invited court to the decision of Joseph **Zagyenda Vs Uganda, HCT Criminal Appn No. 11 of 2020** where justice Lameck N. Mukasa

highlighted the difference between civil and criminal proceedings thus: *“there is a clear distinction between civil and criminal actions. The Civil proceedings determine civil litigant’s claims or liabilities and the standard of proof is on the balance of probabilities. There is a public interest in the criminal proceedings and the required standard of proof is beyond reasonable doubt. The Civil proceedings are individualistic in nature while the criminal proceedings are public in nature. Administrative policy therefore gives priority to the public interest in law enforcement.”*

Counsel further submitted that in the **Zagyenda case (supra)** the judge allowed both the criminal and the civil proceedings to continue without staying the other and the position was confirmed on appeal by the Court of Appeal. She also pointed out that the mere fact that the civil case is in its advanced stage of the hearing is not a sufficient ground to warrant a stay of the proceedings. She also clarified that the parties in the criminal case are the three appellants herein yet the civil suit is only between the complainant and the 3rd appellant and therefore the 1st and 2nd appellants have no interest in the civil suit and the fact that they testified as witnesses does not vest in them any interests in the suit and that the trial Chief Magistrate was right to overrule the objection raised by Counsel for the Appellants.

Counsel submitted that there was no fundamental misdirection by the trial magistrate and no miscarriage of justice was occasioned to the appellants; that the learned trial magistrate rightly evaluated the evidence and arrived at a proper finding. She asked court to dismiss the appeal for want of merit and allow the lower court to proceed with criminal proceedings and the high court to proceed with the civil suit to the logical conclusion.

Consideration of the appeal by court:

The appellants fault the trial Chief Magistrate for failing to stay the criminal matter pending the determination of the Civil Suit between the same parties over the same subject matter. This in my view is the main issue at the heart of this appeal and a determination of the same settles all the other grounds framed for determination by this court.

In *Sebulime Baker Vs Uganda Criminal Appeal No. 21 OF 2018* Justice Flavia Senoga Anglin held thus: ***“There is no universal principle that proceedings in a criminal case must necessarily be stayed when a similar or identical matter is pending before a civil court...”***

In *Goddy Mwakio & Another vs. Republic [2011] eKLR* the Court of Appeal of Kenya stated that: ***“An order for stay of proceedings, particularly stay of criminal proceedings is made sparingly and only in exceptional circumstances.”*** The rationale for this was discussed by Gikonyo, J in *Kenya Wildlife Service –vs- James Mutembei [2019] eKLR* where he stated that: ***–“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in***

equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

In the Indian case *of Ramnarian Singh Vs. Mahatan, 1962 CrilJ 661* by Misra J
5 stated thus: *“The principle has been laid down that a criminal case should not be stayed pending the disposal of a civil suit when the questions involved are not identical. So far as this principle is concerned, it is settled beyond doubt that any question of stay cannot arise unless the points involved in both the proceedings are identical. In the case of HirdayNarain Singh AIR 1929 Pat 500 it has been*
10 *held that there is no invariable rule regarding stay of criminal proceedings under [Section 82](#) of the Registration Act pending the issue in a civil suit. Whether a stay would be granted or not is a matter of discretion for the trial Court, The High Court cannot interfere in criminal revision with the order unless the Court has in exercise of its jurisdiction acted in a manner which is*
15 *unjudicial. It must be assumed that in either Court (Criminal or Civil Court) justice will be done and which Court precedes the other is merely a question of convenience.”*

It was observed in *Okello Chris Otama & Another vs. Uganda Cr. Session Case No. 639/13* that: *“Issues of land should not be confused with criminal issues.*
20 *Claim of ownership is a civil right that ought to be allowed to be proved in a Civil Court and should never be criminalized as this would amount to persecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them”.*

25 I will be guided by the above case law and the principles therein, including the cases cited to me by the appellants and the respondent.

The appellants contended that the charges in Criminal Case No. CO-103 of 2020 are identical to the issue in controversy in Land Civil Suit No. 20 of 2019 pending final disposal and hearing in the High Court and thus asked court to stay the criminal one until the determination of the civil case. The Respondent on the other hand contends that the charges in the criminal case have little or no bearing with the Civil Suit on ground that the civil suit is between the complainant and the 3rd appellant and not all the appellants and that the 1st and 2nd appellants have no interests in the civil suit. The Respondent also contended that the mere fact that there is a civil suit pending disposal does not in itself operate as a ground for stay of the criminal proceedings and thus asked court to dismiss the appeal and order for the expeditious hearing of the criminal case.

In this case, the 1st and 2nd appellants are not parties to the said suit and no such accusation or claim was made against them in the land suit. Therefore, the contention by the appellants that the facts are the same and identical and the parties are equally the same in both cases is devoid of any merit. The 1st and 2nd applicant are alleged to have forged minutes of a public institution, an issue that can only be competently tried in the criminal case and it is not an issue that was raised in the land suit pending disposal of the High Court at Fort Portal.

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On Count 2, the 3rd Appellant was charged with Forgery contrary to section 342 and 347 of the Penal Code Act. It is alleged that the 3rd Appellant in the month of January 2016 in the Districts of Kampala and Kabarole, forged a transfer form for land comprised in lease Register Volume 1222 Folio 06 Plot 107 Block 45 at Harugongo in Kabarole District. The issue of forgery is not prominently brought out in the land suit and is an alleged crime that may be handled through criminal proceedings and punished regardless of the existence of civil proceedings, which is

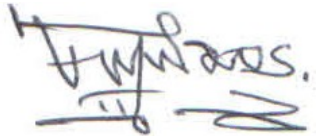
intended to safeguard the public from fraudsters who forge titles and public documents.

On Count three, the 3rd Appellant was charged with uttering a false document
5 contrary to section 351 of the Penal Code Act. It is alleged that the 3rd Appellant
between the month of January and February 2016 at the Ministry of Lands,
Housing and Urban Development in Kampala District knowingly and fraudulently
uttered a false document to wit; forged land transfer form to the Commissioner
Land Registration. On count 4, the 3rd Appellant was charged with Fraudulent
10 Procurement of a certificate of title contrary to section 190(1) of the Registration of
Titles Act. It is alleged that the 3rd Appellant between the month of January and
February 2016 at the Ministry of Lands Housing and Urban Development in
Kampala District, fraudulently procured for herself a leasehold certificate of title
for land comprised in Lease Register Volume 1222 Folio 06, Plot 07, Block 45 at
15 Harugongo in Kabarole District. In my view the proceedings in the criminal case
on these charges have nothing to do with the land suit No. 0020 of 2019.

It cannot be a correct proposition of the law that where a civil suit is pending
between two parties, no criminal proceedings may be instituted against one of the
20 parties arising from the same facts. In this case, it is my finding that the facts in the
criminal and civil case are not necessarily similar or identical. I have found no
cause warranting the stay of the criminal proceedings pending the disposal of land
suit No. 0020 of 2019. The trial Chief Magistrate carefully considered the facts of
the case and arrived at a proper finding when he declined to stay the proceedings as
25 sought by the appellants.

I therefore find no merit in this appeal and it is hereby dismissed. The Assistant Registrar is hereby directed to immediately transmit the trial file back to the trial court for further hearing.

5 I so order.

A handwritten signature in dark ink, appearing to read 'Vincent Wagana', with a stylized flourish underneath.

Vincent Wagana
High Court Judge
FORTPORTAL

10 23.12.2022