

5 THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ANTI-CORRUPTION DIVISION

CRIMINAL MISCELLANEOUS APPLICATION NO 002 OF 2024

(ARISING FROM HCT-00-AC-005-2023)

10 IN THE MATTER OF THE HUMAN RIGHTS (ENFORCEMENT) ACT, 2019

KITUTU MARY GORETTI

KIMONO:.....APPLICANT

VERSUS

15 ATTORNEY GENERAL

HON.BETI KAMYA TURWOMWE (IGG):.....RESPONDENT

Before: Okuo Jane Kajuga, J

RULING

20 Introduction

This is an application brought by way of Notice of Motion under Article 50 of the Constitution, Sections 11 & 17 of the Human Rights (Enforcement) Act 2019 and Rules 2, 3(a), 5(1)(a) & (b), 6(1)(a), 7(1), 8(1) and 11 of the Judicature (Fundamental and other Human Rights & Freedoms) (Enforcement Procedure) Rules 2019 for  
25 declarations that:

1. The acts of the 2<sup>nd</sup> Respondent of summoning and subsequently initiating parallel criminal charges against the applicant vide HCT-00-AC-C0-0056-2023 founded on the same character with criminal charges for which she is already charged in HCT-00-AC-005-2023 contravene the applicant's rights  
30 to a fair hearing.



5 2. The acts of the 2<sup>nd</sup> Respondent in initiating additional criminal proceedings  
vide HCT-00-AC-C0-0056-2023 against the applicant on allegations arising  
from alleged mismanagement of supplementary funds released to the Office  
of the Prime Minister to support peace-building activities in the Karamoja  
sub-region in FY 2021/2022 violates her due process rights guaranteed  
10 under the Constitution of the Republic of Uganda.

3. A permanent injunction be issued restraining the 2<sup>nd</sup> Respondent, its  
employees and agents from prosecuting the applicant in respect of the  
alleged mismanagement of supplementary funds released to the Office of  
15 the Prime Minister to support peace-building activities in the Karamoja sub-  
region.

### **Background**

The applicant is the Minister for Karamoja Affairs in the Office of the Prime  
Minister (OPM) and was charged by the Office of the Director of Public  
20 Prosecutions (ODPP) with two counts of Loss of Public Property c/s 10(1) of the  
Anti-Corruption Act 2009 and Conspiracy to Defraud c/s 309 of the Penal Code  
Act Cap 120 in Criminal Case No. HCT-00-AC-005-2023 which is before this court.  
She is charged along with her assistant, Joshua Abaho and Naboya Micheal Kitutu.

The trial has not commenced, having been stalled by several applications made by  
25 the applicant. She filed Miscellaneous Application No 53/2023 alleging violation  
of her fundamental rights and freedoms by various agencies of Government and  
sought amongst others, the nullification of the trial. The application was heard and  
dismissed by this court, prompting her to file Civil Appeal 1525/2023 in the Court  
of Appeal. She then filed Miscellaneous Application No 76/2023 seeking to stay  
30 the criminal trial pending the outcome of the appeal. This application was allowed  
on 7/2/2023 on grounds detailed in this Court's Ruling.

The present application now arises from the actions of another prosecuting  
agency, the Inspectorate of Government (IG) which issued a written summons  
dated 6<sup>th</sup> December 2023 requiring the applicant to appear at her offices on the 11<sup>th</sup>  
35 of January 2024 to give information on an ongoing inquiry, and to produce any  
documents in respect of the management of supplementary funds released to the  
OPM for FY 2021/2022. Before the due date, the applicant through her lawyers,





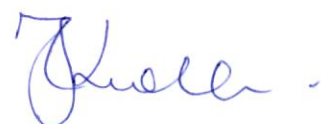
5 filed three applications; the first being Miscellaneous Application No 2/2024,  
seeking a permanent injunction restraining the Inspectorate of Government from  
conducting its investigations, and declarations that the act of summoning the  
applicant interfered with her right to a fair trial. She also filed Miscellaneous  
Applications Nos. 3/2024 and 4/2024 seeking a temporary injunction and interim  
10 orders. She did not appear on the scheduled date and through her lawyers, wrote  
back explaining that she was ill. She also notified the Inspectorate of Government  
of the applications she had filed in court challenging their summons and  
investigations.

Before the applications could be heard, the Inspectorate of Government brought  
15 fresh charges against the applicant at the Anti-Corruption Court, before the  
Magistrate Grade One 1 vide HCT-00-AC-0056-2023, by amending their charge  
sheet to include her. She is charged with three other officials of OPM, none of  
whom are charged in the earlier case, HCT-OO-AC-005/2023. Following the  
registration of the charge against her, the magistrate's court at the Anti-Corruption  
20 Court issued summons requiring her appearance for plea on the 29<sup>th</sup> of February  
2024. These developments resulted in the amendment of the Notice of Motion.

This application is supported by the applicant's affidavits deponed on the 8<sup>th</sup> of  
January 2024, a supplementary affidavit of the 19<sup>th</sup> of January 2024 and an affidavit  
in rejoinder dated 31st January 2024.

25 The grounds of the application are as follows:

1. That in April 2023, the applicant was charged with loss of public property,  
specifically 14,500 iron sheets purchased out of the supplementary funds  
that were released to the Office of the Prime Minister to support peace-  
building activities in the Karamoja sub-region in FY 2021/2022 vide HCT-  
30 00-AC-0005-2023.
2. That there was an investigation by various independent institutions  
including the Parliament of Uganda culminating in charges being instituted  
by the Director of Public Prosecutions against the applicant in HCT-00-AC-  
35 0005-2023.



5 3. That the action of subjecting the applicant to an additional set of criminal proceedings arising from the execution of her duties as Minister of Karamoja Affairs, Office of the Prime Minister in respect to the management of supplementary funds to support peace-building activities and touching the same transaction as the charges in HCT-00-AC-005-2023 contravenes the  
10 applicant's right to a fair hearing enshrined in Articles 28 (1), 28 (3), (a), (c), (d) and 44 (c) of the 1995 constitution.

15 4. That the charges preferred by the Inspectorate of Government are prejudicial to the applicant and violate her rights as an accused person in HCT-00-AC-0005-2023

5. That it is just and equitable that the applicant is granted the orders sought in the application.

**Representation:**

20 The applicant was represented by **Jude Byamukama** and **Zahara Tumwikirize** from JByamukama & Co Advocates while the Respondent was represented by **Johnson Natuhwera (SSA)**, **Jackline Amusugut (SA)**, **Raymond Nyanzi (SA)** and **Arnold Kyeyune (SA)** from the Attorney General's Chambers. The 2<sup>nd</sup> respondent was represented by **Vincent Kasujja**- Manager of Civil Litigation, Inspectorate of  
25 Government. Submissions were made orally.

I wish to note, before taking leave of the question of representation, that the 2<sup>nd</sup> Respondent filed an affidavit in reply to the Motion deponed on 19<sup>th</sup> January 2024 and a second one in response to the amended Notice of Motion deponed on 31<sup>st</sup> January 2024. Both were drawn and filed by the Directorate of Legal Affairs of the  
30 Inspectorate of Government. They were sworn by the Inspector General of Government, Betty Kamya Turomwe.

The capacity of the Inspectorate of Government to sue or be sued has been settled in the case of **Sentiba Gordon and 2 others versus IGG, Supreme Court Civil Appeal No 6/2006** where it was held that there is no provision in the Constitution,  
35 the Inspectorate of Government Act, Cap 167 or any other law which confers corporate status on it. It can only be represented by the Attorney General in Civil





5 matters under Article 250 (1) of the Constitution and as espoused in a myriad of decisions including **Fuelex Uganda Limited versus AG, Minister of Energy and Mineral Development and another, Civil Division Miscellaneous Cause No 048/2014; Kakooza Mutale versus Attorney General and others (2001-2005) HCB 110**

10 Section 17 of the **Human Rights (Enforcement) Act 2019**, under which it has been filed provides that the Civil Procedure Act and the Rules thereunder apply in the laws governing. These proceedings are not criminal, but rather civil in nature. Whereas **Section 6 (5)** of the same Act requires the court not to strictly apply the  
15 rights violation, the question of locus standi cannot be dismissed as mere technicality or matters of form. The Inspectorate of Government has no legal capacity to appear and defend, and can only be represented by the Attorney General. The Directorate of Legal Affairs of the Inspectorate consequently has no capacity to appear before the court, let alone file evidence in response to the  
20 application. The 2<sup>nd</sup> Respondent is not sued in her individual capacity but as the Inspector General of Government, in the exercise of her constitutional functions.

Owing to the foregoing position, I will disregard the affidavits filed by the Directorate of Legal Affairs of the Inspectorate of Government which has no locus standi before this court. This application will therefore be determined based on the  
25 1<sup>st</sup> respondent's affidavit in reply deposed by Brenda Kimbugwe Mawanda, the Manager for Prosecutions in the Inspectorate of Government, on 31<sup>st</sup> January 2024, and filed by the Attorney General's chambers.

### **Jurisdiction**

I also wish to address the question of whether this application is properly before  
30 me. Every court must determine whether the matter in which it is being asked to exercise jurisdiction falls within its jurisdiction or not, whether the challenge is raised by any party or not. It is trite law that jurisdiction can only be exercised where authorized by the law, and any orders passed by a court without the requisite legal empowerment are null and void. **Desai versus Warsama 1967 EA**  
35 **351; Uganda versus Kassiano Wadri and 31 others Gulu Criminal Revision No 2/2018.**



5 Counsel for the Respondent submitted that under **Section 11** of the **Human Rights (Enforcement) Act 2019**, the power to determine any allegations of human rights violation that arise in the course of criminal trials lies with the trial court, which in this case would be the Magistrate's court. In their considered view, the prosecution being challenged is the one before the Magistrate's Court therefore the application  
10 before this court is misplaced and amounts to an abuse of process.

Counsel for the applicant defended the decision to bring the application before this court. They argued that the order by the Inspectorate of Government to produce documents is detrimental to her defense in Case No 5/2023 as it would have the effect of depriving her of the evidence that she intends to rely on. They  
15 also submitted that separate trials would prejudice their client's right to a fair trial in terms of the expenses involved in defending herself in two separate matters, and the fact that the same witnesses and evidence would be required in the two cases.

In resolving this question I will consider **Section 11(2) of the Human Rights Enforcement Act** which provides as follows:  
20

**Whenever, in any criminal proceeding-**

**(a) it appears to the judge or magistrate presiding over a trial,**

**(b) it is brought to the attention of the competent court; or**

**(c) the competent court makes a finding,**

25 **that any of the accused person's non derogable rights and freedoms have been infringed upon, the judge or magistrate presiding over the trial shall declare the trial a nullity and acquit the accused person**

This provision requires a trial court to address any allegations of human rights  
30 violations that arise from or relate to a criminal case that is before it.

I note that the instant application is brought under the auspices of Criminal Case No 5/2023 which is pending trial before this court, and is anchored on the following grounds; a) that the summons and requirement to produce documents



5 will affect the applicant's right to aptly defend herself in the trial before this court, and b) that the separate trial will prejudice the applicant's defense before this court. These are premised on the argument that all the offenses charged are of the same character, and should have been investigated and prosecuted together.

10 The applicant's case relates to the effect of the Inspectorate's impugned actions on the trial that is pending before this court. Having established this nexus, this court is vested with the jurisdiction to entertain the matter, under section 11 (2) of the Act.

I will now proceed to determine the application on its merits, after having carefully considered the pleadings and the submissions of all parties in this case.

15 **The applicant's case:**

It was submitted for the applicant that the 2<sup>nd</sup> Respondent's acts of summoning the applicant and instituting charges on a case founded on the same facts, and hence subjecting her to multiple cases contravenes the applicant's right to a fair hearing. They relied on the decision in the case of **Kazinda Geoffrey versus**  
20 **Attorney General, Constitutional Petition No 30/2014** where the Constitutional court held that numerous trials in offenses of similar character offend the Constitution and the right to a fair trial, specifically **Articles 28 (1) and (9)** thereof. They found that the offenses the petitioner had been charged with had all been committed while he was the Principal Accountant in the Office of the Prime  
25 Minister, and were similar. They could have been joined in one trial. Consequently, they permanently stayed proceedings in the cases that were still pending against the petitioner at the Anti-Corruption Court, save for the offense of illicit enrichment.

It was argued that the prosecution ought to have considered a joinder of the two  
30 cases as provided under **Sections 86 of the Magistrates Courts Act** and **24 of the Trial on Indictments Act** which allow accused persons to be joined on the same charge if the offenses are founded on the same facts or form a series of offenses of the same or similar character, and were part of a series of the same transaction.

They relied on the cases of the **State of Andra Pradesh Vs Chemalapatati and**  
35 **another 1963 AIR 1850, Nassib Singh Versus the State of Punjab and another Criminal Appeals Nos 1051-1054 of 2021, and Naboya Michael Vs Uganda,**



5 **Miscellaneous Application No 0039/2023** as persuasive authority for definition of  
“the course of the same transaction” as offenses committed in the proximity of  
time, place, unity of purpose and design and continuity. Furthermore, these  
decisions espouse the principle that where a person commits various offenses  
forming part of the same transaction, a joint trial would be the norm rather than  
10 the exception, unless it is proved that a joint trial would prove difficult.

They submitted that the purpose of a joinder is to safeguard the rights of an  
accused person who unlike the State doesn't have unlimited resources and should  
not be required to defend herself in separate trials that could be joined.

15 It is the applicant's case that in the amended charge sheet sanctioned by the second  
respondent and laid before the Magistrates court in Case No 56/2023, the applicant  
is charged with causing financial loss. The particulars of the charges are that Hon.  
Mary Goretti Kitutu between February and June 2022 while performing her duties  
as Minister for Karamoja affairs failed to conduct various peace-building activities  
in the Karamoja region knowing that this would cause a financial loss of 1.56  
20 billion. It is the applicant's case that this charge can be joined to the 1<sup>st</sup> indictment  
as they relate to the supplementary budget and the applicant's execution of her  
duties as Minister for Karamoja Affairs. In essence, they took fault with the  
Inspectorate for investigating and bringing charges on a matter whose  
investigation had been concluded by the Parliament of Uganda and the DPP who  
25 opted to pursue only the charges in respect of the iron sheets.

That the actions of the 2<sup>nd</sup> Respondent prejudice her ability to defend herself in  
criminal case No. 5 of 2023 since the defense she would put up at both trials would  
be the same and would involve the same documents. He contended that the only  
reason for splitting the charges was to violate the applicant's due process rights.

30 The applicant's counsel further submitted that the summons marked “Annexure  
B” was issued when the Inspectorate knew she was already charged in court over  
the same matter, yet purported to call her as a witness. This summons required  
her to produce documents in respect of supplementary funds, an act they contend  
is prejudicial to the applicant as it would deprive her of the documents she  
35 requires in her defense in Criminal Case No 5/2023. They cited **Olara Otunnu Vs  
Attorney General Constitutional Petition No 12/2012** where it was held that it is





5 unconstitutional to compel a person who is not suspected of committing an offence to appear before a police station and produce documents.

In conclusion, it was argued that the applicant's ability to stand trial in Criminal Case No 5/2023 is compromised by the actions of the 2<sup>nd</sup> Respondent in a manner described in the affidavits and to court through the submissions. That it falls upon  
10 this court to protect the applicant's ability to challenge her trial in criminal Case No. 5/2023 without being administratively disabled by separate proceedings of the same character. They contend the actions of the 2<sup>nd</sup> Respondent are a violation of the non-derogable right to a fair trial and prayed that the application is granted.

**The Respondents' Case:**

15 In reply, counsel for the respondents submitted that the application is intended to interfere with the Constitutional and statutory mandate of the Inspectorate of Government under Articles 230 of the Constitution and Section 14 of the Inspectorate of Government Act. They contended that the applicant's fundamental rights had not been infringed by the issuance of summons as it was well within  
20 the Inspectorate of Government's power to issue the impugned summons which were intended to accord the applicant a fair hearing over the allegations under investigation.

It is their case that the applicant's right to a fair trial is not compromised by the Inspectorate's prosecution of the applicant because the offenses in the two cases  
25 are different and not capable of joinder. They stemmed from irregularities in the mismanagement of supplementary funds for administrative and monitoring costs in the disarmament exercise and did not relate to the charges in Case No 56 / 2023.

They pointed out the varying aspects of the two trials as follows;

- 30 1. Lack of similarity in the offenses charged. The DPP's case against the applicant is for loss of public property c/s 10 of the Anti-Corruption Act and Conspiracy to Defraud c/s 309 Penal Code Act, while the Inspectorate of Government's prosecution on the other hand is for Causing financial loss c/s 20 of the Anti-Corruption Act.
- 35 2. The persons the applicant is being prosecuted with in the two cases are not the same. In Criminal Case No. 56 / 23 she is charged with Seremba Geoffrey,



5 Masagazi Deogratiou and Atuhirwe Tracy while in Case No 5 / 23, she is charged with Abaho Joshua and Naboya Kitutu Michael.

- 10 3. The offenses in issue occurred in different time frames as indicated on the charge sheets. The offenses that are the subject of the DPP's prosecution occurred in January 2023 in Namanve stores in Mukono and concerned 14,500 pre-painted iron sheets while that of the Inspectorate occurred between January and June 2022.

15 It was their submission that because the charges are different, are based on a different set of facts and series of transactions, involve different accused persons and were committed at different times they can't be joined in one charge sheet. They referred this court to **Queen Vs Jonathan Colin (2020) NICA 10** where it was held that two offenses may constitute a series of the same transactions but there must be a nexus between them. They argued that in the instant case, there is no nexus between the offenses in the two cases and it is prudent that separate trials  
20 are conducted.

They relied on the decision of the Supreme Court in **Charles Harry Twagira versus Uganda, Constitutional Petition No 7/2005** to argue that to determine whether a fair hearing has been conducted or that there was a violation of the right to a fair hearing, the proceedings must first be completed. Since the trial against the  
25 applicant has not been concluded, they posited that this application was made in bad faith and should be dismissed.

**In Rejoinder**, counsel for the applicant stressed that the constitutional mandate of the Inspectorate of Government does not accord it the power to abuse court process, nor imply that the accused should lose his or her rights under the  
30 constitution.

He reiterated the position that the offenses are similar and based on the same transactions therefore the separate trials amount to an abuse of the right to a fair trial as held in the Kazinda Case. They occurred while the applicant was the Minister for Karamoja affairs and related to the same supplementary budget, and  
35 the effect of the second case is to hamstring the applicant in her defense.

They reiterated their earlier prayers.





5 **Identification of the Issues:**

From the preceding submissions, and the pleadings before the Court, two issues arise for resolution;

10 1. Whether the summoning and prosecution of the applicant by the Inspectorate of Government under HCT-00-AC-56-2023 for offenses founded on the same character with offenses under HCT-OO-AC-5-2023 contravene her right to a fair hearing

2. What remedies are available to the applicant

Before I proceed to the issues, I wish to highlight what the right to a fair trial entails.

15 The right to a fair trial has its roots in the **Universal Declaration of Human Rights 1948** and is reflected in **Article 28 of the Uganda Constitution, 1995**. For purposes of this application, I will consider specific provisions which I find relevant to the application.

These are the following:

20 1. **Article 28 (1)** which provides;

(0) **In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law (emphasis mine).**

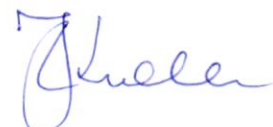
25 2. **Article 28 (2) (c and f)** which provide;

2. Every person who is charged with a criminal offense shall-

**(c) be given adequate time and facilities for the preparation of his or her defense:**

30 **(f) be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court.**

3. And lastly **Article 28(9)** which provides;



5 A person who shows that he or she has been tried by a competent court  
for a criminal offence and convicted or acquitted of that offence, shall not  
again be tried for the offence or for any other criminal offence of which  
he or she could have been convicted at the trial for that offence, except  
10 upon the order of a superior court in the course of appeal or review  
proceedings relating to the conviction or acquittal

In *Rosemary Nalwadda versus Uganda AIDS Commission*, Civil Division  
Miscellaneous Cause 0045/2010 a fair trial was defined as follows;

15 "A fair trial, or a fair hearing, under this Article of the Constitution means  
that a party should be afforded the opportunity to, inter alia, hear the  
witnesses of the other side testify openly, that he should if he chooses,  
challenge those witnesses by way of cross-examination, that he should be  
given the opportunity to give his own evidence, if he chooses, in his  
defense, that he should, if he so wishes, call witnesses to support his  
case."

20 Whereas the above decision refers to the rights of an accused during trial, the right  
to a fair trial also relates to pretrial processes as set out in Article 28. These include  
the rights in **Articles 28 (2) (c and f) and (9)** of the **Constitution** which I have set  
out above. The failure to adhere to pretrial measures can affect the rights of an  
accused person to defend themselves at trial. The right to a fair trial does not start  
25 when charges are preferred but from the first point of contact between the accused  
and state investigative authorities. It follows that these processes can be examined  
when issues arise during the proceedings or trial in court.

It is not the law that the question of violation of rights to a fair trial can only be  
determined after proceedings as argued by the respondent. Courts have always  
30 been expected to safeguard the rights of the accused to a fair trial during criminal  
proceedings. The **Human Rights (Enforcement) Act, 2019** specifically provides a  
mechanism for the courts to interrogate allegations of human rights violations  
during the trial, and enjoins them to stop the criminal proceedings while doing so,  
until the question is determined. Where the non-derogable right to a fair trial is  
35 compromised, the court has to nullify the proceedings and acquit the accused  
person. The case of **Charles Harry Twagira** (supra) is therefore not applicable.



5 Whereas Article 28 is not exhaustive and Article 45 of the Constitution envisages other rights that may not have been specified, the rights I have specified above are the framework within which this application will be decided.

10 **Issue 1: Whether the summoning and the prosecution of the applicant by the Inspectorate of Government under HCT-00-AC-56-2023 for offenses founded on the same character with offenses under HCT-OO-AC-5-2023 contravene her right to a fair hearing**

I have decided to approach the resolution of this issue in the following manner;

15 a) I will first examine the propriety of the summons issued by the Inspectorate within the context of the impugned investigations, and whether they violate the applicant's fair trial rights

b) I will then determine whether the offenses in the alleged 'parallel' prosecutions are founded on the same facts and should have been charged together, and consequently whether the Inspectorate's prosecution of the applicant in Case No 53/2023 violates her right to a fair trial

20 **The evidence:**

The applicant in her supplementary affidavit avers as follows;

25 **Para 2: That on the 9<sup>th</sup> day of March 2023, the 2<sup>nd</sup> Respondent's office wrote to me demanding for various pieces of information touching the Karamoja relief items in my custody on account that her office was conducting an investigation in which I was named as a key actor in requisitioning and distribution of the said relief items**

30 **Para 3: Besides the Office of the 2<sup>nd</sup> Respondent, I later discovered that various public agencies namely the Director of Public Prosecutions, Criminal Investigations Department, the state House Anti-Corruption Unit and the Parliament of Uganda were equally conducting parallel investigations into the alleged mismanagement of the said relief items...**

**Para 4: That based on the joint investigations by the Director of Public Prosecutions, Criminal Investigations Department and the State House Anti-Corruption Unit, I was publicly charged before this court vide HCT-**



5 OO-AC-OO5-2023 for the offense of loss of public property amounting to 14,500 iron sheets under the Karamoja Community Empowerment Program

10 Para 5: That the said iron sheets were procured with the supplementary funds that were released to the Office of the Prime Minister to support peace-building activities in the Karamoja region in the FY 2021/2022

Para 6: That the said criminal case vide HCT-OO-AC-005-2023 is fixed for hearing on the 12<sup>th</sup>, 13<sup>th</sup> and 15<sup>th</sup> days of February 2024 before this court

15 Para 7: That despite this public knowledge, the 2<sup>nd</sup> applicant in total disregard of the rule of law chose to continue with her own parallel manifestly illegal and unconstitutional investigation by signing off a search warrant in favour of certain designated persons and the police to enter my premises...

20 Para 8: In furtherance of her unconstitutional acts, the 2<sup>nd</sup> respondent equally and with no clear agenda summoned me to appear before their offices on the 11<sup>th</sup> day of January 2024 and demanded that I carry along with me any documents or information released to the Office of the Prime Minister to support peacebuilding activities in the Karamoja region

25 Para 9: That on the said date I was represented by the lawyers at the said office and was reliably informed that it was a futile exercise since the officers in charge of the investigation were indisposed.

From the above submissions, it is apparent that the applicant contests the process of investigations by the Inspectorate, and questions the legality of the summons and search warrants issued in pursuance of the same.

30 On the other hand, in the 1<sup>st</sup> respondent's affidavit in reply deposed by Brenda Kimbugwe Mawanda it is averred that the Inspectorate in exercise of its power to conduct investigations, issued summons for the Minister to appear before it in respect of a complaint alleging mismanagement of supplementary funds given to the OPM for F/Y 2021/22 to support the disarmament exercise in Karamoja. The complaint related to irregularities in the procurement for the supply of goats and  
35 iron sheets, mismanagement of funds meant for administrative and monitoring





5 costs in the disarmament exercise in Karamoja Region and the diversion of goats and iron sheets by OPM officials. However, the Inspectorate's investigation is restricted to the alleged mismanagement of the administrative and monitoring costs.

10 The summons issued to the applicant were intended to accord her a fair hearing before a final decision could be made. The order for the production of documents was specifically in respect of the peacebuilding activities. I took this to mean that they considered the peace-building activities as separate from the procurement and distribution of iron sheets and goats.

**Resolution on the propriety of the investigations**

15 I have considered Annexure B to the applicant's affidavit in support of the motion. It is a standard Format witness summons issued under Section 26 of the Inspectorate of Government Act, addressed to the applicant and dated 6<sup>th</sup> December 2023. It is framed as follows:

20 **"You are ordered to attend before the Inspectorate of Government at Jubilee Insurance Centre...on Thursday the 11<sup>th</sup> of January 2024 at 10:00 am, and so from day to day until your attendance there is dispensed with, to give information on the ongoing inquiry**

25 **AND ALSO to bring with you and to produce at that time and place any documents or information in respect to the management of supplementary funds that were released to the Office of the Prime Minister to support peace-building activities in the Karamoja Sub Region in FY 2021/2022." (emphasis mine)**

30 On the same date, a search warrant was signed authorizing four officers including two police officers, to enter the applicant's premises, carry out an inspection, and collect any evidence and documents concerning the inquiry into the mismanagement of supplementary funds meant to support the disarmament exercise in Karamoja subregion. (again, emphasis is mine) It specified the recovery of the Closed Circuit Television (CCTV) footage at her residence. This search warrant is Annexure C1 of the applicant's affidavit in support of the motion.



5 The specific matter under inquiry was not mentioned in the summons. The  
Inspectorate opted to use the phrase "peace-building activities" rather than the use  
of "funds released for administrative and monitoring costs" which they were  
interested in, as averred in paragraph 23 of the 1<sup>st</sup> respondent's affidavit in  
support. I find the wording of the summons vague and ambiguous, and subject to  
10 varying interpretations. The same applies to the search warrant. I am not sure if  
the parties expected to conduct the search could tell from the wording therein,  
what they were required to look for and to recover from the premises. The  
wording of the search warrant suggests that the inquiry being conducted related  
to the mismanagement of the entire supplementary funding.

15 From the foregoing, it could be easily concluded that the investigation of  
December 2023 by the Inspectorate was covering territory already canvassed by  
other agencies. There was need for clarity in the summons. This was particularly  
necessary in this case because the supplementary release to the OPM, or various  
aspects of it had been under investigation by other agencies and had led to the  
20 applicant's prosecution in Criminal Case No. 5/2023. The Inspectorate was well  
aware of this. In the circumstances of this case, it serves both the interests of the  
summoned person, the summoning authority and the officers tasked with the  
search exercise, to be specific on what the investigation was about.

Since the applicant never honored the summons, and no documents were  
25 produced by her or taken from her as a result of the search, coupled with the fact  
that no further steps were taken to compel her compliance, I am of the view that  
the vagueness and ambiguity in the summons and the search warrants are not of  
material effect.

The applicant castigates the Inspectorate for picking out a part of what was a  
30 broader investigation, and focusing on it as a basis for the subsequent  
investigations and prosecution, and termed this act as an abuse of power. Indeed,  
even in her submissions, it was severally mentioned that there were parallel  
investigations into the same matter by different agencies. The first question is  
whether there was a broad investigation into the supplementary budget in the first  
35 place and whether the Inspectorate's power to conduct the subsequent  
investigation and issue summons to the applicant in that pursuit, was curtailed by  
the same.



5 I observe that the Inspectorate had attempted to conduct investigations into the mismanagement of iron sheets purchased under the supplementary budget. On 9th March 2023, they summoned the applicant over the same. In her supplementary affidavit, the applicant confirms this and provides in evidence, Annexure "D" titled *"Mismanagement of Relief items for vulnerable groups under*  
10 *the Office of the Prime Minister"*. The documents she was requested to submit included the policy document that informed the decision to purchase the iron sheets, the distribution guidelines and the list of beneficiaries, the procurement of the iron sheets, and requisitions for the same.

The applicant is silent on whether she responded to the summons of 9<sup>th</sup> March  
15 2023 or even produced the required documents. She does not state this in any of her affidavits. The Respondent made no reply to this either. There is no evidence presented to show that the earlier investigation continued to a logical conclusion. It would appear that this investigation fizzled out.

At about the same time that the summons was issued on March 9<sup>th</sup>, 2023 by the  
20 Inspectorate, the Parliament of Uganda had commenced investigations triggered by a motion raised on the Floor of Parliament on 7<sup>th</sup> March 2023. The applicant adduced evidence of Annexure H which is the **"Report on the motion for a resolution of Parliament to inquire into the alleged mismanagement of relief items under the Office of the Prime Minister meant for the people of Karamoja**  
25 **Sub Region"** prepared by the committee on Presidential Affairs and dated May 2023. Whereas the title and motion appeared to be restricted to the management of relief items, one of the Terms of Reference of the Committee was to enquire into the alleged mismanagement of the supplementary budget of Ushs 39.94 billion intended to cover the implementation of a) peace-building activities b)  
30 procurement and distribution of iron sheets and goats.

This TOR appeared to broaden the scope of the investigation by Parliament. However, a careful study of the report shows that the investigation only covered relief items. Table 1 at page 10 of the report shows the breakdown of the funding. It was found that OPM spent 6.186 billion on peace-building initiatives, a different  
35 expenditure line from the Shs 7.164 billion on procurement and distribution of iron sheets and Shs 26.09 billion on goats (the latter constituting part of the relief items). The funds spent on peace-building activities however were not investigated. I see



5 no record of the activities carried out under this component or any inquiries into their implementation.

I note that the Parliament of Uganda in the execution of its oversight functions, has the power to order an investigation, under the Rules of Procedure of Parliament. It however has no prosecutorial capacity, hence their recommendation  
10 for DPP to exercise its functions under Article 120 of the Constitution to charge the applicant. The Office of the DPP has the constitutional mandate to direct police investigations and determine the charges to initiate, if any, based on the findings. From the evidence, the DPP exercised this power and the police and State House Anti-Corruption Unit conducted the investigations that led to the charges in Case  
15 No 5 / 2023 which were registered in April 2023. There is no evidence before this court to suggest that the DPP investigated the other aspects of the supplementary budget other than the iron sheets.

I have carefully considered paragraphs 11 to 13 of the 1<sup>st</sup> respondent's affidavit in reply.

20 **Para 11: That I know that the Inspectorate of Government received a complaint alleging mismanagement of supplementary funds that were given to the Office of the Prime Minister (OPM) in the FY 2021/2022 to support the disarmament exercise in Karamoja Sub-region.**

25 **Para 12: That according to the complaint received...the supplementary funds were meant to be utilized for agricultural supplies (goats), (Donations (iron sheets), and the conduct of workshops and seminars**

**Para 13; That I know that the specific allegations in the complaint included;**

- 30 **a) irregularities in the procurement for supply of iron sheets and goats**  
**b) mismanagement of the supplementary funds meant for administrative and monitoring costs in the disarmament exercise in Karamoja Region**  
**c) that iron sheets and goats were diverted to personal use or sold by officials of the Office of the Prime Minister and political leaders**



5 This complaint was never attached and so it remains unclear as to when it was lodged. Although the summons and the search were unclear as to the nature of the subsequent investigations, I have considered the particulars of offense in Annexure F and the respondent's averments that the investigation was focused on peace-building activities and not on iron sheets and find them to be true. This  
10 position is backed by the Parliamentary Report. As earlier stated, the Inspectorate of Government commenced an investigation into iron sheets and summoned the applicant vide their letter of March 2023, this did not proceed. I can safely conclude that the Inspectorate stepped down from the iron sheets investigation they had started.

15 It is, therefore, improper to suggest that the Inspectorate was running a parallel investigation with other agencies to the prejudice of the applicant. There is no evidence tendered to support the applicant's contention that the scope of the DPP's investigation was broader than the iron sheets or relief items. I have no evidence at this stage to show what the peacekeeping activities were, nor the specifics of the  
20 monitoring and implementation activities. What is clear is that these are presented as distinct from the procurement, distribution or alleged diversion of iron sheets.

The question therefore is whether the Inspectorate of Government's summoning and order for production of documents in December 2023 is proper.

25 The Inspectorate of Government has broad powers under the Constitution and Statutory law. **Article 230** thereof provides for special powers of the Inspectorate as follows;

30 **(1) The Inspectorate of Government shall have power to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office.**

35 **(2) The Inspector General of Government may, during the course of his or her duties or as a consequence of his or her findings, make such orders and give such directions as are necessary and appropriate in the**



5 circumstances.

(3) Subject to the provisions of any law, the Inspectorate of  
Government shall have power to enter and inspect the premises or  
property  
10 of any department of Government, person or of any authority, to call for,  
examine and where necessary, retain any document or item in  
connection  
with the case being investigated, found on the premises; and may, in  
those  
15 premises, carry out any investigation for the purpose of its functions.

The above are in addition to the general investigative functions stipulated under  
Article 225 (1) (e) of the Constitution.

The basic purpose of a criminal investigation is to gather sufficient evidence to  
prove or disprove an allegation made or suspicion of involvement in conduct that  
20 may constitute a crime. At this point, no conclusions should be made about  
culpability, until after all the relevant facts have been gathered. A party so  
summoned may refuse to make any statement, and the right against self-  
incrimination would protect them. Nevertheless, such summons cannot be said to  
be unlawful. In the **Olara Otunnu case** (supra) the Constitutional Court held that  
25 summoning a person for purposes of investigation does not in any way violate  
their rights as provided for under Articles 28 (1). The court instead took issue with  
the act of compelling the petitioner to attend. The facts in that case are  
distinguishable. The petitioner was first summoned on 15<sup>th</sup> April 2010 to appear  
at police for questioning over statements that he had uttered. On 22<sup>nd</sup> April he was  
30 summoned again and required to appear before the CID. He was further notified  
that if he failed to appear, he would be prosecuted under S 27A (3) of the Police  
Act which provided that if a person summoned failed or refused to appear,  
refused to produce documents or refuses to answer questions commits an offense  
and may be prosecuted. The Constitutional Court found this provision  
35 unconstitutional. This is not what is in issue in this case, and there was no threat  
to compel the witness to appear and even to produce the documents. No intended  
prosecution was threatened for failure to appear or produce documents, or both. I



5 therefore disagree with the applicant's reliance on this authority to support his case.

As rightly observed by the Hon Justice Kakuru Kenneth (as he then was) in the Olara Otunnu case:

10 **"The person who is required to Police may have a good reason for failure to attend to police, to produce documents or information. The person may not have any documents to produce or useful information to provide. The police has the duty to investigate crime, coming up with evidence that points to suspects and not just suspect persons and proceed to extract information from him in the hope that they will incriminate themselves.**  
15 **The law is arbitrary...the assumption by police that a person summoned may have any documents or information may be baseless, false or unjustified... Failure to produce documents on account that the person in fact does not possess it may lead to prosecution. Where one is indeed in possession of such documents or information he may require it for his or**  
20 **her defense. Secondly, producing it to police may deprive him or her defense or he or she may incriminate him or herself."**

As earlier stated in this judgment, a person summoned cannot be compelled by fear of sanctions. Neither is he or she obliged to produce documents. If he or she knows that they require the documents for their defense, they similarly have no  
25 obligation to furnish them to the investigating Authority. It should not be lost that in some cases, the production of documents may in fact clear an accused of any suspicions and show they were not culpable.

In the instant case, the applicant never appeared when summoned nor did she produce any document. There is no proof that the applicant at any point submitted  
30 herself to the IG for investigations as summoned. Annexure J of her affidavit in rejoinder shows that her lawyers wrote to the Inspectorate explaining that she was ill and therefore unable to appear. No sanctions were threatened against her for this nonappearance. Instead, the Inspectorate preferred charges in court against her.

35 In light of the foregoing, I am not persuaded by the argument that the act of summoning and requiring her to produce documents prejudiced her defense in



5 Case No 5 / 2023 or contravened her fundamental rights as guaranteed by law.  
From the foregoing, the subsequent investigation covered a different aspect of the  
supplementary budget and not the iron sheets. For that reason, the Inspectorate  
had the right to issue summons and conduct investigations into the allegations not  
covered by the DPP. I am unable to find that these summons and investigations  
10 prejudiced her right to a fair trial.

b) This brings me to the next question of whether the offenses in HCT-OO-AC--  
56-2023 and in HCT-OO-AC-5-2023 were of the same character and should have  
been charged together; and if so, whether the separate charges contravene her  
15 right to a fair hearing in the latter case.

**The evidence:**

In the case prosecuted by the Office of the DPP, the applicant is charged with her  
personal assistant Joshua Abaho, and one Micheal Waboya Kitutu, said to be her  
brother. The charge sheet is Annexure A to the applicant's affidavit in support.  
20 The three are charged with the following offenses:

- a) The applicant is charged with two counts of Loss of public property c/s  
10(1) of the Anti-Corruption Act, 2009.
- b) Abaho is charged with two counts of corruption c/s 2(c) and 26 (1) of the  
Anti-Corruption Act
- 25 c) Naboya, who is not an employee of OPM is charged with Receiving  
stolen property c/s 314 (1) of the Penal Code Act
- d) The applicant and Abaho Joshua are charged with conspiracy to defraud  
c/s 309 of the Penal Code Act

They are charged with different offenses all related to the handling of iron sheets  
30 procured by the OPM and intended for distribution under the Karamoja  
Community Empowerment program. The applicant and Abaho are accused of  
conspiring to divert 14,500 pieces of iron sheets for their use and that of third  
parties. This was at Namanve stores in Mukono. Naboya is alleged to have  
received 100 pieces of the iron sheets in issue at Situmi Village in Namisindwa,  
35 with the knowledge that they were feloniously obtained. These offenses are said  
to have occurred between June 2022 and January 2023.





5 In paragraphs 6 and 7 of the summary of the case, it is alleged that the iron sheets were procured out of Ushs 39.940 billion which was released as a supplementary Budget for disarmament, pacification, and peace-building programs. They were pre-painted and marked "OPM". The case is focused only on the iron sheets.

10 In the case under prosecution by the Inspectorate of Government, the applicant is charged with three others, all staff of OPM. The charge sheet is Annexure F of the applicant's supplementary affidavit. They are charged as follows:

- 15 a) The applicant is charged with one count of the offense of Causing financial loss c/s 20(1) of the Anti-Corruption Act. It is alleged that between February and June 2022, she failed to conduct various peace-building activities in the Karamoja Region knowing her omission would cause a loss of 1.55 billion shillings to the Government of Uganda.
- 20 b) Seremba Geoffrey who is the Undersecretary and Accounting officer of OPM and Deograti Masagazi who is the Undersecretary and Head of the Department of Pacification and Development in the same office are jointly charged with Corruption c/s 2(h) of the Anti-Corruption. It is alleged that to illicitly obtain benefits for themselves and for the applicant, they omitted to exercise due care in authorizing the release of Ushs 2,230,291,000/= to various staff between February and June 2022.
- 25 c) Atuhirwe Tracy who is the Acting Head of Accounts in OPM is charged with corruption c/s 2 (i) and 26 of the Anti-Corruption Act. It is alleged that she neglected her duty to manage and ensure accountability for Ushs 2.230 billion meant for peace-building activities in the Karamoja Region between April and June 2022.

#### Analysis:

30 **Sections 87 of the Magistrates Courts Act and 24 of the Trial on Indictments Act** provide for the joinder of persons in the framing of charges or indictments. They are couched in the same words and read as follows:

**The following persons may be joined in one indictment and may be tried together—**

- 35 **(a) persons accused of the same offence committed in the course of the same transaction;**



5 (b) persons accused of an offence and persons accused of abetment or of an attempt to commit that offence;

(c) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code Act or of any other written law) committed  
10 by them jointly within a period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of any offence under Chapters XXV to XXIX inclusive of the Penal Code Act and persons accused of receiving or retaining  
15 property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit either of the last-named offenses;

(f) persons accused of any offence relating to counterfeit coin under Chapter XXXV of the Penal Code Act, and persons accused of any other  
20 offence under that chapter relating to the same coin, or of abetment of, or attempting to commit, any such offence.

The instructive word in the foregoing provisions is "may" which has been defined as an expression of possibility, a permissive choice to act or not to act, ordinarily implying some discretion unlike the word "shall" which in most contexts is  
25 mandatory.

This means that the prosecuting authority makes the decision regarding which accused persons should be joined together in one indictment, and which ones ought to be tried separately based on the considerations set out in sub-sections (a - f). The court has the power to intervene to prevent a miscarriage of justice by  
30 ordering joint or separate trials. A miscarriage of justice can occur where the accused is prejudiced in his defense by the joint or separate trials.

In this case, I am not dealing with an application for a joinder of charges. Rather I am being asked to find that the prosecution offends the applicant's right to a fair trial because it is based on similar facts and occurs in the same series of

Deela



5 transactions as Case No. 5/2023, and to issue a permanent injunction restraining the Inspectorate and her agents from prosecuting the applicant in Case No 56/2023.

Careful consideration of **Sections 24 of the Trial on Indictments Act and Section 87 of the Magistrates Courts Act** specifically subsections (a) and (d), which are most applicable to the issue under contention require accused persons to be charged together where the offenses are similar. It also provides that persons  
10 accused of the same offense or different offences committed in the "course of the same transaction" may be charged together.

Applying this to the facts of this case, the applicant argues that all the different accused persons can be charged and tried together.

15 In my considered view, it is irrelevant whether all the accused work in the same office or not. In **Ocira Geoffrey and two others versus Uganda, ACD Criminal Appeal No 2 / 2014**, the accused were all employees of AMURU District Local Government who were charged with causing financial loss and False Accounting. Justice Keitirima Eudes in his judgement stated as follows-

20 "Surely, there is a clear misjoinder of the appellants in one charge. The appellants were charged on offences that happened on different dates, at different times and with different activities!

The 1<sup>st</sup> appellant was a Senior Accounts Assistant charged for causing financial loss for activities in the financial years 2008/2009-2009/2010. The  
25 2<sup>nd</sup> appellant was charged for causing financial loss in his capacity as a Vector Control Officer in 2009/2010. The 3<sup>rd</sup> appellant was charged for causing financial loss in his capacity as a nursing officer in financial year 2009/2010.

30 Count four was false accounting by appellant 2 on 13<sup>th</sup> February 2010 in his capacity as vector control officer.

There is nothing to show that the appellants committed the same offence in the course of the same transaction nor that they abetted or attempted to commit that offence, nor that the offences were committed by them jointly within a period of 12 months nor were they different offences committed  
35 in the course of the same transaction. The particulars of the offences are very clear on this. They were not in the same transaction and not committed jointly by the appellants. The charge as laid was bad in law for

*Telee*

5 misjoinder as it did not fall within the ambit of Section 87(a) (b) (c) (d) (e) (f) of the Magistrates' Court Act. The offences alleged in counts 1,2 and 3 are several, they are separate and distinct and occurred on different occasions. They were not committed in the same course of transaction nor were they committed jointly.

10 In **Yakobo Uma versus R, (1963) EA 542** two men were charged with different offenses, at different times though in the same village against the same complainant. Sir Udo Udoma held that there was a misjoinder. The fact that the complainant was the same did not justify a joinder of persons.

15 In **Nathan Versus R (1965) EA 777** it was held that the test to be applied to determine whether different offenses have been committed in the course of the same transaction, is whether the acts from the beginning were in contemplation, or necessarily arose therefore or formed parts of one whole transaction"

20 I also find supportive authority in the decisions of **Nassib Singh versus State of Punjab and another** (Supra), **State of Andhra Pradesh versus Cheemalapati** (Supra) that offenses committed in the course of the same transaction would mean offenses committed in the proximity of time or place, or unity of purpose or design. In the case of **State of Andhra Pradesh**, it was held that there must be a connection between a series of acts before they could be regarded as forming the same transaction. If some of them stand out independently, they would not form  
25 part of the same transaction but would constitute a different transaction.

I find the above authorities persuasive in defining "the course of the same transaction" and have previously relied on the same in the case of **Naboya Micheal Kitutu versus Uganda, HCT-OO-AC-CM-0039-2023**.

30 This brings me to the offenses in the two cases under consideration. The common factor is that the two arose from supplementary funds released to the OPM and that they are all related to activities executed while the applicant was the Minister for Karamoja affairs. The question is whether this alone is sufficient to qualify the offenses as occurring in the course of the same transaction. I do not think so. The  
35 defining factor is the manner of execution of the offenses, and whether they are so connected or related as to form part of the same transaction. There is no unity of

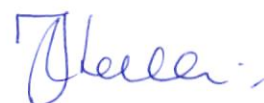


5 purpose or design exhibited between the offenses in the two files. The first case is  
purely related to the diversion of iron sheets that had been purchased with part of  
the supplementary funds and kept in the OPM Stores in Namanve for distribution.  
The charges relate to the manner in which the applicant and two others handled  
10 these government stores, and how they diverted them to their benefit and that of  
third parties, instead of distributing it to the intended beneficiaries under the  
Karamoja Community Empowerment Program. The first two accused in the case  
are alleged to have committed the offenses together, each playing different roles  
which enabled the crimes to be perpetrated. The third accused who is not an  
employee of OPM is charged jointly with the applicant for receiving stolen  
15 property as required under Section 24 (e) of the Trial on Indictments Act.

The allegation in Case No 56/2023 relates to what is referred to in the indictment  
as "money for peace-building activities" As earlier found in this judgment, the  
report of Parliament showed that the funds were used for iron sheets, goats and  
for peacebuilding activities. Unlike the first case in which there is a summary of  
20 the case, I have only the charge sheet to consider in the second. It is alleged that  
the applicant caused financial loss of Shs. 1,555,365,000/= by failing to conduct  
peace keeping activities. In count 2 where the Accounting officer and the Head of  
Pacification Department are charged with corruption, it is stated in the particulars  
of the offense that their actions were intended to illicitly benefit the applicant and  
25 themselves.

From what has been availed to me, there is no connection between the acts that  
constitute the transactions in the alleged diversion of iron sheets and the peace-  
building activities. No connections can be seen between the accused persons in  
either case, and going by the summary of the case in Case No 5/2023, no link  
30 whatever to the charges under case No 56/2023. It cannot be said that from the  
beginning, the various offenses were in contemplation, or necessarily arose  
therefore or formed parts of one whole transaction.

In Paragraph 23 of the 1<sup>st</sup> respondent's affidavit in reply, it is averred that the  
Inspectorate's interest is solely in the mismanagement of administrative and  
35 monitoring costs. I see no evidence suggesting the contrary.



5 The charges in the iron sheets case emanate from transactions that occurred  
between June 2022 and January 2023 while the second case transactions occurred  
between February and June 2022. Whereas this shows that the offenses did not  
occur within the same time, I do not attach much significance to it, in light of the  
fact that there is no nexus between the two in terms of joint commission by the  
10 accused, or continuity.

The offenses cannot be said to be similar within the meaning of sub section (a)  
neither were they committed jointly. I have described them in detail in this ruling.

In conclusion, find that the offenses do not fit within the cases that can be joined  
together under the provisions of sections 24 of the Trial on Indictments Act and  
15 Section 87 of the Magistrates Court Act.

It is alleged that the applicant will be prejudiced by separate trials in the following  
manner:

- a) The evidence she would rely on in terms of witnesses and documents would  
be the same.
- 20 b) It would be costly for her to defend herself in two trials.

In considering whether these cited factors would prejudice her right to a fair trial,  
I will first analyze legal interpretation of **Articles 28 (2) (c and f)** of the  
**Constitution** which I find to be relevant in this case. Any determination on the  
violations alleged would require examination against these constitutional  
25 principles.

The case of **Dr Stella Nyanzi versus Uganda, Criminal Appeal No 0079/2019** sets  
out some of the characteristics of a fair trial and they include the allowance of  
reasonable time for the accused to investigate and properly prepare and present  
his or her defense and that no undue advantage is taken by the prosecutor or  
30 anyone else.

**The UN Human Rights Committee General Comment 32, on Article 14 of the  
International Covenant on Civil and Political Rights (ICCPR) dated 23/8/2007**  
provides that accused persons must have adequate time and facilities for the  
preparation of their defence. This provision is an important element of the





5 guarantee of a fair trial and an application of the principle of equality of arms. Adequate facilities are defined to include access to documents and other evidence.

The Constitutional Court in **Soon Yeon Kong Kim and another versus AG, Constitutional Reference No 6/2007** observed that the accused must be given and afforded those opportunities and means so that the prosecution does not gain an  
10 unfair advantage over the accused, and so that the accused is not impeded in any manner and does not suffer unfair disadvantage and prejudice in preparing his defense, confronting his accusers, and arming himself in his defense so that no miscarriage of justice is occasioned."

These authorities expound on the meaning of Article 28 (c and f) which requires  
15 an accused to be afforded adequate time and facilities to prepare his or her defense, including allowing him or her access to assemble and prepare the documents and witnesses that they may wish to call.

I have considered the arguments of both parties. I agree with the Respondent that it has not been established how the prosecution of Case No. 56/2023 will impede  
20 the applicant's rights in Case No. 5/ 2023, especially in light of the finding that the offenses in the two cases were not committed in the course of the same transaction and are quite different. The argument that she will be impeded in accessing documents or witnesses cannot hold. It cannot be concluded that the evidence she will be tendering in the two cases will be the same.

25 I will now consider the application of **Article 28 (9) of the Constitution** and the decision in the case of **Kazinda Geoffrey versus Attorney General, Constitutional Petition No 30/2014**.

Article 28 (9) protects an accused person from double jeopardy which is an essential element of the right to a fair trial. The **UN Human Rights Committee General Comment 32 (supra)** provides that this Rule protects an accused person  
30 against the arbitrary power of the State, by preventing it from prosecuting someone for the same offense twice. I find the decision in **Green Versus United States, 355 US 184 (1957)** instructive. It was held therein that;

35 "The State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby



5           subjecting him to embarrassment, expense and ordeals and compelling  
him to live in a continuing sense of anxiety and insecurity, as well as  
enhancing the possibility that even though innocent, he may be found  
guilty."

10       These authorities confirm the position that double jeopardy relates to prosecution  
for an offense over which an accused has been prosecuted before, whether they  
were acquitted or convicted. Article 28 further provides that such a person cannot  
be prosecuted even for a different offense for which he or she could have been  
convicted at the trial for that offense. For the provision to apply, by necessary  
15       implication, there must be a connection or nexus between the offense over which  
he or she was convicted or acquitted. This Rule was not meant to do away with  
the right to separate trials for different offenses. Where there are different offenses  
with no nexus, it cannot be said that the accused could have been convicted at the  
trial for one offense.

20       In the **Kazinda Case**, which I am aware is on appeal to the Supreme Court, the  
Constitutional Court held that the offenses against the petitioner were "of the same  
character" and could adequately have been joined in one trial, except for the  
offense of illicit enrichment. I have carefully considered the facts in that case and  
find them distinguishable. The petitioner challenged his prosecution on the  
ground that all the offenses in the various cases brought against him arose from  
25       each other and were all related. The court found that the evidence adduced  
showed that the offenses fell within the definition of offenses of the same character  
and could adequately have been joined in one trial.

30       I am unable to arrive at a similar conclusion in the case before court for reasons I  
advanced herein before. I therefore find that there is no proof that the applicant's  
right to a fair hearing is affected by the two charges preferred against her. It  
should also be noted that in the Kazinda case, there was a conviction already  
entered in respect of one of the cases, hence the application of the double jeopardy  
principle, unlike in the instant case. The previous conviction over a related case  
was the basis for the decision.

35       I wish to emphasize that no law bars multiple trials of an accused person, as long  
as these trials are not part of the series of the same transaction, or similar, or fall



5 within the circumstances for joinder provided under Sections 87 of the MCA and  
24 of the Trial on Indictments Act. Infact, even where the factors for joinder are  
met, the court may direct different trials if satisfied that a miscarriage of justice  
will occur or that the accused may be prejudiced in his or her defense. See S 52 of  
the Trial on Indictments Act. In this case, I am only in agreement with the applicant  
10 in as far as the expenses she will incur in defending two cases is concerned. I do  
not find it as sufficient cause for a joinder, or prejudice warranting an interference  
with the status quo.

The application fails on that ground

### Issue 2; Remedies available

15 The **Judicature (Fundamental and other Human Rights and Freedoms)  
(Enforcement Procedures) Rules, 2019** provide that the court may grant reliefs  
including a) declaration of rights and freedoms; (b) declaration of invalidity of a  
law or conduct, to the extent of inconsistency with the Constitution;(c) an  
injunction or other prohibitory or restitutory order or decree; (d)compensation;  
20 (e)damages; and(f) any other relief as the court may deem fit.

The applicant sought a permanent injunction restraining the Inspectorate of  
Government from prosecuting the applicant in respect of the alleged  
mismanagement of supplementary funds released for peace-building activities.  
She also sought declarations that the acts of summoning and prosecuting her for  
25 offenses based on the same character as Case No 5/2023 contravene her right to a  
fair hearing.

Having heard the application and carefully considered the law and the facts, along  
with the submissions of both parties, I am unable to find that;

- 30 a) The acts of the 2<sup>nd</sup> Respondent of summoning and subsequently  
initiating parallel criminal charges against the applicant vide HCT-00-  
AC-C0-0056-2023 founded on the same character with criminal charges  
for which she is already charged in HCT-00-AC-005-2023 contravene the  
Applicant's rights to a fair hearing.
- 35 b) The acts of the 2<sup>nd</sup> Respondent in initiating additional criminal  
proceedings vide HCT-00-AC-C0-0056-2023 against the Applicant on  
allegations arising from alleged mismanagement of supplementary



5 funds released to the Office of the Prime Minister to support peace-  
building activities in the Karamoja sub-region in FY 2021/2022 violates  
her due process rights guaranteed under the constitution of the Republic  
of Uganda.

I therefore decline to grant the reliefs sought.

10 The Inspectorate of Government, its employees or agents shall not be restrained  
from prosecuting the applicant in respect of the alleged mismanagement of  
supplementary funds released to the Office of the Prime Minister to support peace-  
building activities in the Karamoja sub-region.

The application fails and is accordingly dismissed.

15



Okuo Jane Kajuga, J

Judge

19/2/2024

20