

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
CRIMINAL REVISION CASE NO.01 OF 2024
ARISING FROM NAKAWA CRIMINAL CASE NO.43 OF 2023

UGANDA **APPLICANT**

VERSUS

1. KATANGA MOLLY
2. KAKWENZA PATRICIA
3. NKWANZA MARTHA KATANGA
4. OTAI CHARLES
5. AMANYIRE GEORGE **RESPONDENTS**

BEFORE HON: JUSTICE ISAAC MUWATA

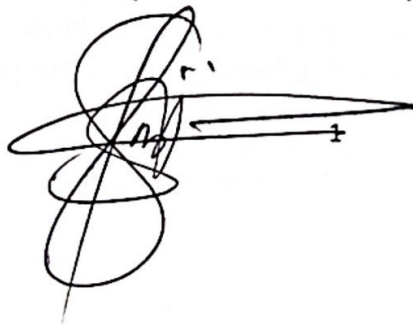
RULING

This is an application for revision brought by the Director of Public Prosecutions on the following grounds that;

- 1. The action by the learned Chief Magistrate of Nakawa, of taking plea of the 2nd 3rd, 4th, and 5th respondents for the offences of destroying evidence and accessory after the fact of murder on a charge sheet with a count of murder was incorrect, illegal, improper and irregular.**
- 2. The learned Chief Magistrate had no jurisdiction to take plea of the respondents on a charge sheet where there is a count of a capital offence of murder which is only triable by the High Court.**
- 3. The finding/ruling of plea of not guilty by the learned Chief Magistrate in respect of the respondents be set aside.**

The application was supported by an affidavit sworn by Anna Kiiza, Chief State Attorney. The application was not opposed by the respondents.

The application was brought under the provisions of section 48 and 50 of the Criminal Procedure Code Act, Sections 17(1) and 33 of the Judicature Act and Rule 2 of the Judicature (Criminal Procedure) (Application) Rules.



The background of the application is that the respondents were jointly charged on the same charge sheet with A1 Katanga Molly who is charged with murder contrary to section 188 and 189 of the Penal Code Act. A2 Kakwanza Patricia and A3 Nkwanzu Martha Katanga are charged with destroying evidence contrary to section 102 of the Penal Code Act, while A4 Otai Charles and A5 Amanyire Charles are charged with being accessory after the fact of murder contrary to section 392(1) of the Penal Code Act.

The powers of this court in a Criminal Revision are laid out in Sections 48 and 50 of the Criminal Procedure Code Act. The Court is enjoined to examine the record of any proceedings for purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and to investigate the regularity of any proceedings in the Lower Court.

In this particular case the main issue for consideration of this court is to determine whether the Magistrate had jurisdiction to take plea on a charge sheet with a count of murder. It is argued by the applicants that the magistrate didn't have jurisdiction to take pleas of A2, A3, A4, A5. The basis for this argument is that they are jointly charged with A1 who is charged with a capital offence for which the chief magistrate lacks jurisdiction.

Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon.

Issues of jurisdiction are substantive to the extent that they go to the core of a case and if a court lacks jurisdiction whether pecuniary or territorial, over the subject matter, its judgement and orders however precisely certain and technically correct, are of no legal consequence and may not only be set aside anytime by the court in which they were rendered, but declared void in every court in which they are presented. **See: Gabula Benefansion Vs Wakidalu Meraso HCT Civil Appeal No.29 of 2006 (High Court at Jinja)**

It is not in dispute that the Chief Magistrates Court is clothed with jurisdiction to hear and determine the offence of destroying evidence contrary to section 102 of the Penal Code Act, and that of being accessory after the fact of murder contrary to section 392(1) of the Penal Code Act.

The charge sheet in the instant case however contains a count of murder which is clearly outside the jurisdiction of the Chief Magistrates Court. The question to determine is whether in those circumstances the Chief Magistrate was clothed with the jurisdiction to handle the matter.

A handwritten signature in black ink, followed by the number '2'.

In the case of **Uganda Vs Ndyamuhaki Julius and Others Criminal Revision No.001 of 2016 High Court at Kabale**, the court held "The practice in such cases is that the gravest offence in a multiple count charge sheet determines the jurisdiction." The count of murder in this case determined the jurisdiction of which Court could handle this case. I find no reason to depart from the findings of my learned brother.

The magistrate was therefore only required to read the charges and advise the respondents that he did not have jurisdiction to hear the case and that they would take plea or apply for bail in a court with jurisdiction and thereafter remand the accused person. The purported actions taken by the learned Chief Magistrate were irregular and a nullity at law. He had no power to take plea on a charge sheet that contained a count of murder. It is only a court with jurisdiction over all the counts in a charge sheet that has the power to take plea, hear and determine the case or grant bail.

The above notwithstanding the DPP also has powers to determine which offences to be committed to the High Court for trial even if the magistrates court has jurisdiction over the same. This is provided for under section 169 of the Magistrates Courts Act.

In the result, I find that the learned Chief Magistrate had no jurisdiction to take plea given the nature of the charges presented before him. The resultant pleas are hereby set aside for being irregular and a nullity. The respondents shall take plea at the commencement of their trial before a court of competent jurisdiction.

I so order.



JUDGE.

24/01/2024