

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**REVISION CAUSE NO. 34 OF 2016**

**UGANDA:..... PROSECUTIONS**

**VERSUS**

- 1. INSPECTOR GENERAL OF POLICE,  
GENERAL KALE KAYIHURA.**
- 2. REGIONAL POLICE COMMANDER KAMPALA EAST,  
ANDREW KAGGWA**
- 3. HEAD OF OPERATIONS KAMPALA METROPOLITAN,  
JAMES RUHWEZA**
- 4. COMMANDAR FIELD FORCE UNIT,  
SAMUEL BAMUZIIBIRE**
- 5. REGIONAL POLICE COMMANDER KAMPALA  
NORTH, WESLEY NGANIZI**
- 6. DEPUTY REGIONAL POLICE COMMANDER KAMPALA  
PERSONS  
NORTH, GODFREY KAHEBWA**
- 7. WANDEGEYA DIVISIONAL POLICE COMMANDER,  
MOSES NANOKA**

**ACCUSED**

## **8. COMMANDER IN OPERATIONS, FIELD FORCE UNIT,**

### **KAMPALA METROPOLITAN SOUTH, PATRICK MUHUMUZA**

#### **RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA**

##### **1. Introduction**

- 1.1 The Prosecutions (applicant in this matter) is being represented by Mr. Anguzu Lino, Principal State Attorney, Ms. Jacquelyn Okui, Senior State Attorney and Ms. Irene Nakimbugwe, Senior State Attorney.
- 1.2 Mr. Abdullah Kiwanuka from Lukwago & Co. Advocates, Mr. Walyemera Daniel from Namugali & Walyemera Advocates, and Mr. Martin Muhumuza from the Net work of Public interest Lawyers, Law School, Makerere University appeared as Private prosecutors.
- 1.3 The complainants: Ssebitosi Andrew, Kaddu Joseph and Ddiba Rogers attended Court. Each of them informed Court that they have no lawyers.
- 1.4 Mr. Andrew Karamagi, an advocate and researcher, School of Law, Makerere University informed Court that he is being represented by Mr. Walyemera Daniel. Upon perusal of the charge sheet it was noted that this so called complainant is not among the complainants named therein.

##### **2. Facts of this petition for Revision**

The criminal case, miscellaneous cause No. 6066 of 2016, between the parties was privately instituted in Makindye Chief Magistrate's Court by Kaddu Joseph, Ssebitosi Andrew, and Ddiba Rogers.

The Director of Public Prosecutions in exercise of his powers under Article 120 (3) of the Constitution of the Republic of Uganda, Section 43 of the Magistrates Courts Act, Cap.16 Laws of Uganda and Section 13 (1) (a) of The Prevention and Prohibition of Torture Act, 2012 gave instructions to take over the Prosecutions of the Criminal Case.

Following the Director of Public Prosecutions' instructions a letter dated 9<sup>th</sup> August, 2016 was filed by the Resident Senior State Attorney, Makindye, notifying Court of the intention to take over.

The matter came up in Court on 10<sup>th</sup> August, 2016 for mention; however, in the ruling of the Chief Magistrate he held the objection of the advocates for the complainants that the Director of Public Prosecutions had no locus to appear and directed that a formal application be made to take over.

**3. This application for revision.**

The Director of Public Prosecutions was aggrieved by the orders and ruling of the trial Chief Magistrate, hence this application for revision of the orders of the said Chief Magistrate, His Worship Mafabi Richard, Chief Magistrate of Makindye Chief Magistrate's Court.

**4. Resolution of this application for Revision by Court**

4.1 This matter came up for hearing before me on 16<sup>th</sup> August, 2016. During the recording of appearances of parties on the Court record, a dispute arose as to whether Counsel on private Prosecutions in the matter in the lower Court are representing any person allegedly to have been tortured by the alleged suspects in the charge sheet. Both Counsel for the Director of Public Prosecutions and these on Private Prosecutions made long submissions on the issue. A ruling was made and the said dispute was resolved.

4.2 When the Court reconvened and after delivering a ruling on the said issue, Counsel on the Private. Prosecutions team, Mr. Abdullah Kiwanuka from M/S Lukwago & Co. Advocates addressed Court as follows:

**“We have agreed with Counsel for the Director of Public Prosecutions, that the Director of Public Prosecutions takes over the Prosecutions of this matter strictly under Article 120 (5) of the constitution which provides, that:-**

**In exercising his or her powers under this Article, the Director of Public Prosecutions shall have regard to the Public interest, the interest of the administration of justice and the need to prevent abuse of legal process.**

**Further, we have agreed that both firms of lawyers shall be on record on watching brief throughout the Prosecutions and proceedings of this matter.”**

In reply, Ms. Irene Nakimbugwe, Senior State Attorney submitted that they are aware that their colleagues have conceded for the revision before this Court. That, however, their application for revision has points of law which are not captured in the consent. That they are:-

- 1. The Director of Public Prosecutions who is in charge of all Prosecutions in this Country be given audience to address Court in any Prosecutions matter.**
- 2. The lower Court record contains errors, illegalities and irregularities.**

She prayed that the orders of the Chief Magistrate be revised and the record of the lower Court be put right.

4.3 In reply, Counsel on the private Prosecution supported the orders and ruling of the trial Chief Magistrate delivered on 10<sup>th</sup> August, 2016 at Makindye. Counsel submitted that by the Director of Public Prosecutions making a formal application could give them as Private Prosecutors an opportunity to reply to such an application considering this is a matter of Public interest.

He further submitted that the trial Chief Magistrate never made a final order on the matter. That hence this application for revision is pre-mature before this Court. He referred to Section 50 (5) of the Criminal Procedure Code Act, Cap. 116, the cases of **Chatal Karesandas –vs- Republic Criminal Revision No. 5 of 1962 and Musone –vs- Uganda, Criminal Revision No.1 of 1963.** Unfortunately, Counsel Walyemera Daniel never supplied the said authorities to Court. So I am unable to appreciate their relevance in this matter for revision.

- 4.4 It is important to note that under Section 48 of the Criminal Procedure Code Act (Supra), the High Court has powers to call for the records of the lower Court and satisfy itself as to the correctness, legality or propriety of any finding or order as well as the irregularity in the proceedings of the lower Court.

The Director of Public Prosecutions made an application for Revision of the orders of the Chief Magistrate, to wit:-

1. At page 2, last paragraph of the proceedings of the lower Court, the trial Chief Magistrate clearly barred the Director of Public Prosecution from responding to the submissions made by Counsel on Private Prosecutions. The trial Magistrate held:-

**“Before Court allows the Director of Public Prosecutions to respond, I think I will agree with the Counsel for the complainants that a formal application must be filed in Court by the Director of Public Prosecutions.”**

The holding of the trial Chief Magistrate in my view is wrong. And that amounts to an illegality for this Court to address. Under Article 120 (3) (c) of the Constitution (Supra):-

**“To take over and continue any proceeding instituted by any other person or authority.”**

The Constitution does not give a procedural format on how the Director of Public Prosecutions can take over any proceedings instituted in Court by any other person or authority. This Article 120 (3) (c) of the Constitution is operationalised by Section 43 of the Magistrate’s Courts Act, Cap.16 and Section 13 (1) (a) of the Prevention and Prohibition of Torture Act, No. 3 of 2012, which provide powers of the Director Public Prosecutions take over the Prosecutions of any Criminal Case instituted on the Magistrate’s Court at any stage at the proceedings, before judgment. The Director of Public Prosecutions has a right to appear in any Court during the trial of a criminal matter which has been instituted under Private Prosecutions and addresses Court orally

on his intentions to take over the said criminal proceedings. Thus the letter that was written by the Director of Public Prosecutions expressing intentions to take over criminal proceedings in miscellaneous cause No.6066 of 2016 was one of the procedures that Director of Public Prosecutions can use in such instances. Therefore, the trial Chief Magistrate erred in law and fact when he barred the State Attorney who had appeared in his Court to address him on the intentions of the Director of Public Prosecutions take over the matter.

To that extent, therefore, that error or illegality is accordingly revised and the lower Court record corrected to reflect the correct position of the law as stated hereinabove. The trial Chief Magistrate was bound to follow Article 120 (3) of the Constitution which spells out the functions of the Director of Public Prosecutions. Again, in **miscellaneous application No.3 of 2016, Obey Christopher and 14 others vrs Uganda**, at page 10 my brother Judge Hon. Mr. Justice Lawrence Gidudu, a Judge of the High Court of Uganda, Head of Anti Corruption Court held that:-

**“The Director of Public Prosecutions is the Constitutional Authority for all Prosecutions in the Country; he is not under the direction or control of any person or authority (see Article 120 (b) of the Constitution).”**

Wherefore, the trial Chief Magistrate’s orders that the Court allows the Director of Public Prosecutions to file an application so that he determines whether the Director of Public Prosecutions is worth of taking over the Criminal Proceedings is not in the matter in the lower was erroneous and contravenes Article 120 (3) and (6) of the Constitution of the Republic of Uganda.

In this instant matter of revision of the trial Chief Magistrates orders, during the hearing the private prosecutors appreciated the functions of the Director of Public Prosecutions under Article 120 (3) (5) and (6) of the Constitution, and conceded to this application. They, too, saw the errors and/or illegalities in the criminal proceedings before the lower Court.

5.

**Conclusion**

In closing and consideration of all the submissions by the parties, the authorities cited and relied on by me hereinabove in this ruling, my analysis of the entire application by revision and for the fact that the Private Prosecutors conceded to this application for Revision, this application for Revision is allowed in the following orders, that:-

1. The impugned orders of the trial Chief Magistrate are hereby revised and the record of the lower Court put correct by reflecting my findings and orders hereinabove in this ruling.
2. By consent of the parties to this revision, the Director of Public Prosecutions shall take over and continue with the Criminal Proceedings of the lower Court as is provided for under Article 120 (3), (5) and (6) of the Constitution.
3. The Director of Public Prosecutions is not subject to control of any person or authority when exercising his Constitutional functions as enshrined under Article 120 of the Constitution (Supra).
4. The Director of Public Prosecutions in exercise of his Constitutional mandate under Article 120 (3) (c) of the Constitution is not obliged under the law to file an application, when he is desirous of taking over any criminal matter instituted by any other person or authority in the Magistrate Courts or other Court higher than the Magistrate Courts.
5. The Director of Public Prosecutions has powers in all criminal proceedings all over Uganda.

Dated at Kampala this 17<sup>th</sup> day of August, 2016.

.....

**Joseph Murangira  
Judge.**

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CRIMINAL DIVISION  
REVISION CAUSE NO. 34 OF 2016  
UGANDA:..... PROSECUTIONS**

**VERSUS**

- 1. INSPECTOR GENERAL OF POLICE,  
GENERAL KALE KAYIHURA.**
- 2. REGIONAL POLICE COMMANDER KAMPALA EAST,  
ANDREW KAGGWA**
- 3. HEAD OF OPERATIONS KAMPALA METROPOLITAN,  
JAMES RUHWEZA**
- 4. COMMANDER FIELD FORCE UNIT,  
SAMUEL BAMUZIIBIRE**
- 5. REGIONAL POLICE COMMANDER KAMPALA  
NORTH, WESLEY NGANIZI**
- 6. DEPUTY REGIONAL POLICE COMMANDER KAMPALA  
PERSONS**

**ACCUSED**



**NORTH, GODFREY KAHEBWA**

**7. WANDEGEYA DIVISIONAL POLICE COMMANDER,**

**MOSES NANOKA**

**8. COMMANDER IN OPERATIONS, FIELD FORCE UNIT,**

**KAMPALA METROPOLITAN SOUTH, PATRICK MUHUMUZA**

**REPRESENTATION**

17/8/2016

Mr. Walyemere Daniel appearing together with Mr. Abdullah Kiwanuka for the Private Prosecutions.

Ms. Irene Nakimbugwe, Senior State Attorney and Jacquelyn Okui Senior State Attorney for the Director of Public Prosecutions.

We also have Counsel Jeffrey Atwine from the Attorney General's Chambers

We are ready to receive the ruling.

Ms. Margaret Kakunguru the Clerk is in Court.

**Court:** Ruling is read in open Court, to the parties.

Right of appeal is explained.

.....

**Joseph Murangira**

**Judge.**