

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CRIMINAL DIVISION)

MISCELLANEOUS APPLICATION NO. 0003 OF 2022

**(ARISING OUT OF BUGANDA ROAD CRIMINAL CASE NO. 1301 OF
2019)**

KAKANDE ALOYSIUS.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

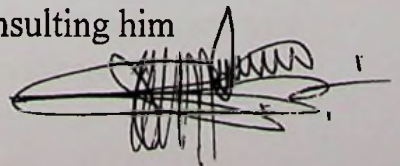
BEFORE HON JUSTICE TADEO ASIIMWE

RULING

This Application was brought by way of Notice of Motion under section 48 and 50 of the Criminal Procedure Code Act and the constitution.

The Applicant seeks to move this Honorable Court to call for orders;

1. That the ruling of magistrate grade one court at Buganda road court dated 27/01/2022 in a criminal case no.1301/2019 be reversed and such orders be made
2. That the learned trial magistrate occasioned a miscarriage of justice when he ruled that the accused had chosen to be silent without consulting him



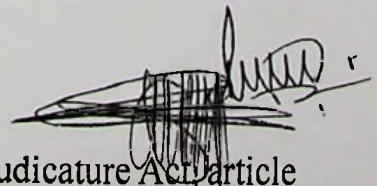
3. That the trial magistrate denied the accused his right to a fair hearing when he refused to take his evidence and considered to have kept quiet
4. That the learned trial Magistrate erred in law when he ruled that the accused had chosen to keep silent when he was already on record on 27th August 2021 that he was giving sworn evidence and call witnesses.
5. That the trial Magistrate erred when he denied the adjournment and to grant a court order.
6. That the proceedings and ruling of 27th January, 2022 that were made by the Magistrate at Buganda road be set aside.
7. That the criminal case number 1301 at Buganda road is an abuse of court process only intended to frustrate civil suit number 125 of 2018 wherein the complainant, Edumud Sebugwawo is the defendant.
8. That the court record is perused and the case be determined on its merits.
9. That court grants any other reliefs that it may deem fit.

The application is supported by the affidavit of MR. Kakande Aloysius, the applicant who is the accused in criminal case No. 1301 of 2019 and plaintiff in HCCS no.125 of 2018 at Mpigi.

The gist of the affidavit in support is that the applicant was denied a right to be heard in criminal case number 1301 when he was even ready to do so in court. That his trial is an abuse of court process intended to defeat his civil case at Mpigi High court. The respondent filed an affidavit in reply opposing the application and a rejoinder by the applicant.

At hearing the Learned State Attorney Wanamama represented the respondent while Counsel Kawanga John Baptist and Leila G represented the Applicant. Both Counsel filed written submissions which I will consider in this ruling.

In his submission, the applicants counsel in support of the grounds in the motion argued that the criminal trial against the applicant at Buganda road Court is an abuse of court process aimed at defeating the ongoing high court civil matter.



Counsel cited sections 48 and 50 of the CPC, section 17 of the Judicature Act, article 28 of the Constitution and a number of decided cases arguing that the applicant was denied a right to be heard yet he had notified court to give evidence on oath. In

counsel's view the decision of the trial Magistrate denied the applicant a right of fair hearing which is constitutional. That fair hearing includes allowing adjournments to bring necessary exhibits to court and legal representation.

Counsel invited Court to stay the criminal proceedings till disposal of civil suit number 125 of 2018 at Mpigi Court.

That if the criminal trial is not stayed, it will occasion the miscarriage of justice to the applicant since it is related to the civil case which will become a moot.

In reply, the learned state Attorney raised a preliminary objection arguing that revision is only brought against concluded matters and not interlocutory matters as in this case.

He further submitted relying on decided cases that the applicant's failure to defend himself in a period of 5 months is an injustice and against article 28 of the constitution. That the applicant is himself to blame by failure to lead his evidence.

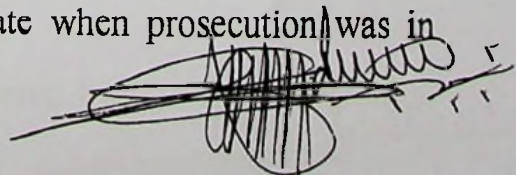
On the issue of an existing civil suit, he argued that he argued that the criminal case is about enforcing public interest relating to forgery which has no bearing to ownership private rights. He invited court to give the applicant schedules on hoe to defend himself.

RESOLUTION

From the submissions of both counsel and the pleadings on record, the main issue for courts to determination is whether it was improper or illegal for the magistrate to continue criminal proceedings without hearing from the applicant and when there is a pending civil matter where the applicant is a party.

Before I consider the merits of this application, I wish to consider the preliminary objections raised by the respondent. The learned state attorney raised an objection that revision applications are only brought against concluded matters and not interlocutory matters.

He further argued that the revision was brought late when prosecution was in advanced stages.



First of all, apart from stating the two preliminary objections, the learned state attorney did not argue them or provide the Authorities for his position on the preliminary points. So his submission is not backed by any statutory law or decided cases.

My considered view is that criminal revisions can be brought any time before conclusion of the matter to deal with legality and or irregularities in the trial process. The position being stated by the learned state attorney is only applicable in appeals as per the case of **Charles Harry Twagira v Uganda (1) (Criminal Application 3 of 2003) [2003] UGSC 31 (19 September 2003)** I therefore do not find any merit in the preliminary objections and the same is hereby overruled. I will now proceed to resolve the application on its merits.

The Law.

Section 50 (2) of the Criminal Procedure Act provides for the power of the High Court on Revision and is to the effect that no order under this Section shall be made unless the DPP has had an opportunity of being heard and no order shall be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or by an advocate in his or her defense.

Section 48 of the Criminal Procedure Code Act further provides that, the High Court may call for and examine the record of any criminal proceedings before any Magistrates' Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrates court.

Section 17(1) of the Judicature Act is to the effect that the High Court exercises general powers of supervision over the magistrates' courts'.

2. With regard to its own procedures and those of the Magistrates' Court, the High Court shall exercise its inherent powers-

(a) to prevent abuse of process of the Court by curtailing delays of judgment including the power to limit and discontinue delayed prosecutions.

(b) to make orders for expeditious trial and

(c) to ensure that substantive justice shall be administered without undue regard to technicalities.

The above provision of the law illustrates that the inherent powers of the High Court are intended to curtail delays, to ensure expeditious trial and to ensure that technicalities are not used to defeat substantive justice. The High Court also has unlimited original jurisdiction over all matters to revise the lower court decision and restate the correct position of the law above.

In view of the above provisions of the law, perusal of the record reveals that the applicant was charged with four counts relating to Uttering a false document, obtaining registration by false pretenses and forcible Detainer.

That the accused was put on defence and the trial magistrate closed his defence before the accused led his defence. That this was an abuse of the accused's right to a fair hearing. Further that there is a civil matter where the accused is the plaintiff and concerns the same subject matter and that therefore the criminal case should have been stayed pending the determination of the civil suit.

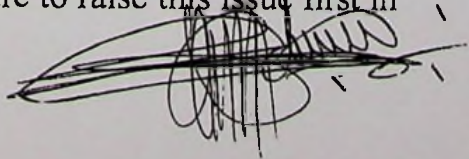
Although this court is cognizant of the fact that "there is no universal principle that proceedings in a criminal case must necessarily be stayed when a similar or identical matter is pending before a civil court" I am aware of the common law principle that criminal matters should take precedence over civil matters.

Court in **Sebulime Baker v Uganda (High Court Criminal Appeal-2018/21)** **stated that** *It is also trite law that "where a civil court has taken cognizance and is deciding the same issue, the criminal proceedings before the trial court amount to abuse of process of law. Proceedings pending before the trial court in such circumstances ought to be stayed till the disposal of the civil suit(s)".*

Whereas I agree with the above positions of the law, I wish to state that in cases where an investigation can satisfactorily be investigated by both the civil and criminal court, there absolutely no reason to stay the criminal proceedings. The reverse is only true in cases that involve determination of ownership rights.

However, in this case, the criminal court can ably establish issues of uttering a false document and obtaining registration by false pretence in both the civil and the criminal court and it doesn't matter which court decides first.

Secondly, from the lower court record it is not shown any where that the accused person or his lawyer sought court to stay the criminal proceedings and his request declined by the trial magistrate. Therefore, it is premature to raise this issue first in this court.

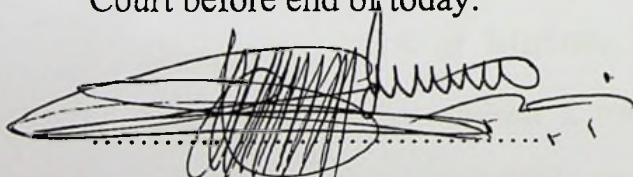
A handwritten signature in dark ink, appearing to be a stylized name, located at the bottom right of the page.

On the issue of the accused having been denied a right to be heard, I have perused the lower court record and have taken note that the accused was well represented when he was put on defence on 27/08/2021. The accused's counsel asked for several adjournments between 30th/09/2021 and 27th/01/2022. Five months after the accused was put on defense, his counsel still sought for an adjournment to do things that he should have done earlier. I literally understand the trial magistrate for closing the hearing in the presence of both the accused and his lawyer. A right to be heard was not created to be abused or held on to delay court process. It should be respected as it does not lie in a vacuum. Once an accused chose to disrespect it, it is as good as Voluntarily waiving the same.

However, I shall reluctantly take a liberal approach and give the accused person a benefit of doubt to be lead his defence on specific days.

In conclusion I partly allow this application to the extent of the right to be heard. The prayer for stay of proceedings is not granted. The Applicant's request to defend himself is here by allowed with an order directing that proceedings against the applicant in Criminal case no. 1301 of 2019 continues by allowing the applicant to start his defence on 29/08/2022 before the trial magistrate.

The Deputy Registrar is directed to return the lower Court file to Buganda Road Court before end of today.

A handwritten signature in black ink, appearing to read 'Tadeo Asiimwe', with a large, dense scribble over the middle of the signature.

TADEO ASIIMWE

JUDGE

23/08/2022