

THE REPUBLIC OF UGANDA

In the High Court of Uganda at Anti-Corruption Division Kololo

Revision cause 1/2023

(Arising from the Chief Magistrate's Anti-Corruption Court at Kololo)

(Criminal Application No 119 /2022)

UgandaApplicant

Versus

Kennedy Ahimbisibwe:.....Respondent

Ruling

Under a plea bargain arrangement, the Respondent pleaded guilty to possession of uncustomed goods (cigarettes) and conveyance of the same, contrary to sections **200 (d) (iii) and 119 (b) (iii)** of the East African Community Customs Management Act 2004. The lower court effected the terms of the plea bargain agreement by inter-alia ordering that the goods “**be released to the owners upon completion of sentence and payment of the relevant taxes**” after the Respondent fulfilled his part of the plea agreement.

The Applicant however refused to comply with the plea terms on the basis that the goods contravene the **Tobacco Control Act, 2015**, and the **Tobacco Control Regulations 2019**.

The Applicant now seeks to have the lower Order revised and substituted with an order for forfeiture of the goods, under the relevant provisions of the East African Community Customs Management Act 2004, hence this application.

The Respondent argues that since he was not charged, tried and convicted under the Tobacco Control Act, 2015, an order for forfeiture of the goods if granted would offend his Constitutional due process right to presumption of innocence.

Considerations.

That the Respondent was charged under the East African Community Customs Management Act 2004 and not the Tobacco Control Act is common cause. It should therefore be understood that the plea agreement and resultant court order solely related to offences under the East African Community Customs Management Act 2004.

For the Applicant to seek to have the court order revised on grounds that the importation of the goods offended the Tobacco Control Act, or that the respondent is suspected to have committed an offence under a different law is not legally sustainable.

Were this court to grant the application, the respondent will not have been availed an opportunity to make presentations relating to the Applicant's assertions, or even plead to other offences other than those which were the subject of the plea bargain. This would be tantamount to convicting him unheard.

If the Applicant believes that there are other remedies accruing to them or other prosecutable offences relating to the same goods, since the terms of plea agreement don't seem to rule out the commencement of a separate legal process, subject of course to various legal challenges they are at liberty to pursue that option.

Conclusion.

This application stands dismissed for want of merit.



Hon Lady Justice Margaret Tibulya.

17 July 2023.