

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)

CRIMINAL REVISION CAUSE NO. 0418 OF 2023

[ARISING FROM CRIMINAL CASE NO. 3301 OF 2023 AT THE CHIEF MAGISTRATES COURT OF
BUGANDA ROAD HOLDEN AT CITY HALL KAMPALA)

1. TUMWEBAZE KEN.....APPLICANTS

2. TUMWEBAZE DOREEN

VERSUS

UGANDA.....RESPONDENT

Before Hon Lady Justice Rosette Comfort Kania

Ruling

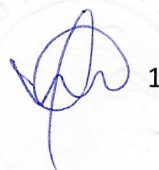
Tumwebaze Ken and Tumwebaze Doreen (hereinafter referred to as the applicants) brought this application under Sections 48, 50(1)(b), 50 (5) of the Criminal Procedure Code Act cap 116 and 33 of the Judicature Act Cap 13 against the Respondent seeking orders that;

- a). The criminal proceedings in Criminal Case No. 3301 of 2023 in the Chief Magistrate's Court at Buganda Road Holden at City Hall be stayed pending the hearing and determination of High court civil suit no. 0780 of 2023 [**Hanifah Tamale Kiggundu and Abubaker Tamale Kiggundu vs Yoweri Serwanga & others**] in the High Court Land Division.
- b). Costs for this application be provided for.

The application is supported by an affidavit sworn by Doreen Tumwebaze, the 2nd Applicant setting out the grounds in support of the application elaborately.

Brief Facts

It is alleged that in 2007 at Komamboga central village in Kampala District the applicants who are the accused persons in the criminal case, with intent to defraud, concealed a document which is evidence of ownership of land to wit a land title for Block 196 plot 239 Kyadondo. The applicants are charged with; concealing a deed contrary to section 278 of the Penal Code Act, malicious damage contrary to section 335(1) of the Penal Code Act, assault occasioning actual bodily harm contrary to section 236 of the Penal Code Act, criminal trespass contrary to section 302(a) of the Penal Code Act, fraudulent acquisition of land title contrary to section 190(1) of the Penal Code Act, conspiracy to commit a felony contrary to section 390 of the Penal Code Act and threatening violence contrary to section 81(a) of the Penal Code Act.

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The record of the proceedings indicates that on 30th January 2024, at the lower court, counsel for the applicants made a prayer for stay of the criminal proceedings against the applicants on the basis that there is a suit pending against them in the Land Division of the High Court between the complainants in the criminal case and the 1, 2nd and 5th accused persons over the same subject matter. In response to this prayer for stay of proceedings, court informed counsel that, as of the time of the prayer, there were no criminal summons neither was there a proper charge sheet before the court for the court to even entertain hearing the case. Court added that it is the procedure that, a proper charge sheet should first be placed before the court with or without the accused so that where appropriate plea is taken, following which the application can be properly made. In essence, the application was stay was premature. Upon this guidance counsel for the applicants prayed that, the criminal summons be extended preferably after 12/02/2024 pending High Court's determination of criminal application NO. 0418 of 2023, which is the present application.

The Application for Criminal Revision

Being dissatisfied with the guidance of the court, the applicants lodged the present application by Notice of Motion, for revision. The application is brought under sections 48, 50 (1) (b) and 50 (5) of the Criminal Procedure Code Act. The application is also anchored on section 33 of the Judicature Act.

The main grounds of the application are that;

- a) the complainants in criminal case NO. 3301 of 2023, Abubaker Tamale Kiggundu and Hanifa Tamale, filed High Court Civil Suit NO.0780 of 2023 against the applicants and others for several orders including a declaration that the plaintiffs are the rightful owners of land comprised in Block 196 plots 1124, 1125, 1126 and 1127 land at Komamboga.
- b) The applicants averred that they purchased the aforementioned parcels of land from Yoweri Serwanga and duly transferred the same into their names on 13th September 2007 and 10th February 2009. The applicants contended that at all material times since the acquisition of the aforesaid land, they enjoyed quiet and uninterrupted possession of all the land now comprised in Kyadondo Block 196 plots 1122, 1124, 1126, 1240 and 1242 land at Komamboga.
- c) The institution of criminal proceedings at the same time during the pendency of High Court Civil Suit NO. 0780 of 2023 whose main question for determination is the ownership of the captioned land is an abuse of court process and an attempt to precipitate conflict of jurisprudence which Courts should not allow.
- d) That all the charges in the charge sheet have a direct bearing on the questions of ownership of the land in question and that the complainants (Plaintiffs in Civil Suit NO. 0780 of 2023) would not be prejudiced at all, if made to wait for the outcome of the civil matter.



The application is supported by the affidavit of the 2nd applicant, a one Doreen Tumwebaze, the gist of the affidavit has already been covered by the summary of the notion of motion above and I shall not repeat it.

Representation

Counsel George Muhangi appeared for the applicants while Wanamama Mics Isaiah Senior State Attorney Senior State Attorney, represented the respondent. Both parties submitted orally, which submissions I have relied on in writing this ruling. I will not reproduce the submissions.

Analysis and Determination

The Black's Law Dictionary Ninth Edition defines "revision" as a reexamination or careful review for correction or improvement. In applying for revision, the applicants invoked the supervisory powers of this Honourable Court as provided in the law, which requires the court to reexamine and carefully review the record of proceedings of the lower court. Revision in this context is therefore, the examination by the High Court of the record of proceedings of the Magistrate's Court so as to satisfy itself of the correctness, legality or propriety of any findings, order or sentence. See **Mabalangaya-vs-Sanga (2005) 1 EA 236**.

Section 48 of The Criminal Procedure Code Act, which is one of the provisions on which the applicants anchored this application provides that, "The High Court may call for and examine the record of any criminal proceedings before any magistrate's 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 magistrate's court." (emphasis mine).

Black's Law Dictionary Ninth Edition describes the terms, finding, sentence and order as follows;

"order" an order is the mandate or determination of the court upon some subsidiary or collateral matter arising in an action, not disposing of the merits but adjudicating a preliminary point or directing some step in the proceedings."

"finding" a determination by a judge, jury or administrative agency or a fact supported by the evidence in the record presented at the trial or hearing.

"sentence" the judgment that a court formally pronounces after finding a criminal defendant guilty"

Section 48 of the Criminal Procedure Code Act therefore comes into play when there is an order, sentence or judgement against which an aggrieved party invokes the supervisory powers of the High Court. In the present case, the Magistrate has not made any order, sentence or finding to necessitate an application for revision as envisaged under section 48.

Section 50 (1) (b) of the Criminal Procedure Code Act provides for powers of the High Court on revision and states as follows; "In the case of any proceedings in a magistrate's court, the record



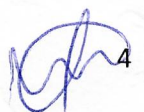
of which has been called for or which has been reported for order or which otherwise comes to its knowledge, when it appears that in those proceedings, an error material to the merits of any case or involving a miscarriage of justice has occurred, High Court may in the case of any other order, other than an order of acquittal, **alter or reverse the order** (emphasis mine). The applicants therefore erroneously anchored their application for revision on section 50 (1) (b) of the Criminal Procedure Code when the lower court had not made any order in which an error material to the merits of the case to justify an application for revision. In this application, there is no order to be altered or reversed.

Section 50 (5) of the same Act provides that; "Any person aggrieved by any finding, sentence or order made or imposed by a magistrate's court may petition the High Court to exercise its power of revision under this section; but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed (emphasis mine).

The above provisions grant the High Court powers of revision over Magistrates Courts. In the case of **Hitila-vs-Uganda (1969)1 EA 219** the Court of Appeal of Uganda held that, "in exercising its powers of revision, the High Court could use its wide powers in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice had occurred." From perusal of the records of the lower court, there is nothing to indication that an error material to the merits of the case involving a miscarriage of justice had occurred. In fact the applicants had not even taken plea in respect of the charges preferred against them neither had the charge sheet been formally laid before the court.

The grounds for a revision are now well settled. Arising from the provisions of the Criminal Procedure Code and the authorities cited above, the High Court may revise the decision of a magistrate's court where the decision of a magistrate is marred by illegally, irregularly or incorrectness. Revision may also arise out of the decisions of a magistrate that are an abuse of court process.

Before this court we have an application for revision where the magistrate has not made any order in the criminal matter which is the subject of the application for revision. From the records of the lower court, the applicants first appeared in court in respect of the criminal case on 22nd September 2023 when the prosecution was absent. The matter was subsequently adjourned, to the following dates; 23rd October 2023, 22nd January 2024, 30th January and lastly to 26 Feb 2024. Rather than appearing in court, the applicants opted to apply to this Honourable Court for revision, despite the fact that there is no order or decision against which this application for revision is brought. The correct course of action would have been for the applicants to apply under section 209 of the Magistrates Courts Act for stay of the criminal proceedings in the Magistrate's Court after plea had been taken and the case commenced. In the event that they



were dissatisfied with the orders of the Magistrate in that application for stay of the criminal proceedings, the applicants would then have had the basis on which to apply for revision of the order(s)/finding (s) on the grounds of irregularity, illegality or impropriety or that the decision occasioned a miscarriage of justice.

Counsel for the applicants also relies on Section 33 of the Judicature Act which is to the effect that the High Court shall grant remedies to parties so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided." On the charge sheet, which is on the record of the proceedings of the lower court, charges including of; threatening violence and assault occasioning actual bodily harm preferred against the 1st applicant are not offences which have a remedy in civil proceedings. Resolution of the issues in the civil suit would definitely not answer some of the charges including of assault occasioning actual bodily harm and threatening violence. The remedies available under civil law do not lend themselves to the offences in the criminal proceedings so as to qualify for the description of " multiplicity of proceedings" which would bring the application within the ambit of section 33 of the Judicature Act. It appears that Counsel for the Applicant misinterpreted the "Lis Pendens Rule" which is a purely civil rule that bars several suits on the same subject matter proceeding in different courts, and are seeking to apply them to criminal proceedings. I therefore find that, the application is improperly brought under the ambit of Section 33 of the Judicature Act.

In the circumstances, Counsel for the applicants wrongly applied the provisions of section 48 and 40 of the Criminal Procedure Code to their application as there is no order, sentence or finding against which this application is brought. The applicant is therefore premature. The application was also improperly brought under section 33 of the Judicature Act.

In the premises, it is my view that the criminal case in Nabweru continues and at the appropriate time, the applicants may apply for stay of proceedings and if dissatisfied with the orders, apply to the High Court for review. In summary, therefore, I disallow this application with the following orders;

- a). It is directed that the criminal case No. 3301 of 2023 proceeds;
- b). I make no order as to costs.

I so order.



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Rosette Comfort Kania

Judge

19th March 2024