

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**CRIMINAL MISCELLANEOUS APPLICATION NO. 035 OF 2022**  
**SSALI VICENT.....APPLICANT**  
**VERSUS**  
**UGANDA.....RESPONDENT**

**Before Hon. Lady Justice Rosette Comfort Kania**

**Ruling**


Ssali Vincent, hereinafter referred to as the applicant, brought this application under Sections 48, 50(1) (b) and (5) of the Criminal Procedure Code Act, Section 33 of the Judicature Act and Rule 2 of the Judicature (Criminal Procedure) (Applications Rules S.I 13-8) against the respondent seeking the following orders;

- (a) That the criminal proceedings in Criminal Case NO.135 of 2022. CRB 279 of 2022 Uganda- vs- Ssali Vicent at Kasangati Chief Magistrates Court) be stayed pending hearing and determination of Civil Suit NO. 281 of 2022- Ssentongo Venali VS Uthman Mawaji & Ors ( hereinafter referred to as the civil suit).
- (b) That costs be provided for.

The application is supported by an affidavit sworn by the applicant and a supplementary affidavit deponed by the applicant's father. I will not repeat the contents of the affidavits, but the gist of the application is that;

- The land which is the subject of the alleged criminal trespass is also the suit land in Civil Suit NO. 381 of 2022 Ssentongo Venali -VS Mawaji Uthman at the Land Division of the High Court of Uganda at Kampala.
- It is imperative that ownership of the land which is the subject of the criminal case be determined properly before the High Court of Uganda.
- The Applicant who is charged with the offence of criminal trespass is the biological son of the plaintiff in the civil suit.
- It is in the interest of justice that the criminal case be stayed until the question of the ownership of the land allegedly criminally trespassed upon by the Applicant is determined by the High Court under civil suit No, 381 of 2022.
- The learned trial magistrate irregularly and improperly refused to stay the criminal proceedings when the civil suit was brought to her attention.
- It is in the interest of justice that the criminal case be stayed until the question of ownership of the land allegedly trespassed upon by the applicant is determined by the High Court.

**Brief facts:**

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It is alleged that, the applicant and others still at large on the 23<sup>rd</sup> day of December 2021, at Jokolera-Kiti Nangabo Sub-county, Kasangati Town Council, in Wakiso District entered upon the land on block 99 plot 2315 Kyaddondo in possession of Mawaji Uthman with intent to annoy, intimidate the said Mawaji Uthman. The applicant denied the charge and a plea of not guilty was entered. The land that is the subject of the offence of criminal trespass preferred against the applicant, for which the defendant in the civil suit obtained a certificate of title, allegedly belongs to the applicant's father on whose behalf the applicant is occupying the land. The complainant, Mawaji Uthman also claims to be the owner of the subject land. The said land is also the subject matter of civil suit NO. 381 of 2022 Ssentongo Venali vs. Mawaji Uthman & Others at the High Court of Uganda at Kampala. The complainant in the criminal case is aware of the said civil suit and had already filed a written statement of defense and equally filed a counterclaim against the applicant's father over the suit land which is the same property that is the subject of the criminal trespass case. The applicant contends that the learned trial magistrate refused to stay the criminal proceedings when the civil suit was brought to her attention, hence this application.

#### **Representation**

Selwanga George appeared for the applicant while the respondent was represented by Apolot Joy Christine, a Senior State Attorney in the Office of the Director of Public Prosecutions.

#### **Submissions of the Parties**

Counsel for the applicant submitted that the Applicant, who is the accused in the criminal case is the biological son of the plaintiff in the civil suit. That the Applicant is occupying the suit land on behalf of the plaintiff in the civil suit. He further submitted that the complainant in the criminal case claims to be the owner of the suit land having acquired a title for it, which title the Applicant's father contests in the civil suit as being illegally and fraudulently obtained. And that on 23<sup>rd</sup> December, 2021, the date of the alleged criminal trespass, the Applicant was in occupation of the suit land, which occupation started even before the stated date of the alleged criminal trespass.

Counsel went on to submit that the issue of ownership of the land which is the subject of the criminal case needs to first be determined properly before the High Court of Uganda to establish whether the accused's father is the owner of the suit land in which case, the criminal case against the accused shall fail. Counsel cited the case of **Okello Chris Otame & Another Vs. Uganda Criminal Session Case n0. 639/13** where it was held that, " issues of land should not be confused with criminal issues. Claims of ownership is a civil right that ought to be allowed to be proved in a civil court and should never be criminalized as this would amount to persecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them".

Council further cited the case of **Musumba Yahaya & others Vs. Uganda Criminal Revision Case NO. 4 of 2019** where it was held that; " The determination of ownership rights of the suit land which are best resolved through a civil suit will have a direct bearing on the criminal case. Allowing the criminal proceedings to continue when there is a pending civil suit in the High Court to determine ownership rights will amount to an abuse of court process and can result into conflicting judgments." Counsel for the Applicant concluded with a prayer for court to grant the orders as sought.

The application was opposed by the f Apolot Joy Christine a Senior State Attorney from the Office of the Director of Public Prosecutions (DPP) who stated that; there are two concurrent proceedings one of which



is previous or filed earlier than the other before courts vested with the jurisdiction to hear the suits or proceedings; the Criminal Case NO. 135/2022 was instituted at Kasangati Chief Magistrate's Court while the Civil Suit No. 381/2022 was instituted at the High Court land division and that these are different suits filed at different times and now running concurrently; Civil Suit NO. 381/2022 and Criminal Case NO.135/2022 are totally different in nature in terms of remedies sought, issues, subject matter and offences and that the criminal suit will not establish the cause of action as asserted by the plaintiff in civil suit NO. 381 of 2022. She further submitted that it is impossible that the outcome of Criminal Case NO. 135/2022 and Civil Suit NO. 381/2022 will be similar; the suit or proceedings are not between the same parties as the applicant is not one of the parties in the civil suit; the applicant did not elaborate the real dangers that he is expected to suffer if the two cases are allowed to proceed concurrently and that the affidavits do not disclose how the continued prosecution of the criminal case would constitute a miscarriage of justice to the applicant in terms of his ability to defend himself in court in the civil matter.

Counsel for the respondent submitted that the accused person is charged with offences criminalized under the laws of Uganda. She added that the laws applicable to civil and criminal matters in Uganda do not provide for staying criminal matters in favour of civil matters and staying civil matters in favour of criminal matters. She cited the case of **Sarah Kulata Bisangwa V Uganda Supreme Court Criminal Appeal NO. 3 Of 2018** where it was held that; "It cannot be a correct proposition of the law that where a civil suit is pending between the two parties, no criminal proceedings may be instituted against one of the parties arising from the same facts". She relied on S. 209 of the Magistrate's Court Act Cap 16 which provides that; "No Magistrate's Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom or any of them claim, litigating under the same title, where that suit or proceedings is pending in the same or any court having original or appellate jurisdiction in Uganda to grant the relief claimed."

She submitted that in the case of **Uganda vs. Ssonko Edward Criminal Revision Application NO. 12 of 2019**, the court stated the essential ingredients of Section 209 of the Magistrates Court Act to be proved before court stays proceedings as follows;

- That there are two concurrent suits or proceedings one of which is previous or filed earlier than the other before the same court or any other court vested with the jurisdiction to hear the suit or proceeding.
- The suit or proceeding is between the same parties under whom they claim or litigate
- The subject matter of the suit or the proceedings are directly or substantially the same.
- Whether the applicant will be prejudiced if the criminal case is not stayed.

The Respondent also quoted the case of **Uganda Vs. Ssonko Edward Supra 42** in which Lady Justice Margaret Mutonyi among other things, interpreted Section 209 of the Magistrates Courts Act and stated that; "...the law provides for stay of the new suit or proceeding and not the previous suit or proceeding..."

Accordingly, the Respondent prays that court does not grant orders to stay Criminal Case NO. 135/2022 pending hearing and determination of Civil Suit NO. 381/2022 because criminal case NO. 135/2022 is public in nature and administrative policy gives priority to public interest in law enforcement.



In rejoinder, Counsel for the Applicant filed submissions where he cited the following decisions; **Kaddu Dunstan & Mukasa Samuel-vs-Uganda Criminal Revision Cause NO. 04 of 2022** in confirmation of the case of **Sebulime Baker-vs- Uganda Criminal Appeal NO. 2 of 2018** citing the case of **Okello Chris Otama & Another-vs-Uganda Criminal Case NO. 639 of 2013**) where the judge held that; " issues of land ownership should not be confused with criminal issues, claim of ownership is a civil right that ought to be allowed to be proved in a civil court and should never be criminalized as this would amount to persecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them." Counsel further argues that it is a trite principle of the law that, there is a need to first establish possession and ownership of property and cites the case of **Ssepuuya Vicent & Nambooze Fortunate Mujjabi-vs-Uganda Criminal Appeal Number 128 of 2017** where the court agreed with the prepositions advanced by the appellant's Counsel that criminal trespass is proved by among other ingredients; possession and ownership of the subject land.

Furthermore, Counsel for the Applicant further cited the case of **Okello Chris Otama& Another -vs-uganda Supra** where it was held that: " issues of land should not be confused with criminal issues. Claim of ownership is a civil right that ought to be allowed to be proved in a civil court and should never be criminalized as this would amount to persecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them". The respondent further cited the case of **Musumba Yahya & Others-vs-Uganda Supra**, where it was held that, " the determination of ownership rights of the suit land which are best resolved through a civil suit will have a direct bearing on the criminal case. Allowing the criminal proceedings to continue when there is a pending civil suit in the High Court to determine the ownership rights will amount to an abuse of court process and can result in conflicting judgments."

Counsel for the applicant stated that the respondent erroneously pointed out in their submissions that the accused in the criminal case is charged with malicious damage to property, whereas the charge sheet states criminal trespass as the charge.

Counsel for the applicant disagrees with the respondent's reliance on Section 209 of the Magistrates Courts Act in support of their objection to the application and avers that Section 209 is instead supportive to the grant of the application. He cited the case of **Kaddu Dunstan & Mukasa Samuel -vs-Uganda Criminal revision cause number 04 of 2022 Arising from criminal case number 085 of 2022** where Justice Oyuko Anthony Ojok held that: "the law in our jurisdiction is very clear, section 209 of the Magistrates Courts Act provides as follows; "no magistrates court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between parties under whom they or any of them claim, litigating under the same title, where the suit or proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed...". I find no reason to deny the prayer for stay of a criminal proceedings pending the determination of the civil matter before the High Court Land Division and the subject matter between the two cases being the same, I agree with the holdings in the authorities cited by the Counsel for the applicant and allow the application."

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Counsel for the applicant invites this court to take judicial notice of numerous judges deployed at High Court Land Division, thus the fears of delays are nonexistent since the civil suit was already scheduled and the same is scheduled now for full hearing on 13th December 2023 before Hon. Lady Justice Nkonge.

#### Determination of Court;

The law:

Section 48 of the Criminal Procedure Code Act 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.”

Section 50 (1) 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, the High Court may;

(b) in the case of any other order, other than an order of acquittal, alter or reverse the order.

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.

Section 33 of the Judicature Act provides that; “The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to, in respect of any legal or equitable claim properly brought before it, 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.”

S. 209 of the Magistrate’s Court Act provides that; “ No Magistrate’s Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom or any of them claim, litigating under the same title, where that suit or proceedings is pending in the same or any court having original or appellate jurisdiction in Uganda to grant the relief claimed.”

Section 17 (1) of the Judicature Act provides that the High Court shall exercise general powers of supervision over the Magistrate’s Courts.

(2) With regard to its own procedures and those of the Magistrate’s Courts, 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.



I have carefully considered the application, read the submissions of both counsel, perused the affidavits for and against this application. The written submissions filed by Counsel for the Applicant and the Respondent were adopted.

Counsel for the Applicant submitted that, the issue of ownership of the land which is the subject of the criminal case needs to be determined before the High Court of Uganda to establish whether the accused's father, Ssentongo Veneli, is the owner of the suit land, in which case, the criminal case against the accused shall fail. I will be guided by the statutory provisions cited above, case law and the principles therein, including the authorities cited by Counsel for the Applicant and the Respondent.

Counsel for the Applicant 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."

In the present case, the criminal proceedings were instituted before the civil suit, which suit was filed after the criminal case had taken off. The remedies available under civil procedures do not lend themselves to the offences in the criminal proceeding so as to qualify for the description of "multiplicity of proceedings" which would result in bringing the circumstances surrounding the Application within the provisions 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 not properly brought under the ambit of Section 33 of the Judicature Act.

Counsel for the applicant also relies on Section 50 (1) (b) of the Criminal Procedure Code Act which provides for revision of orders of magistrates courts on the basis of errors material to the merits of any case or where the proceedings involve a miscarriage of justice. I am not persuaded that the submissions of Counsel for the Plaintiff have satisfied the standard required in Section 50 (1) (b) to justify a revision of the decision of the learned trial magistrate in rejecting the application to stay the criminal proceedings.

The applicant faults the trial magistrate for failing to stay the proceedings in the criminal case pending the determination of the civil suit between the biological father of the applicant and the defendants on the basis that the subject matter in the criminal case is principally the same as in the civil matter. The applicant contends that, the criminal case be stayed until the question of ownership of the land allegedly criminally trespassed upon by the accused person is determined by the High Court.

Counsel for the applicant cites the case of **Sebulime Baker -vs- Uganda Criminal Appeal NO. 21 of 2018**, where Lady Justice Flavia Senoga Anglin held that: "issues of land ownership should not be confused with criminal issues, claim of ownership is a civil right that ought to be proved in a civil court and should never be criminalized as this would amount to persecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them." However, in the same case Justice Flavia Senoga Anglin held 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..." This means that staying of criminal proceedings where there is a subsisting civil suit on the same matter is not automatic. A strong case must be made for that course of action. It is only where exceptional circumstances have been shown to exist that a criminal case may be stayed when a similar or identical subject matter to that in the criminal proceedings is pending determination in a civil suit. As was stated in the case of **Goddy Mwakio & Another -vs- Republic (2011) eKLR** the Court of Appeal of Kenya stated that: " An order for stay of proceedings, particularly stay of criminal proceedings is made sparingly and only in exceptional circumstances". The rationale for this was discussed by Gikonyo , J in **Kenya Wildlife Service -vs-James Mutembei (2019)eKLR** where he stated that; " Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and over all, right to fair trial. Therefore, the test for stay of proceedings is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases....Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for stay on this ground must show not only merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case."


In **Zagyenda –vs- Uganda Criminal Application NO. 11 of 2020**, Justice Lameck N. Mukasa highlighted the differences between civil and criminal proceedings thus: "There is a clear distinction between civil and criminal actions. The civil proceedings determine civil litigant's claims or liabilities and the standard of proof is on the balance of probabilities. There is a public interest in the criminal proceedings and the required standard of proof is beyond reasonable doubt. The civil proceedings are individualistic in nature while the criminal proceedings are public in nature. Administrative policy therefore gives priority to the public interest in law enforcement.

As stated by Justice Lameck N Mukasa in the case of **Zagyenda –vs- Uganda (supra)**, the inherent powers of the court in Section 17 of the Judicature Act are intended to curtail delays, to ensure expeditious trial and to ensure that technicalities are not used to defeat substantive justice.

Based on the above authorities, I am not persuaded that the current application is one in which the interests of justice will best be served by ordering a stay of proceedings in the criminal case.

I have studied the applicant's affidavit and the submissions of counsel for the applicant, nowhere is it stated that trial of the criminal case is delayed nor is it alleged that technicalities are being employed to defeat substantive justice. Indeed, going by the record on the file, the criminal case had already taken off by the time the civil suit was filed. To allow this application, would result in a delay of the conclusion of the criminal case. The criminal case and the civil case are proceeding in different courts under different judicial officers, there is no way in which continuation of the criminal case would prejudice the progress of the civil case. Accordingly, the applicant has not succeeded in bringing this application within the ambit of Section 17 of the Judicature Act.

Counsel for the applicant relies on the case of **Okello Chris Otama & Anor Supra** where it was held that " issues of land should not be confused with criminal issues. Claim of ownership is a civil right that ought

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to be allowed to be proved in a civil court and should never be criminalized as this would amount to persecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them”.

To strengthen his arguments, Counsel further cites the case of **Musumba Yahya and Others Vs. Uganda supra**, where it was held that “the determination of ownership rights of the suit land which are best resolved through a civil suit which will have a direct bearing on the criminal case. Allowing the criminal proceedings to continue when there is a pending civil suit in the High Court to determine ownership rights, will amount to an abuse of court process and can result into conflicting judgments.

Counsel for the applicant submits that the issues of land particularly when ownership of land is in issue are civil matters and should not be confused with criminal matters. In the instant case, the complainant has a certificate of title for the land in dispute, which title the applicant’s father alleges in the civil suit was illegally and fraudulently obtained. The fact that issues of ownership of land are civil matters does not preclude the DPP from preferring charges provided for in the Penal Code Act when a complaint relating to ownership of land, which complaint amounts to a contravention of the provisions of the Penal Code Act has been filed with law enforcement. To take the view advanced by the Counsel is to deprive the complainant of the right to have their voices heard when crimes such as the one with which the applicant is charged are alleged to have been committed. The applicant is accused of offences criminalized under the laws of Uganda and it would be an affront on the court system if a charge of criminal trespass , an offence which often times is characterized by violence and chaos would be set aside pending the determination of a civil suit filed during the pendency of the criminal case. The correct course of action would have been for the plaintiff in the civil suit, who is the applicant's father to seek redress from the courts of law in the event that he was of the view that his rights to land had been infringed on rather than to take the law into their own hands and enter onto the disputed property, as alleged in the charge sheet. To stay the proceedings in the criminal case which was filed first in preference for the civil suit that was filed when the criminal case was being heard would be to set a bad precedent in cases where offences of a criminal nature are committed in the course of citizens taking the law in their own hands to assert their civil rights over land. To do so would be to make a mockery of the criminal justice system and set the stage for anarchy and lawlessness.

The respondent quotes Section 209 of the Magistrates Courts Act which provides as follows;“ No Magistrate’s Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between parties under whom they or any of them claim, litigating under the same title.” Counsel for the applicant contends that Section 209 actually strengthens the case for stay of proceedings in the criminal case pending determination of the civil suit.

The respondent relies on the decision of my learned brother, Justice Oyuko Anthony Ojok in the case of **Kaddu Dunstan & Mukasa Samuel-vs-Uganda Criminal Revision Cause NO. 04 of 2022 Arising from Criminal Case NO. 085 of 2022**, where it was held that, “the law in our jurisdiction is very clear, section 209 of the Magistrates Court Act provides as follows; "no magistrates court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between parties under whom they or any of them claim litigating under the



same title, where the suit or proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed"... I have no reason to deny the prayer for stay of a criminal proceedings pending the determination of the civil matter before the High Court Land Division and the subject matter between the two cases being the same. I agree with the holdings in the authorities cited by the counsel for the applicant and allow the application." This authority although good, is not applicable in the instant application. It is distinguishable from the current application because it dealt with a criminal case that was commenced after the civil suit was filed, as opposed to the current situation where the civil suit was filed after the commencement of criminal proceedings. Indeed, the application of Section 209 to stay of proceedings was also interpreted by Lady Justice Margaret Mutonyi in the case of **Uganda-vs-Ssonko Edward Criminal Revision Application NO. 12 of 2019 Arising out of Criminal Case NO. 760/2018** where it was stated thus; " .... in the instant case, the law provides for stay of the new suit or proceeding, not the previous suit or proceeding." I associate myself with the interpretation of my learned sister, therefore on the basis of Section 209 of the Magistrates Courts Act, I find that the present Application for stay of criminal proceedings in favour of the continuation of a civil suit which was filed later, is at odds with the provisions of Section 209.

The applicant avers in paragraph 8 of his Affidavit that :....it is in the interest of justice that the captioned criminal case be stayed until the question of ownership of the land allegedly trespassed upon by the applicant is determined by the High Court of Uganda." This Court is not persuaded that the interest of justice would be served by staying the criminal proceedings. This court wishes to direct the mind of counsel of the applicant to the fact that, in the event that it transpires that the charges are found to be unfounded, justice for the applicant can be sought under the tort of malicious prosecution. The tort of malicious prosecution is committed where there is no legal reason for instituting criminal proceedings. It occurs as a result of the abuse of the minds of judicial authorities whose responsibility is to administer criminal justice.

According to Odunga's Digest on Civil Case Law and Procedure page 5276, the essential ingredients to prove malicious prosecution are as follows:

- (a) The criminal proceedings must have been instituted by the defendant
- (b) The defendant must have acted without reasonable or probable cause
- (c) The defendant must have acted maliciously
- (d) The criminal proceedings must have been terminated in the plaintiff's favor.

In the case of **Olango Steven-vs-Attorney General & Kampala Capital City Authority Civil Suit NO. 681 of 2016**, Hon. Justice Ssekaana Musa stated that; "Every person has the freedom to bring criminals to justice. But this does not mean that any innocent person should be brought to justice unnecessarily. It is in order to check false accusations of innocent persons and that is what the tort of malicious prosecution intends to protect."

The complainant in the criminal case has a right to be heard on his complaint which is founded in the Penal Code Act and indeed, according to the record of the lower court, by the time the civil suit was filed, the criminal case had commenced. In my view, the applicant has not met the standard for stay of proceedings set out by Gikonyo J in the case of **Kenya Wildlife Service –vs-Mutembei supra**. To stay the

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criminal proceedings would be an infringement on the right of the complainant to have his complaint expeditiously determined.

Therefore, as stated by Justice Lameck N. Mukasa, in the case of **Zagyenda Joseph-vs-Uganda Supra**, “ in the circumstances, judicial efficiency will be best promoted by the expeditious disposal of both the criminal and civil proceedings. The applicant should be given a fair hearing and it is in the interest of justice that the criminal case proceeds expeditiously.

Consequently, in the circumstances, the interests of justice will be best promoted by the expeditious disposal of both the criminal and civil proceedings. The applicant should be given a fair hearing and it is in the interest of justice that the criminal case proceeds expeditiously.

In summary, therefore, I disallow this application with the following orders;

- It is directed that the criminal case NO. 135 of 2022 be fast tracked and concluded expeditiously.
- I make no order as to costs.



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**ROSETTE COMFORT KANIA**  
**JUDGE**

17<sup>th</sup> October 2023