

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(ANTI CORRUPTION DIVISION)

CRIMINAL REVISION NO. 10 OF 2009

(Arising out of Buganda Road Chief Magistrate’s Court Criminal Case No. 1695 of 2001)

UGANDA

:.....

APPLICANT/PROSECUTOR

VERSUS

MUWONGE ANDREW & 5 OTHERS :.....

RESPONDENTS

BEFORE HON. JUSTICE P.K. MUGAMBA

RULING:

When on 10th September, 2009 hearing was about to start of an application for revision, Mr. Kabega, appearing for the respondents raised a preliminary objection. In summary what he sought court to rule on is that the application was incompetent before court since the proper procedure to adopt would have been to appeal the impugned decision of the Chief Magistrate, Buganda Road. Needless to say the applicant stated that the proper procedure was what was adopted and sought this court to reject the objection.

The application in contention was brought under section 48 and section 50 of the Criminal Procedure Code Act, Cap.116 of the Laws of Uganda. It is instructive to cite those provisions where they are relevant to this matter. Section 48 thereof states:

‘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.’

I hasten to add that the Provision of S.48 in no way relates to the matter under consideration since court did not call for the record. There could however be some relevance in the Provision of S. 50(5) of the same Act wherein it states:

'(5) 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 powers 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'.

The emphasis above is added. Doubtless there was no appeal and the preferred mode of procedure was by petitioning for revision, a procedure that appears at a tangent with S. 50(5) of the Criminal Procedure Code Act.

What is at the core of this matter is contained at page 158 of the record. The record reads:

'Court: This is a case of 2001. There is no one representing the state. I agree with Counsel for A4 and holding brief for the rest and I believe it is fit to close prosecution case at this moment. Let parties file written submissions by 19/01/2009. Bail extended accordingly, let the state reply by 28/01/2009. Matter for ruling date 02/02/2009. Bail extended accordingly'.

Looking at the above and indeed the entire record it is not clear to one that any conclusion to the case was arrived at, yet every case must come to a conclusion. For example was the prosecution case ever closed? It is sought by the applicant that this court issues an order for the revision and/or quashing of the decision of the Chief Magistrate made on 16/12/2008, closing Prosecution's case in the absence of representation for the state, before Mr. Ssaku Bathwell was cross-examined and other prosecution witnesses testified, be revised. Loose ends regrettably remain. It is at such times that this court would be looked upon to administer substantive justice without undue regard to technicalities, as Article 126 (2) (e) is invoked. In any case a court of law cannot sanction what is illegal and illegality once brought to the attention of the court overrules all questions of pleading including admissions made thereon. See Makula International Ltd Vs His Eminence Cardinal Nsubuga & Another {1982} HCB 11. In my view provisions of S. 50(5) of the Criminal Procedure Code Act would pale in light of the above provisions as this court is already seized of the case in controversy. Clearly there is a matter crying out for investigation by this court.

In consequence the objection fails. The application is to be heard to determine its merits.

P.K. MUGAMBA

JUDGE

17/09/2009