THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL REVISION NO. 02 OF 2011

1. **JULIET KATUSIIME**
2. **DAVID SEBULIBA**
3. **MAJ. GODFREY KYOMUHENDO::::::::::::PETITIONERS**

VERSUS

UGANDA:: RESPONDENT

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

Representation:

Mr. Bob Kasango of Counsel for the Applicants
Mr. Emmanuel Mwanje SSA for State

Court Clerk:
Ms. Rose Akullu Obote

Ruling:

This is an application for revision brought under sections 45 and 50 of the Civil Procedure Code.

The background to this application is that during the trial of the applicants/Accused persons, before the Magistrate Grade I, City Hall Court, the defence Counsel raised an objection against the admission of the charge and Caution Statement made by A1 and recorded by PW7 , D/ASP Allan Twishime, the 13th day of October, 2009 contending that it was inadmissible in evidence, having been taken by the Police Officer who was also the investigating officer at all material times at time of taking the charge and Caution Statement and subsequent to that. The learned Trial Magistrate disallowed the objections and admitted the Charge and Caution Statement in evidence. The Applicants were aggrieved by the finding and order of the learned Trial Magistrate and filed this application/petition seeking the High court to exercise its powers of revision and reverse the order of the learned Trial Magistrate.

Mr. Kasango submitted that it was incurable procedural irregularity for PW7, being the Investigating Officer to have also recorded the Charge and Caution Statement in the case of Section 48 of the Criminal Procedure Code provides;

> ***" The High court may call for and exercise the record of nay Criminal proceedings before any magistrate's court for the purpose of satisfying itself as to the corrective ness, ;legality or propriety of nay finding, sentence or order as t the regularity of any proceedings of the magistrates' court".***

While section 50(5) of the same Act provides:

> ***"Any person aggrieved by any finding, sentence or order made or imposed by a magistrates' court may petition the High court to exercise its powers of revision order this section; but no such petition shall be entertained where the petitioner could have applicable against the finding, sentence or order and has not appealed".***

Counsel cited a number of authorities where it has been held that a confession statement recorded by an investigating officer is not admissible in evidence:

- No. RA 78064 CPL Wasswa and Ninsima vs Uganda SC Crim. Appeal No. 4849 of 1999.
- Masila Sosa & Nume Charles vs Uganda C.A Crim. Appeal No. 7 of 2007.
- Cpl Ngobi Kato Galandi & anor. Vs. Uganda C.A Crim. Appeal No. 190 of 2003

Mr. Kasango argued that the Trial Magistrate decision being interlocutory is not appealable thus the reason to proceed by way of revision.

Mr. Emmanuel Muwango, Senior State Attorney argued that the application was premature. That the defect complained could be addressed y an appeal after the final judgment of the case. He cited a guide to Criminal Procedure in Uganda by Hon. Justice B.J. CJ- 3rd Ed. His Lordship writes at page 207:

> ***" Like appeals, revision can only be forwarded on a final order or judgment of the court. It cannot be made against a preliminary or interlocutory order or ruling which does not determine the case".***

My attention was drawn by counsel for the Applicants to the Madras High court decision in **Sulachana & others vs M. Kulasekaran, Criminal Revision Petition No.1027 of 2001.** The issue was whether the interlocutory orders can sail under the revisional jurisdiction of the High court. Justice A. Packiara J held that orders of a purely interim temporary nature which do not decide or touch the important rights or the liabilities of the parties are considered as interlocutory orders.

However, any order which substantially affects the right of he accused or decides contain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High court against that order, because that would be against the very object which formed the basis for in section of that particular provision in section 393 of the 1973 Code. His Lordship listed orders summoning witnesses, adjoining cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceedings as examples of orders which amount to interlocutory orders against which no revision would lie under section 397(2) of the aluctus 1973 Code.

The said section provides that the powers of revision shall not be exercised in relation to any interlocutory order. The learned judge observed that the above provision was intended to safeguard the interests of the accused by cutting out delays and ensuring that accused persons get a fair trial without such delay.

We do not have a similar provision in the Criminal Procedure Cod. However the Honorable Chief justice statement in his aforementioned is in line with the above.

I therefore find the above decision in the instant case did not have the effect of deciding the Applicants rights once and for all. It is possible for the Trial Magistrate not to base her final decision on the Charge and Caution Statement.

Though the decision in Charles Harry Twagara vs Uganda – SC Crim. Application No. 3 of 2003 was in respect to an appeal against the Trial magistrate' findings that there was a prima facie case, I find Hon. Justice JWN Tsekooko reasoning very useful to the instant case.

His Lordship stated:

> ***"---I do not think it would be promoting justice and speedy trial to stay proceedings in this case. The case must be brought to an end, one way or the other.***
>
> ***There are many decided cases which illustrate the practice to be followed in case an accused is dissatisfied with the trial courts' ruling on prima facie case. That is to appeal at the conclusion of the trail and include as many grounds as are relevant in the grounds of appeal any complaints about wrong finding that there was or there was no case to answer---------".***

It is my considered view that the same principle should apply to all interlocutory findings, decision and orders of the Trial Magistrate which do not finally determine the rights of the applicant.

To entertain applications for revision on every interlocutory decision or order of a trial magistrate would be defeating the Constitutional right of an accused to a speedy trial.

Consequently, a revision is not maintainable. The file is referred back to the Trial Magistrate for a speedy and fair trial of the Accused persons/Applicants. I so order.

Lameck N. Mukasa
JUDGE
15/07/2011