

- (a) *in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 34 and 41 and may enhance the sentence;*
- (b) *in the case of any other order other than of acquittal, alter or reverse the order”*

One of the grounds for the application is that:

“The trial magistrate overstepped or exceeded her jurisdiction when she held that the applicant was not validly elected chairman of Busereda a matter that can only be decided by a High court hearing a company cause”.

The trial court’s record shows that the Applicant, Ivan Nsigazi, was charged with three counts of making a document without authority c/s 355(a) of the Penal Code Act and three counts of obtaining money by false pretence c/s 305 of the Penal Code Act.

The allegations were that the Applicant/Accused with intent to deceive and without lawful authority or excuse made (or signed or executed) Bugangaizi Settlers Rehabilitation and Development Association (BUSEREDA) Card No. 1102 in the names of Twijukuye Jackson; (count I), No. 938 in the names of Charles Twimujukye (count II) and No.571 in names of Karyeiija gastine purporting to be the Chairman BUSEREDA whereas not.

Further that the Accused with intent to defraud obtained money 5000/- from Twijukye Jackson, Shs. 50,000/- from Charles Twimujukye and shs 50,000/- from Karyeiija Gustine by false pretence pretending that he had the authority as a chairman to print, issue and sign BUSEREDA membership identity card Nos. 1102, 930 and 571 respectively whereas not.

The complainants Charles Twimujukye and Kanyeiza did not give evidence. The learned trial magistrate found that the above two complaints were not supported by evidence.

That left Counts I and IV where the complainant Twijukye Jackson gave evidence and in respect of which the Applicant was convicted and sentenced.

The prosecution's case was that the Applicant had signed Twijukye Jackson's card as Chairman of BUSEREDA whereas he was not. The evidence adduced by PW1, Kitabaruzza Paul, was that at all material times he was the Chairman BUSEREDA and that the Applicant had made out the card without PW1's knowledge or authority. Further prosecution evidence show that the Applicant was the Vice Chairman of the Association.

The Applicant in his defence accepted signing Twijukye Jackson's Card and contended that he became Chairman of BUSEREDA in 2005 July and had made the identity cards in his capacity as Chairman. He further informed court that a person was to pay shs. 5000/- for identity cards. This is the sum he had allegedly obtained from Twijukye Jackson.

It would appear the learned trial magistrate in her mind formed an issue as to who of the two PW1 or Accused/Applicant was the chairman of BUSEREDA at the material time. She took into consideration the provisions of BUSEREDA Memorandum and Articles Association as regards the election of a Chairman of the Association. Her findings were that the Applicant had not properly been or at all elected Chairman of BUSEREDA and that PW1 had not delegated any powers to the Applicant. She stated in her judgment:

“ This court believes that the accused in signing these membership cards had the intention to defraud and deceive since he had no powers to issue or sign the membership cards and he was in that office illegality. The Chairman did not delegate those powers to him. The meeting he called was illegal.

-----The prosecution proved that there was intent to defraud or deceive since the accused was in that office illegally and everything he was doing was illegal he had the intention to defraud.”

Further the trial magistrate relied on the Applicant/Accused's admission that he had received shs. 5000/- from PW5 for the identity card. She stated:

“This is proof enough since it is from the host mouth that PW5 paid to the accused 5000/-.”

She accordingly found the Applicant guilty on counts I and IV and convicted him accordingly. The Applicant was sentenced to 4 years on each of the two counts to run concurrently.

Mr. Munungu submitted that the trial Magistrate did not have the jurisdiction to try and make findings on a company cause. He contends that the issue whether the Applicant had the mandate to sign as Chairman on the Identity Card could only resolved in a Company Cause.

Mr. Muwonge for the State did not submit in reply. He left the matter to court.

I have carefully considered the evidence on record and the judgment of the learned trial magistrate. I find that the ingredients of the respective offences, particularly the intention to defraud, were not conversed or addressed by Her Worship. This was a company cause or conflict turned into a criminal matter. Thereby grossly occasioning injustice to the applicant.

This judgment was delivered and sentence passed on 18th July 2008. The applicant has to date served three years of the sentence. There was no appeal, instead this application for revision filed on 8th February 2011. Yet Sub-section 5 of Section 50 of the Criminal Procedure Code provides;

“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 Applicant has not appealed Despite my finding above I find my hands tied by the above provision.

However courts should not promote an illegality once brought to its notice. The procedure adopted whereby by a Company Cause was converted into a Criminal Case is illegal.

The Constitution commands court that substantive justice shall be administered without undue regard to technicalities Article 126(2) (e) of the Constitution. Section 34 (2)(a) read together with 50(1)(a) of the Criminal Procedure Code empowers this court to reverse the finding and sentence, and acquit or discharge the applicant. In view of my findings above, I hereby reverse the findings of guilty and acquit the Applicant of all the charges. I accordingly order that the Applicant be released forthwith from prison unless lawfully held on other charges.

LAMECK N. MUKASA
JUDGE
15/07/2011