

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN  
AT ANTI CORRUPTION DIVISION  
CRIMINAL APPEAL NO.7/2012**

**UGANDA:..... PROSECUTION**

**VERSUS**

**ODOKI PETER AND 2 OTHERS:.....ACCUSED**

**BEFORE: HON.D.K.WANGUTUSI**

**JUDGMENT**

On the 26<sup>th</sup> October 2011 the appellants Odoki Peter w’oceng, Otai Charles and Etot Paul Peter were charged on three counts as follows Odoki Peter and Otai Charles, Abuse of office, and causing financial loss and the two together with Etot Paul Peter with conspiracy to defraud.

On the 22 February 2012 the three appellant’s filed a notice of motion seeking orders that;

1. The Inspectorate of Government has no powers to prosecute the applicant’s in view of an existing civil suit No 0012 of 2011 filed by rising Star Transporters limited against Pader District Local Government in the High Court sitting at Gulu.
2. Costs of this application.

The notice of motion was accompanied with an affidavit of Odok Peter describing the issues in contention and specifically paragraph 10 and 11 providing as follows;

10. That I have been informed by my Advocates m/s KGN Advocates as well as m/s Rwaganika and co advocates which information I verily believe to be true, that the Inspectorate of Government is trying to challenge the civil proceedings in the High Court by questioning the

Contract of the said m/s Rising Star Transporters limited and my directive that they be paid in accordance with the contract.

11. That I am further informed by my Advocates aforementioned that the High Court is already seized with the claims by m/s Rising Star Transporters limited and the liability of Pader District Local Government and prosecution of this case would in itself be a challenge for the authority of the High Court to effectively determine the matter before it.

The Suit Rising Star Transporters limited against Pader District Local Government was lodged in the High Court Gulu on the 18<sup>th</sup> May 2011. The accused were charged about nine months later. The appellant's advocate sought discontinuance of the criminal matter because there was a civil suit in place. They relied on section 19(1) (c) of the Inspectorate of Government Act. The section provides 19(1) (c)

The Inspectorate of Government shall have power to question or review any of the following matters

A .....

B .....

C, Any civil matter which is before court at the commencement of the Inspectorate Investigations”

The appellants also relied on the opinion of the High Court in **Sarah Kulata Bisangwa vs. Uganda it Cr 202 of 2011**

Considering section 19(1) (c) of the Inspectorate of Government Act, the learned Judge said,

*“The spirit behind that provision is to leave courts free rein to determine matters they are already seized with. Any subsequent investigation in prosecution by whatever means sought could defeat that spirit. It could also be inimical to the tenet of the independence of the judiciary. A court could not be in position to finally determine a given issue without danger of the issue being introduced under a new form”.*

Incoming up with the fore going his Lordship took comfort in CA 6 Of 2008 as follows

***“ Any cause of doubt on the effect of s.19 (1)(c) of the Inspectorate of Government was given a fatal blow in Gordon Sentiba and 2 others versus Inspectorate of Government”.***

He thus opined “militating for discontinuance”. The State in reply conceded that **section 19(1) (c)** would frown at instituting a criminal matter while a civil matter on the same matter was in court, but gave the exceptions to the provision that criminal cases whose investigation commenced before the suits were filed were affected by **19(1) (c)**.

The trial magistrate agreeing with states interpretation of **s.19(1) (c)** and finding that the investigation according to the reference number TS/98/08, begun in 2008 and therefore before the Gulu civil suit 0012 of 2011 was filed found for the state as the following paragraph states;

***“The civil suit no 0012/2011 by the third applicant was filed on 18.05.2011 about two years after commencement of investigations by the IGG. Section 19(1) (c) is therefore not applicable in the instant case as by the time the civil suit was filed investigations had commenced and were even completed. Why the IGG took long to prosecute the applicant is immaterial in the circumstances”.***

The appellant’s being aggrieved with the trial court’s decision filed this appeal which it premised on the following grounds;

1. The Learned magistrate Grade 1 erred in Law and fact when she failed to follow the opinion of the learned judge of the High Court made on the 20<sup>th</sup> day of December 2011 in the case of ***Sarah Kulata Bisangwa Criminal case No HCT.ACD CR.SC 202/2011*** while declining to discontinue the criminal case No 197/2011 against the appellant’s
2. The learned trial magistrate erred in Law and in fact when she held that the Inspectorate of Government can prosecute criminal case no.197/2011 which matter is substantially what is already pending before the High Court sitting in Gulu vide Hccs no.0012 of 2011. ***Rising star Transporters versus Pader District Local Government***
3. The learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record and came to a wrong decision.

They sought this appeal to be allowed and the prosecution of the appellant's by the Inspectorate of Government discontinued.

Submitting for the appellant's, counsel said the 3<sup>rd</sup> appellant was owed money and the case pending in Gulu Court was for recovery of that money from Pader Local Government. That since the charges instituted by the IGG were based on the same transaction, the criminal proceedings breached **s.19 (1) (c) of the Inspectorate of Government Act**. They relied on ***Sarah Kulata Bisangwa cr c 202/11***

He further submitted that unless the criminal was stopped Article 28 which provides for fair trial would be breached. He further contended that the criminal case against the appellant's tantamounted to questioning what was happening in the Gulu Civil Suit. Further that the failure to evaluate the evidence led to a wrong decision in as much as she was wrong in relying upon the charge sheet and Mr. Opwonya's Statement to determine the date of the investigation

In reply Counsel for the state submitted that the keywords to consider in **S19 (1) (c)** was, "Commencement of investigations". He submitted that the investigations commenced in 2008 and therefore **S19 (1) (c)** did not affect them since the Suit in Gulu was filed in 2011 much after the investigations.

### **Ground 1**

The first ground is that the trial Magistrate in failing to follow the decision in ***Uganda versus Sarah Kulata Bisangwa*** erred in law and fact by failing to discontinue the criminal case. To answer the foregoing this appellate Court must subject the evidence as adduced in the trial Court to fresh and exhaustive scrutiny and come to its own conclusion. ***D.R.Pandya versus R(1957)EA336***

The evidence on record shows that the Learned trial magistrate examined the Kulata Case in detail and distinguished it from this case as follows;

***“From the reading of section 19(1)(c ) when investigations commenced is very material.In Kulata’s case investigation’s commenced in 2011 and yet the civil suit were filed in 2010.clearly the case fitted within Section 19(1)(c ) of the IG Act as the civil Suit existed long before the IG’s Investigations”.***

Hence Kulata’s case was clearly distinguishable from the instant. On those grounds she did not follow it because the facts were different in that while in Kulata’s case the investigations followed the civil suit, in the case before Court now the civil suit is the one which followed the investigations.

I would also comment on the words of “commencement” as used in **s.19 (1) (c )**. In my view that word should be given its literal meaning of “starting”. It is in my view when used in investigations means the first of a series of activities leading to prosecution. A clear scrutiny of the word would mean that if the civil matter was in Court in 2007 when the IGG commenced investigations, s.19 (1) (c) would be invoked to ban the the activity of investigation and prosecution thereof. It would in my view not prevent anything already investigated. This position is lent evidence by the fact that if it were left open to offenders to jump into a civil court whenever the IGG is closing upon them, they would simply ransack and deplete the treasury with impunity and then encase themselves in the armour of **s.19 (1) (c)**. I do not think the Legislature could have intended to shield suspects from prosecution. It could only be that it wanted to avoid conflicting decisions in Court. It was only intended to preserve the independence that the courts thrive on. How a prosecution in this present case would affect the civil matter has not been shown by the appellants.

Iam therefore unable to fault the learned magistrate on that conclusion and ground one should therefore fail.

## Ground 2

The appellant's submission on second ground is that the learned magistrate should not have held that the Inspectorate of Government can prosecute criminal case no.197/2011 yet it was substantially the same matter going on in Hccs no 0012 of 2011.

I would like to first say that the parties in the two are different. The matter before Gulu High Court is between Rising Stars Transporters limited versus Pader District local Government. The plaintiff above is an incorporated and registered Limited Liability company. It is not under prosecution by the I.G.G. That as it may, the criminal case in question does not question the civil suit. Section 19(1) (c) was given a detailed interpretation in **Gordon Sentiba and 2 others Vs Inspectorate of Government C A 6 of 2008**. The Supreme Court justifying that provision said,

***“I agree with the submissions of Counsel for the appellant’s that the object of the limitations on the powers of the respondent was to preserve the independence of the Judiciary and the finality of judicial process. A judicial decision between parties is res Judicata between them and should be respected by the parties and all the authorities until set aside in accordance with the law. There would be no end to litigation if any person or authority could at anytime intervene and challenge a decision of the court where it was not a party and where it did not have Locus standi on the pretext that it was prosecuting public interest”***

From the fore going what **S.19 (1)(c)** protects is interference in the functions of the court by intruding or challenging a decision of a court proceeding. This has not been shown to be the case here.

Furthermore the section does not stop the I.G.G from investigation and prosecution of people he suspects of wrong doing. On this the Lord Chief Justice who wrote the lead judgment wrote as follows;

“In this case nothing prevented the respondent from investigating officers it considered had abused their powers and take appropriate action according to its well laid down powers”

This in my opinion could only mean that suspects cannot use the civil courts to insulate themselves from criminal responsibility. In the Sentiba case their Lordships emphasized the issue of “Commencement” as provided in **S.19 (1) (C )** in the following words,

***“To investigate civil proceedings commenced or completed before the respondent commences investigations, violates the principle of independence of the Judiciary and cannot be sanctioned by this court”.***

This last statement is what distinguishes the Sentiba and Kulata cases from this present case in that the two (Kulata and Sentiba) were matters whose investigation by the I.G.G came after they were present in court and in fact attempted as in the Sentiba case to question the court decision. Not so in this case. There is no decision being questioned.

I therefore find no merit in ground two of the appeal, which should fail.

### **Ground three**

On this third ground Counsel for the appellant said that the magistrate failed to evaluate the evidence in that she had relied on a charge sheet to determine the period when the I.G.G did his investigations.

With respect, I am of the view that the reference number on a charge sheet is demonstrative of when the matter came to the police or I.G.G. Using it to determine that period is the surest way of finding out when the I.G.G commenced investigations. In any case even Counsel Oponya who was representing the appellants, in his position as officer of the court conceded. Relying on those two the learned magistrate wrote,

***“In the instant case, investigations commenced in 2008 as reflected in the charge sheet annex to the affidavit of the 1<sup>st</sup> and 3<sup>rd</sup> Applicant. The same was submitted to by Mr. Okoth***

*and Mr.Opwonya also confirmed that from the disclosure investigations were completed by  
2008”*

Learned Trial Magistrate came to this conclusion after examining the document on record, some of which formed evidence filed by the 1<sup>st</sup> and 3<sup>rd</sup> appellant in light of the foregoing I find no merit in the 3<sup>rd</sup> ground of the appeal which should therefore fail.

All in all with respect to the appellant’s criticism of the trial court that it did not scrutinize the evidence in the application, and, by implication if it had done so, it would have rejected the respondents and accepted the appellants instead is unjustified

In the result there is no substance in the appeal, it fails and is dismissed

**HON.D.K.WANGUTUSI**  
**JUSTICE OF THE HIGH COURT**

**27.04.2012**