

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.173 OF 2022

LARRY DRAMADRI----- APPLICANT

VERSUS

ATTORNEY GENERAL ----- RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Section 33 and 38 of the Judicature Act as amended, Section 98 of the Civil Procedure Act and Order 52, Rule 1, 2 and 3 of the Civil Procedure Rules for the following reliefs;

1. A declaratory order that the Director of Public Prosecutions' representative to wit: the Resident State Attorney of Nakawa acted ultra vires in sanctioning charges against the applicant vide CRB 113/2022 based on a complaint that had been withdrawn by the complainant.
2. A declaratory order that the Director of Public Prosecutions' representative to wit: the Resident State Attorney of Nakawa acted irrationally in sanctioning charges against the applicant in the matter that had been settled amicably between the applicant and the complainant.

3. A declaration that the criminal proceedings against the applicant vide CRB: 113/2022 are an abuse of legal process contrary to public interest and administration of justice.
4. An order of certiorari doth issue against the Respondent, Director of Public Prosecutions, their agents, servants and any other public bodies, institutions quashing the impugned decision of the Resident State Attorney of Nakawa in sanctioning charges based on a complaint that had been withdrawn.
5. An order of prohibition and permanent injunction doth issue against the Respondent, Director of Public Prosecutions, their agents, servants and any other public bodies restraining them from further prosecution of the applicant in CRB; 113 of 2022 for being illegal (ultra vires), procedurally irregular and irrational.
6. An order for the award of general and punitive damages.

The grounds in support of this application were stated very briefly in the Notice of Motion and in the affidavit of the applicant-Larry Dramadri which states briefly that;

1. On 26th June 2022, Twesiime Moses filed a complaint of assault against the applicant, wherein he alleged the applicant had assaulted him at the man gate.
2. The applicant subsequently reconciled with the complainant and the complainant made an additional statement on 29th June 2022 at police withdrawing the said complaint.

3. That on 28th July the Resident State Attorney of Nakawa sanctioned charges against him arising from the police file that had been closed after the complainant withdrew his complaint.
4. The applicant contends that the Resident State Attorney of Nakawa in sanctioning charges against him vide CRB: 113/2022 based on a complaint that had been withdrawn by the complainant following successful reconciliation with the Complainant.
5. That the applicant reconciled with the complainant through the area local council leaders mediation in which the complainant-Twesiime Moses was compensated for damages in a sum of 700,000/=

The respondents opposed this application and filed an affidavit in reply through Jonathan Muwaganya-Chief State Attorney in the Office of Director of Public Prosecutions contending that;

1. On the 26th June 2022, a one Twesiime Moses who is employed as a security guard by Condominium plan 002 at block 11-14 Bugolobi Flats reported a case of assault to his detriment against the applicant and two other men who are still at large and a file was opened vide SD REF 05/26/06/2022 and investigations commenced.
2. According to the report, the applicant in course of assault was brandishing a knife in full view of the public.
3. A statement was taken by police from other witnesses and the complainant was examined on PF3 and medical evidence confirmed the fact of assault which was classified as harm.

4. On 30th June, 2022 Barenzi & Co Advocates, the lawyers of the condominium Plan 0020, the employees of the complainant lodged a complaint with Resident State Attorney, Office of the Directorate of Public Prosecutions Nakawa on behalf of the employer alleging that the victim was summoned by the investigating officer under the influence of the suspect/applicant and made to sign a withdrawal statement under duress.
5. On 5th July, 2022 the case file was sent to the RSA, ODPP Nakawa for perusal and advice who as a matter of practice and in light of the complaint called the complainant Twesiime Moses to verify the validity of his additional statement who stated that he did not willingly make the additional statement and that he was interested in the prosecution of his case and this position was minuted under minute B22 of the case file.
6. The State Attorney sanctioned the file under those circumstances and the criminal prosecution is a preserve of the state and cannot be curtailed through unconventional approach taken by the suspect/applicant.
7. It is against public policy for victims of crime to be coerced into settlements without following due process

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and considered in the determination of this application.

Two issues were framed by the applicants for court's determination;

1. *Whether the decision and actions of the director of Public Prosecutions to wit the Resident State Attorney of Nakawa to sanction charges against the applicant based on a complaint that had been withdrawn was illegal, ultra vires, irrational and procedurally irregular?*
2. *What remedies are available to the applicants?*

The applicants were represented by *Mark Kiiza* whereas the respondents were represented by *Senior State Attorney Maureen Ijang*

Determination

Whether the decision and actions of the director of Public Prosecutions to wit the Resident State Attorney of Nakawa to sanction charges against the applicant based on a complaint that had been withdrawn was illegal, ultra vires, irrational and procedurally irregular?

The applicant counsel submitted that since the complainant never made any additional statement retracting the earlier withdrawal then the sanctioned charges in his view were irregular and ultra vires the DPP's mandate. In addition the sanctioning of the charges was indirectly revising the terms of the agreement to reconcile between applicant and complainant which is a civil matter.

Counsel further submitted that decision of the Resident State Attorney to sanction the file usurped the powers of Uganda Police of conducting investigation since the RSA called the complainant without the involvement of police and this in his view was irregular and ultra vires

The respondent counsel submitted that decision of the RSA to sanction the charges was in public interest and administration of justice. The applicant's case is merely an attempt to stifle the DPP from carrying out official

functions despite the DPP not being subject to the direction and control of any authority. There was illegality.

Counsel further submitted that the courts should be wary to allow complainants and suspects/accused to settle criminal matters without following proper procedure. This would allow for the abuse of the criminal justice system and vulnerable complainants.

The respondent contended that criminal matters are of public interest which is why prosecutions are brought in the name of the state and not the complainant. There is therefore sufficient public interest to ensure that alleged criminals are not left to determine their fates by paying off complainants.

Analysis

In the instant case the Applicant is trying to stop the criminal prosecutions since there was an alleged withdrawal or reconciliation between the complainant and the applicant as a suspect. The applicant attempted to coerce a settlement and reconciliation through local council leaders upon a payment of 700,000/= received by police on an exhibit form to the complainant. In *Agenda v Uganda HCT CR-CM 003 of 2011* Mukasa J held that “...*The civil proceedings are individualistic in nature while criminal proceedings are public in nature. Administrative policy therefore gives priority to the public interest in law enforcement.*” See also *Esso Standard Ltd v Mike Nabudere HCCS No. 594 of 1990*

It is very well known that the function in the civil proceedings law is to compensate, while the function of the criminal law is to inflict deterrent and punitive penalties. Administrative policy gives priority to the public interest in law enforcement and if there is a criminal charge pending in court, the need for reconciliation should be a last resort. Where a crime is

alleged to have been committed, the police have a duty to thoroughly and intelligently investigate it with a view to bringing the perpetrators of the crime to justice. *Ayo v State (2015) 16 NWLR (pt 1486) p. 531.*

It is the duty of the police to investigate criminal allegations against any person. The courts cannot stop the police from performing its statutory functions. If there is evidence of an infringement of any of the fundamental rights of a party, the situation can be remedied but not by stopping police investigations. The applicant feels that having secured an alleged withdrawal of the complaint then he should be left scot free. But the unrebutted evidence is that the complainant stated that he was coerced to make the withdrawal and this automatically nullifies whatever happened.

The applicant is trying to use the alleged withdrawal of the complaint to stop the DPP from executing their constitutional mandate. The DPP is not bound by any settlements which may be executed between the criminals and complainants as rightly stated the duty to prosecute is in public interest to prevent and punish criminality. There is no alleged illegality in sanctioning a file where there is reasonable suspicion of commission of a crime even if there is purported withdrawal of complaint.

No court has the power to stop the police from investigating a crime and whether to or how it is done is matter within the discretion of the police. For a person to go to court to be shielded against criminal investigation and prosecution is an interference with powers given by the Constitution to law enforcers. The court lacks the power to issue declaratory and injunctive reliefs with a view to impeding the result of police investigation made pursuant to their constitutional mandate or statutory duty under the Police Act. See *I.G.P v Ubah (2015) 11 NWLR (pt 1471) p 405*

The court should not lend the applicant an excuse to avoid criminal prosecution which is premised on purported withdrawal of complaint secured under coercion. The reconciliation can still be secured through a court process once the suspect or criminal admits liability or pleads guilty under Magistrates Courts Act.

The DPP remains with the sole discretion on whether to continue and discontinue criminal prosecutions as guided by the circumstances of each case. The purported withdrawal secured through police coercion or other local leaders should not be used to take away the constitutional mandate of the Director of Public Prosecutions.

A criminal investigation remains what it is, just an investigation. Thereafter the DPP takes over the direction of proceedings without any direction or control. The court cannot control the manner in which the DPP exercises the power conferred. It is therefore apparent that while the exercise of power by the DPP is not within the control of the court, it is within the limits of Constitution under Article 120. The power of the DPP is discretionary and it is not open to the court to question the exercise of such discretion. In other words, the court cannot by any means curtail, restrict or prevent the powers of the DPP.

The DPP had every right to sanction the file in exercise of the powers conferred under the Constitution. The said act was not illegal or irrational or procedurally improper as the applicant contended.

This application is hereby dismissed with costs to the respondent.

I so Order.

SSEKAANA MUSA

JUDGE

31st March 2023.