

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**HCT-00-CR-CV-004-2013**

**ANKWATSA MARY:.....APPLICANT**

**VERSUS**

**UGANDA:.....RESPONDENT**

**BEFORE: THE HON. JUSTICE LAMECK N. MUKASA**

Representation:

Mr. Herbert Katabarwa of counsel for the Applicant

Ms. Jennifer Amumpaire (SSA) for Respondent

Mr. Kutosi Charles – court clerk

**RULING:**

This is an application for Revision, brought by letter written by M/s Kyazze & Co. Advocates, on grounds that:

1. The decision of the Chief Magistrate to proceed without jurisdiction was a nullity.
2. The decision of the Chief Registrar and Chief Magistrate to transfer the file from one magisterial area to another is unlawful.
3. The decision of the magistrate to remand the accused person is illegal and unlawful.

The Applicant seeks the following areas:

- (a) The trial be declared a nullity and set aside.
- (b) The detention of the applicant be declared illegal.
- (c) Refusal to entertain bail application be declared unlawful.
- (d) Proceedings on a defective Charge sheet be declared illegal.

(e) The Accused be released and set free.

The Application was brought under the provisions of Sections 48, 50 and 51 of the Criminal Procedure Act and Sections 17(1) and 33 of the Judicature Act.

The background to this application is that the Applicant was on 18<sup>th</sup> February 2013 charged before the Chief Magistrate Nakawa on two counts of Forgery Contrary to sections 342 and 347 and uttering a false document Contrary to section 351 of the Penal Code Act.

The particulars of the offences show that the forgery was committed at Kampala in the Kampala District and the uttering a false document at the lands Office Kampala in the Kampala District. On 18<sup>th</sup> February 2012 a plea of not guilty was entered and the Applicant was remanded until 28<sup>th</sup> February 2013. On that 28<sup>th</sup> February 2013 hearing proceeded before the Chief Magistrate. The prosecution called evidence of three witnesses. At the close of evidence from the third witness Court adjourned the case to 13<sup>th</sup> March 2013 and the Accused was further remanded until then. The Chief Magistrate then ordered:-

***“According to the evidence of PWIII the offence was committed within the jurisdiction of Buganda Road. So let the accused be forwarded to Buganda Road Court”.***

Mr. Katabarwa argued that according to the Charge Sheet the offence was committed at the Lands office Kampala which is within the Central Region of the City of Kampala. That under Statutory Instrument No. 45 of 2007 the Lands Office at Kampala is within Kampala Magisterial Area with Chief Magistrates Court of Buganda Road and Mengo. The Nakawa Magisterial Area covers Nakawa Division of Kampala City including Kiira Town Council in Wakiso District with a Chief Magistrate’s Court at Nakawa. Counsel contended that Nakawa Chief Magistrate Court did not have jurisdiction in the matter. He submitted that the trial having started as a nullity at Nakawa Chief Magistrate’s Court

could not be transferred to Buganda Road Chief Magistrate's Court. Further that the Chief Magistrate had no power to make an Order of transfer. He contended that in the circumstances the Chief Magistrate's option was to dismiss the case for lack of jurisdiction.

Counsel cited a number of authorities;

- (i) Kasibante Moses vs Katongole Singh Marwana & Anor – Kampala Election Petition No. 23 of 2011

Therein Hon. Justice Musoke Kibuuka stated:

***“The term jurisdiction is not a term of art. It is a term of law. It is a term of very extensive legal import. It embraces every kind of judicial action. It confers upon the court the power to decide any matter in controversy. It pre-supposes the existence of a duly, constituted court with full control over the subject matter under adjudication. It also presupposes full control by the court of the parties to the subject matter under investigation by it. Jurisdiction defines the power of a court to inquire into facts, to apply the relevant law, to make decisions and to declare the final outcome of the subject matter under its inquiry”***

His Lordship further stated:

***“..It is trite law that no court can confer jurisdiction upon itself. It is equally trite that no court can assign or delegate jurisdiction vested in it”***

He quoted the words of Khaj in Tomasi Musoke vs Joseph Mpunga HCC SC No. 85 of 1974 that:

***“.....the learned Chief magistrate acted beyond the scope of his powers, his order is a nullity in the eyes of the law and it is invalid ab initio. Such an order does not become valid or operative if no appeal is filed against it. It will remain a nullity for all purposes and can be ignored by the respondent”.***

- (ii) Uganda Development Bank vs ABA Trade International Ltd HCT Misc. App No. 567 of 2010.

In that application Justice Madrama quoted from Chesoni & Anor vs Silvester (2006)EA 39 where it was cited as follows:-

***“If the act is valid, then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad.....And any proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse”***

In that case his Lordship found that there was no valid pending suit against the respondent and held that the application for a temporary injunction would therefore not stand against the respondent and he struck it out.

(iii) Ahmed Kawoya Kangu vs Bangu Aggrey Fred & Anor SCC Application no. 4 of 2007 where Hon. Justice Bart Katureebe held that jurisdiction of the Court is not a matter for implication but must be prescribed by law.

In Arther Tindimwebwa & Others vs Joy Muhereza & Anor HCT-05-CV-CA-0055-2010 Justice Bashaija stated;

***“It is settled that jurisdiction is always a creature of statute and where the statute does not expressly confer such jurisdiction, a court cannot competently entertain the matter.”***

And in Gagula Benefansio vs Wakidalu Merabu HCT Civil Appeal No. 29 of 2006 (Jinja) His Lordship Justice Bashaija stated:

***“The lack of jurisdiction by a court over a matter cannot be regarded as a mere technicality under Article 126(2)(e) (Constitution). Issues of jurisdiction are***

*substantive and go to the core of a case and if a Court lacks jurisdiction , whether pecuniary or territorial, over the subject matter of litigation its judgment and orders however precisely certain and technicality correct, are of no legal consequences and may not only be set aside any time by the Court in which they were rendered, but be declared void in every Court in which they are presented. Similarly jurisdiction cannot be conferred on court by consent of the parties and any waiver on their part,. cannot make up for the lack of jurisdiction. See Assanard & Sons (U) Ltd vs East African Records Ltd (1959) EA 360”*

I agree with the above positions of the law. With regard to Criminal jurisdiction section 161 (1)(a) the Magistrate Court Act provides that a Chief Magistrate Court may try any offence other than an offence in respect of which the maximum penalty is death. Therefore the Chief Magistrate at Nakawa, like any other Chief Magistrate, had the jurisdiction to try the offence of forgery or uttering a false document which the Applicant was charged with.

As to territorial jurisdiction section 34 of the Magistrate Courts Act provides;

*“ Subject to the provisions relating to transfer conferred by this Act, every offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed”.*

And section 35 stipulates:

*“When a person is accused of the commission of any offence by reason of anything which has been done or any consequence which has ensued, the offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued”*

The charge sheet shows that the offences charged were committed in the Land offices Kampala which is within the Kampala Magisterial Area with Chief magistrate's Court at Buganda Road and Mengo. Therefore the Chief Magistrate at Nakawa was right when after realizing that the offence was committed within the jurisdiction of Buganda Road she declined to further proceed with the hearing.

Counsel for the applicant's contention is that having so found her Worship should not have ordered the Accused to be forwarded to Buganda Road Court but should have dismissed the case and released the applicant.

The learned Senior State Attorney argued that the case originated from Jinja Road Police Station which was within the Nakawa magisterial area. The charge Sheet shows that the case is Jinja Road Police Station CRB 21/13. The Accused is stated to be a resident of Kitintale Zone 7, Nakawa Division in Kampala District. Section 32 of the Magistrates Court Act provides:-

***“ Where a person accused of having committed an offence within Uganda has escaped or is removed from the area within which the offence was committed and is found within another area, the magistrate's court within whose jurisdiction the person is found should cause him or her to be brought before it and shall unless authorized to proceed in the case, send the person in custody to the court within whose jurisdiction the offence is alleged to have been committed, or require the person to give security for his or her surrender to that court there to answer the charge and to be dealt with according to law”(emphasis mine).***

The Accused was a resident of Kitintale and her case originated from Jinja Road Police Station, all within Nakawa Magisterial Area. Apparently she was found within the jurisdiction of the Chief Magistrate of Nakawa. That Court, under the above provisions, had the jurisdiction to receive her before it and the powers to send her to the Buganda Road Chief Magistrate Court in whose jurisdiction the offence was allegedly committed.

As to bail the record shows that on 18<sup>th</sup> February 2013 Mr. Katarwa Herbert for the Applicant applied for bail. The State Prosecutor objected to bail on the ground that inquiries were still going on.

The Court stated:

***“ The court is not in position to entertain bail. It is past 5.30 p.m. Accused remanded till then”***

On 28<sup>th</sup> February 2013 the Court Record shows the following:

***“Pros: It is for hearing. I have four (4) witnesses ready to proceed.***

***Court: Let us proceed.***

***Mr. Katarwa Herbert for Accused: You can proceed”***

Hearing then proceeded with the calling of three witnesses at the close of whose evidence the matter was adjourned to 13<sup>th</sup> March 2013 and the accused further remanded until then. It was concluded with the order sending the file to Buganda Road Court.

I agree with the Learned Senior State Attorney that the court record does not show any decline by the Learned Chief Magistrate to hear the bail application. When the application was intended to be made on 18<sup>th</sup> February 2012 it was past 5.30 p.m. beyond the court hours. There is not application for bail made thereafter.

I also agree with Mr. Katarwa that Article 23(6)(a) of the Constitution grants any person arrested in respect of a criminal offence a right to apply to the court to be released on bail. Once an application is so made the law presupposes that the same must be entertained by court. However the Court has the discretion to grant or not grant bail. Courts refusal to entertain bail application is abrogation of its constitutional duty. However all this court has is Mr. Katarwa's oral statement from the bar that the

accused/Applicant tried to make an applications for bail but the Chief Magistrate refused to entertain applications both on 18<sup>th</sup> February 2013 and on 28<sup>th</sup> February 2013. The best approach would have been to accompany the complaint with an affidavit with averments on oath in that regard, which would have given the Director of Public Prosecutions an opportunity to respond on oath, if he so chose.

Further in such an event the Applicant had a remedy in section 75(4) of the Magistrate's Court Act which empowers the High Court, in any case where an accused person is appearing before a Magistrate's court to direct that person to be released on bail. This avenue was not exploited in the instant case.

Consequently a revision is not maintainable. The reference of the file to the Chief Magistrate Court of Buganda Road to handle the matter is hereby confirmed. Let the file be accordingly forwarded.

**LAMECK N. MUKASA**

**JUDGE**

**15/03/2013**