

appealed against the said acquittal which appeal was allowed by the High Court and the Petitioner was ordered to proceed with his defence against the charges of Forgery.

- 5 The petitioner filed a Notice of Appeal against the decision of the High Court on 20/11/2008 and asked the Court to provide a copy of the proceedings for purposes of the Appeal.

In the meantime the trial Court summoned the Petitioner to
10 proceed with his defence as directed by the High Court.

It is these proceedings that are being challenged on grounds that this would close and determine the pending appeal and offends the principal of fair trial and fair play under Section
15 50.5 C.P.C.

**“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
20 be entertained where the Petitioner could have appealed against the finding, sentence or order, and has not appealed.”**

It is the submission of the Petitioner that on the authority of
25 the case of **Theodore Ssekikubo & Others Vrs. Attorney General & Others; Constitutional Application No. 6/13 -**

”It is trite that where a party is exercising its unrestricted right of Appeal,it is the duty of the Court to make such orders as will prevent the appeal, if successful from being nugatory.”

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It is argued that if the proceedings are not stayed then the appeal against the orders of the High Court placing the Petitioner on his defence will be rendered nugatory.

Reference was also made to **Francis Mica Vrs. Nuwa Walakira - Supreme Court CA. No. 9/90.**

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The Petitioner also relies on Section 50 (b) of the Criminal Procedure Code, which gives the High Court the mandate to alter or reverse the Magistrate’s order where it appears those proceedings were an error.

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In the alternative, it is prayed that the Petitioner be provided with the record of the lower Court and given a time limit within which to lodge the appeal in the Court of Appeal.

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For the Respondents, it has been submitted that the Interpretation of section 50 (1) (b) of the Criminal Procedure Code Act is that **“.....only a final order of the lower Court can be subject of a Revisional Order. It follows therefore, that applications for revising Interlocutory orders will not be entertained by the High Court.”**

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Reference was made to the case of **Charles Harry Twagira Vrs. Uganda - Criminal Application No. 3/2003.**

5 Therein, the Applicant who had sought a Revisional order under Sections 48 and 50 (1) (b) C.P.C had the same dismissed on grounds according to Bamwine J. **“There is nothing irregular about the procedure adopted by the trial magistrate so far as anything prejudicial to the**
10 **Petitioner on the face of the record to warrant a Revisional Order.”** The matter went right up to the Supreme Court.

An application to stay proceedings was dismissed by Justice
15 Tsekooko JSC who in his decision held that **“Judgment”** is interpreted to include a decision, an order or Decree of a Court. It was held that a Judgment means a final decision of a Magistrate, but not a description of any order or Ruling given in an Interlocutory matter.

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The full panel of the Supreme Court in considering what a right to fair trial was agreed that Article 28 of the Constitution gives an Appellant a right to be enabled to persue his right of Appeal.

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However to submit that an Appellant should persue his appeal at the expense of the proceedings in the lower Court was stretching the import of a fair trial to unreasonable limits.

- 5 The Court further held that accepting such a scenario would make it practically impossible for trial Courts to finish any criminal trial within a reasonable time.

Accused people would launch appeals against every
10 Interlocutory order made during trial, rendering trials prolonged on frivolous points by appealing on every point of objection.

I have carefully studied the provisions of law and the above
15 cited cases clearly, the right to a fair trial, should not be stretched to mean giving a right to an accused person to challenge each and every point of objection as this would unduly undermine procedures and effective trials and would open gates to abuse of the process of Court and the due
20 administration of justice.

Further, the decision of the trial Court does not call for Revision as it is not a final Judgment or decision within the provisions of the Magistrate's Court Act.

The Petitioner, has been found to have a case to answer. He should go ahead, defend himself, offer himself and witnesses for cross examination and then final Judgment will be made. Should he be dissatisfied he can then appeal against that
5 Judgment.

The trial Court will proceed with the trial and conclude the case forthwith.

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Godfrey Namundi

JUDGE

17/03/2015

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17/03/2015:

Nabagala for State

Esarait for Applicant

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Court: Ruling delivered.

Godfrey Namundi

10 **JUDGE**

17/03/2015

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