

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO
MISC APPLICATION NO's.0004 and 0005/2015
(ARISING FROM CRIMINAL CASE NO 0034 OF 2015)

1. B.D. WANDERA

:.....:APPLICANTS

2. OPIDING FRANCIS

VERSUS

UGANDA:.....: RESPONDENT

BEFORE: HON.LADY JUSTICE MARGARET TIBULYA

RULING

This is a ruling on two applications by the applicants (**accused before the magistrate's court**) which were consolidated since they involve the same issues.

BACK GROUND.

The applicants were charged with embezzlement, causing financial loss and abuse of office in the lower court. When the magistrate put the applicants on their defense, they filed these applications whose effect is to challenge the courts finding that the accused persons/applicants have a case to answer.

The main complaints are;

- the Inspectorate of government was not fully constituted when the part of the investigations were conducted. The evidence (**both oral and documentary**) gathered during that time should be expunged from the record.
- The magistrate did not demonstrate how the prosecution had satisfied the requirements of establishing a **prima facie** case against the accused persons, thereby denying them a right to acquittal.

Extensive arguments were raised by both parties to the application, but I don't think it is necessary to repeat them here.

The application was brought under section 48 of the Criminal Procedure Code, S. 206 (1), (3) and (4) of the MCA and Rule 24 of the Judicature (Criminal Procedure) (Applications) Rules.

Section. 48 of the Criminal Procedure Code provides that,

“The high court may call for and examine the record of any criminal proceedings before any magistrate’s court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the magistrate’s court”.

Under this section the mandate to call for any record is with the High Court and not any other person or body of persons. In this case the applicants through their advocates are the ones asking the court to call for the lower court record and I think this is not proper. Nonetheless I have perused the submissions for and against the application and come to the conclusion that the proceedings in the lower court are correct and legal. There is no irregularity with them so as to warrant this courts intervention in the way sought by the applicants.

The gist of the complaint is that the magistrate made a ruling that a prima facie case had been made out by the prosecution when, according to the applicants there is no basis for that finding. **Charles Harry TwagiraVs Uganda, Criminal Appl. No. 3 of 2003** is authority for the position that, ***“the practice to be followed in case an accused is dissatisfied with the trial courts’ ruling on prima facie case... is to appeal at the conclusion of the trial and include as many grounds as are relevant in the grounds of appeal any complaints about wrong finding that there was or there was no case to answer”.***

The applicants will have the right to appeal at the conclusion of the trial. The complaint relating to the exercise of power by the Inspectorate of government should be included in the appeal if they choose to do so at the end of the trial. To the above i may only add that the remedies that the applicants are seeking are untenable since if granted they would have the effect of the High Court interfering with the magistrate’s courts exercise of jurisdiction at the trial stage. Granting the remedies would tantamount to hijacking the trial process in a way that would require me to evaluate the lower court evidence and then substitute my views on whether there is a prima facie case for those of the trial court that is seized with the matter. It would mean that I could actually acquit the applicants on the basis that they have no case to answer in a case that I

have not presided over. That would not only be a vicious assault on criminal practice and procedure, but also a sad commentary on judicial independence.

I refuse to grant the orders sought and dismiss both applications, with a further order that the applicants go back to the lower court and continue with their defence.

Margaret Tibulya

Judge

15th December 2015