

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA**

**CRIMINAL REVISION CAUSE NO. 008 OF 2016
(ARISING FROM RAKAI CRIMINAL CASE NO. MSK-00-CR-CO-206/2016)**

HON. NAMUJJU DIONIZIA CISSY:..... APPLICANT

VERSUS

UGANDA:..... RESPONDENT

RULING

BEFORE: THE HON. JUSTICE DR. FLAVIAN ZEIJA

This cause was brought by Petition under S. 50(1) of the CPC. The Magistrate G1 Masaka her Worship Aisha Nabukeera, overruled the submissions of the applicant on a no case to answer on the 18th day of November 2016 and made a finding that the applicant had a case to answer. Being aggrieved with this finding, the applicant comes to this court for provisional orders on the following grounds:

- (a) The learned trial magistrate G1, acted with material injustice when she directed the petitioner to make a defence on all counts as stated in the amended charge sheet dated 10th March, 2016 against the Petitioner in Criminal Case No MSK-00-CR –CO-206 of 2016 at Masaka Chief Magistrate Court and or the charges pending before the said court

- (b) The charges, trial and findings against the petitioner Vide Lwengo CRB/088/2016 and Criminal Case No MSK-00-CR –CO-206 of 2016 are invalid, Null and Void for no witness was ever called by the prosecution to show that the Petitioner was seen at or with any Electoral Commission official on the 5th March, 2015 and 15th August 2015, as alleged.
- (c) The decision of the learned trial Magistrate Grade 1 to put the petitioner to her defence was grossly irregular and caused material injustice in that no prima facie case shown to have been made by the prosecution as shown by the record in the lower court to warrant the petitioner making a defence to charges preferred against her.
- (d) The decision of the Magistrate G 1 to put the petitioner to her defence is irregular and caused material irregularity in that the petitioner's concerns in her submission of no case to answer were not addressed by the learned trial magistrate in coming to a conclusion that there was a case to answer.
- (e) That the decision of the learned trial Magistrate Grade 1 to put the Petitioner to her defence was irregular and caused material injustice as it subjected the petitioner to financial crippling, humiliation, intimidation and embarrassment and are calculated to annoy, demean, the petitioner who is a woman member of Parliament for Lwengo District
- (f) The learned trial Magistrate G1 acted with material injustice when she put the responsibility on the petitioner of investigating and proving what would have been the prosecution's case and the prosecution did not call any witness to prove the allegations levelled against the Petitioner.

He prayed for the following orders

- (a) Setting aside the Order overruling the Petitioner's submission of no case to answer
- (b) Setting aside the Order requiring the Petitioner to put her to her defence
- (c) Putting an order in place that the petitioner be acquitted on all charges of no case to answer

(d) That it is fair and equitable that the decision/proceedings and orders of the lower court be called for and revised by this honourable court.

At the hearing, the state/applicant was represented by Kandebe Ntambwirweki of Ntabirweki, Kandebe and Co. Advocates while the respondent was represented by Moses Atoe a State Attorney in the office of the Directorate of Public Prosecution. Asuman Basalilwa was watching brief.

The brief facts from the record are that on the 21st day of March 2016, the petitioner was charged with a series of counts and she pleaded not guilty. The state subsequently amended the charge sheet on the 15th day of July 2016. The charge sheet had the following Counts:

1. Forgery C/S 342 and 349 of the PCA(Forgery of a deed poll)
2. Forgery C/S 342 and 349 of the PCA(Forgery of Statutory Declaration)
3. Forgery C/S 350A of the PCA (Forgery of URSB Stamps)
4. Making a False Document C/S 345(D)(1) of PCA.(Signing a deed poll purporting to be someone else)

Upon some protracted hearing and at the close of the prosecution's case, counsel for the applicant made submissions on a no case to answer. The trial Magistrate in her own analysis found that there was a case to answer and put the applicant to her defence. The applicants felt aggrieved with this decision hence this petition.

Counsel for the petitioner argued that the requirement of the law to intervene in revision is usually that it is exercised where there is no right of appeal or where the Chief Magistrate forwards a file to the High Court when it comes to the attention of the High Court that there is an irregular order or proceedings which caused material injustice.

He argued that the prosecution called 5 witnesses who testified and were all cross examined after which the prosecution closed its case. Of all the 5 witnesses that were called on Count 1 nobody mentioned 5th February 2015 or the presence

of the petitioner at Byuma Zone in Lwengo District. The phrase Byuma Zone in Lwengo District is so big. Nobody described this place and whether it exists at all. Where the offence of forgery is alleged, there was no evidence to show that the petitioner forged the document (Deed poll) and that it was forged from Byuma Zone. It was a surprise that the trial court found that a case had been made out on this count. The third count was also of forgery. No witness testified to any forgery on 15th August, 2015. Regarding stamps, witnesses testified against stamp impressions, but whereas they claim that the stamps were forgeries, the actual stamp of the Registration Services Bureau was not brought to court to show the differences between the genuine stamps and forged ones. The impression of the actual stamp would have been availed for comparison by the court itself. He wondered what would inform the witness to conclude that the stamps were forged. All this evidence was not available. Count 4 was on making a false document. Kisa Lule Agnes was produced as a witness. She was shown a document bearing a stamp (registration of documents) and also another one bearing her name and signature. All she said was to deny that she did not sign. During the investigation, no sample signature had been taken from Agnes or the stamps against her signature. Nothing was ever submitted to the analytical laboratory to determine whether she had signed or whether she was denying for the sake. The court was never availed with any sample signatures for court to compare. The finding caused material injustice to the petitioner as to how the accused person would defend herself on such counts as this would amount to shifting the burden of proof from the prosecution to the accused person. That would mean that the accused would have to investigate herself by incurring expenses of forensic evidence and this is contrary to the case of ***Wolmington Vs DPP***. The prosecution should have brought expert evidence and without doing that, the prosecution cannot have discharged the burden to put the accused to her defence.

Counsel sought refuge in S. 50 of the CPC, and argued that court can handle a grievance on any finding and this application for revision was ok before this court.

An accused does not have to wait to be convicted and to serve part of the sentence hence resort to S.50 (1) (b) and (5) of the CPC. He referred to the case of ***Christopher Nsereko V Uganda, Criminal Revision No.7 of 2003***, where Kagaba J held that the accused person does not have to wait until the final order once the material injustice is brought to the attention of court.

In reply, counsel for the respondent argued that this application for Revision is brought to defeat justice. It is not supported by any grounds as envisaged in S.50 of the CPC. He referred to the case of ***Charles Harry Twagira Crim. Rev. No.4 of 2003***, where the accused was charged with the offence of embezzlement before the Chief Magistrates Court of Buganda Road. The Chief Magistrate made a Ruling that the accused had a case to answer and accused made a Revision Application before Justice Bamwine. Justice Bamwine held that there was nothing irregular on the face of the record. The applicant appealed to the Court of Appeal which dismissed the appeal and later the Supreme Court did the same. The arguments by Counsel for the petitioner were also depressed by the Case of ***Okiroi James Vs Uganda, Criminal Revision Cause No 003 of 2010.*** There is no right of a Revisional order in respect of a finding by the Magistrate that there is a case to answer. The best option is for the applicant to wait for the final decision to appeal on a final decision. He further argued that counsel for the petitioner's reference to the case of ***Christopher Nsereko Vs Uganda*** is erroneous because in this case, the Magistrate made an order to hand over the property (vehicle) which was in possession of the police before completing the trial. This was an irregularity.

I do not comprehend that it is right for this Court to grant the orders sought for by counsel for the applicant. If such orders are granted, the net effect is that no Magistrate will ever complete a criminal case as all advocates will attempt to challenge the finding of no case to answer through Revision. This will create backlog as every case may end up with a Revision Cause and subsequently an

appeal after the case is concluded by the Magistrate upon disposal of the said revisions by the High Court.

The above observation notwithstanding, I did not find a niche within the provisions of S.50 of the CPC where I could anchor the applicant's petition. A *prima facie* case was defined in the case of ***Bhaatt Vs Republic (1957) EA 322*** as that which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence. It should be noted that a *prima facie* case does not mean a case proved beyond reasonable doubt. The court is not even obliged at this time to find whether the evidence is worthy of too much credit or if believed is weighty enough to prove the case beyond reasonable doubt. That conclusion can only be reached when a case for the defence is heard. ***See the case of Wibiro Alias Musa Vs Republic (1960) EA 184.***

I find the arguments of counsel for the applicant not convincing. The applicant should present her defence and convince court that all the allegations against her are false. It is actually to her advantage that the state has not taken certain steps to prove its case as she alleges. I avoided delving into the cogency of the evidence on trial to avoid biasing the Trial Magistrate since the trial is still ongoing. That can only be done on appeal if the Magistrate makes a finding of guilt. Counsel for the applicant's argument that the petitioner will serve a sentence before she can appeal the final decision of the magistrate is misplaced. There are legal provisions that enable the magistrate to grant bail pending appeal and such an application can be made orally upon the magistrate pronouncing Judgement.

I agree with the authorities cited by counsel for the respondent. I did not find any reason to depart from the findings of my learned brother Justice Bamwiine in ***Charles Harry Twagira Crim. Rev. No.4 of 2003***. Instead, I find that counsel for the petitioner's reference to the case of ***Christopher Nsereko and Anor Vs Uganda , Crim. Rev. No 07 of 2003***, is erroneous. In this case, Christopher Nsereko and his wife Mary Nakasumba were jointly charged with obtaining money

by false pretence contrary to Section 289 of the Penal Code Act. They were accused of defrauding Katerega (complainant) Sh.13,000,000/= by falsely pretending that they were selling their land, yet they had previously sold the same land to a one Kawezi. In order to raise the 13 Million, the complainant handed over his truck valued at 8,500,000 and topped up with cash of 4.5 Million. When Katerega attempted to occupy the land, he found it already occupied. He raised a complaint hence this case. The vehicle was seized by police and detained at police. After the complainant's testimony, Kandebe counsel for the accused applied to have the vehicle released to his client. The Magistrate declined because it had not been exhibited. At the close of the prosecution evidence, court found that there was a prima facie case made out against the accused. Before the defence opened, counsel for the state applied to have the vehicle released to the complainant, as Kandebe had done earlier but Kandebe objected. The prayer was granted. On revision, the judge had to determine whether the Magistrate's order was interlocutory or final. The Magistrate had stated before releasing the vehicle:

“It is the court's view, based on the above reasoning that the complainant is the person legitimately entitled to the Motor Vehicleand it should be accordingly restored to him. I have no doubt this order meets the interests of justice and the prompting of good convenience. Police in whose custody the vehicle is should hand it over to the complainant. The accused should pass the Log Book of the vehicle to the complainant”.

The Judge found that it was erroneous to take such a decision before the accused made his defence. That order was in finality and that is why the Judge entertained and granted revisional orders. This was misconduct on the part of the magistrate.

In this petition, I do not see how this case becomes relevant. The magistrate did not decide the case in finality. She only found that there was a case to answer.

In the result, I order that the file be taken back to the Magistrate for the applicant to present her defence. The application before me merits no granting of the orders prayed for. The application is accordingly dismissed.

I so order.

Dr Flavian Zeija

Judge

30/3/2017