

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA SITTING AT GULU  
CRIMINAL REVISION No. 0002 OF 2018

	UGANDA .....	PROSECUTOR	
5	VERSUS		
	1. HON. KASSIANO EZATI WADRI	}	
	2. HON. KARUHANGA GERALD	}	
	3. HON. MWIRU PAUL	}	
	4. HON. MABIKE MICHAEL	}	
10	5. SSEBUWUFU JOHN MARY	}	
	6. MUSISI WILLIAM NYANZI	}	
	7. ATIKU SHABAN	}	
	8. ANDAMA BENARD	}	
	9. ONEN MUHAMAD	}	
15	10. ANDAMA ANWAR DOKA	}	
	11. LJAGA MUHAMAD	}	
	12. WANI ALORO	}	
	13. ASIKU TOM	}	
	14. AJOTRE STEPHEN	}	
20	15. ODONG JOHN BOSCO	}	..... ACCUSED
	16. ANIKA CHARLES	}	
	17. ASEGA ABIRU JOGO	}	
	18. TAMALE WILBERFORCE	}	
	19. BUTELEZI NOR MANZUH	}	
25	20. AKIRA MAIDA	}	
	21. FARUKU ABURAHAMAN	}	
	22. GAMBA TUMUSHIME	}	
	23. MANDELA NELSON	}	
	24. OBETI SIMON alias EDEGA	}	
30	25. DRAJI SAM	}	
	26. NALUBOWA CAROLINE	}	
	27. GALUMBE AMID	}	
	28. ODONG RASUL alias ATIKU	}	
	29. ABWOLA JANE	}	
35	30. LJOTRE BASHIR	}	
	31. ASARA NIGHTY	}	
	32. AMIDU JUMA	}	

**Before: Hon Justice Stephen Mubiru**

**RULING**

5 This ruling arises from the decision of the Chief Magistrate of Arua, who by letter dated 17<sup>th</sup> August, 2018 *suo motu* invoked the provisions of section 48 of *The Criminal Procedure Code Act* that empowers the High Court to 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  
10 proceedings of the magistrate's court. The Chief Magistrate seeks to satisfy himself as to the regularity of the proceedings now pending before him in Criminal Case No. 52 of 2018, *Uganda v. Hon. Kassiano Ezati Wadri and 31 others*.

In that case, the thirty two accused were on 16<sup>th</sup> August, 2018 produced before the Chief  
15 Magistracy's court at Gulu and jointly charged with the offence of Treason c/s 23 (1) (b) of *The Penal Code Act*. It was alleged that the thirty two accused, and others still at large, on 13<sup>th</sup> August, 2018 at Arua Municipality and other places within Uganda, with intent to do harm to the person of the President of the Republic of Uganda, unlawfully aimed and threw stones thereby hitting and smashing the rear windscreen of the Presidential car. Being a capital offence, the  
20 accused did not take plea and were accordingly remanded to the Government prison at Gulu from where they are due to appear before the same court on 30<sup>th</sup> August, 2018 for further mention of their case. In his letter to the High Court, the Chief Magistrate's Court has expressed doubts as to whether or not it has geographical jurisdiction over the accused persons in that case, considering that the particulars of the charge sheet indicate that the overt act for which they stand  
25 charged took place in Arua, which is a different magisterial area outside the territorial boundaries of the Chief Magistrate's Court of Gulu.

In accordance with section 50 (2) of *The Criminal Procedure Code Act* I listened to the submissions of the learned Resident Senior State Attorney Mr. Omia Patrick, representing the  
30 prosecution and those of Hon. Medard Lubega Seggona appearing together with Hon. Asuman Basalirwa and Mr. Mr. Acellam Paul Ocaya, Counsel for the accused persons.

In his submissions, the learned Resident Senior State Attorney argued that under section 37 (b) and (d) of the magistrates courts act, when an offence is committed partly in one local area and partly in another and where it consists of several acts done in different local areas, the offence may be inquired into or tried by a court having jurisdiction over any of those areas. In the instant case the evidence we have and the charge sheet before court indicates that the alleged offence which culminated in the act that was committed in Arua Municipality in 13<sup>th</sup> August 2018 started from other areas, inclusive of Gulu. There was a pre-action processes which included planning and at the time of hearing we shall adduce evidence to that effect. Gulu is one of such places. The stoning of the motorcade was just the epitome of the act.

While the accused were arrested from within Arua Municipality, the security situation in Arua both at that time and now is still tense given the fact that the MP elect who was a candidate in that election process is accused No.1 in the case before the Chief magistrate's court in Gulu, Mr. Kassiano Wadri. Arraigning 32 persons before the magistrates court in Arua would provoke a violent situation that would give rise to more harm to both the accused, the people of Arua municipality and the security organs. Given the fact that the matter can be inquired into by courts of other local jurisdictions, including Gulu, the accused were transferred to Gulu for arraignment as inquiries continue. It was his submission that the 32 persons are properly before the Chief Magistrate's court in Gulu as one of the local jurisdictions where some of the acts giving rise of the incident were committed. He prayed that the court holds that it is lawful to have them in Gulu for arraignment and the subsequent mention of their case.

As regards the High Court, he submitted that the court has unlimited original jurisdiction over all matters including treason with which the 32 accused are charged. The fact that the court is sitting in the circuit of Gulu does not bar it from hearing a criminal case. It has not been committed to this court for trial yet. The court will have the jurisdiction to try the matter once it is committed to it. Gulu was not mentioned in the charge sheet. This was an error which can be cured by having the charge sheet amended. The process of mentioning the case in the meantime can be validated.

In response, the learned defence counsel submitted that he agreed with the reasons given by the State Attorney and his interpretation on section 37 (b) and (d) of *The Magistrates Courts Act*. The offence having been allegedly committed in Arua, we can only comment on the propriety of the charge. The limitation on jurisdiction relates to trial. The transfer of a case is a pre-requisite  
5 for cognisance, but that is a procedural error that should have been corrected earlier but still can be cured by ratification. It is a matter of inherent unlimited jurisdiction of this court which can be exercised by the court since the Chief Magistrate's court will not try the case. The arrangement of the high court circuits has no territorial ramifications but is rather based on administrative convenience. A1 is concerned about the brutalisation of his people and would not like to have it  
10 escalated. The situation is volatile. The proceedings before the Chief Magistrate should not be quashed. The case should not be transferred back to Arua. Jurisdiction should be maintained by the Chief Magistrate of Gulu.

Having considered the submissions of both counsel, the averments contained in the charge sheet,  
15 addressed my mind to the law regarding personal and geographical jurisdiction of Magistrates' Courts, the transfer of criminal cases and the powers and jurisdiction of the High Court, I found and decided *ex-tempore* that although there were some procedural irregularities leading up to the Chief Magistrate's courts at Gulu taking cognisance of the case, they were not fatal to the proceedings and could be rectified by an order of this court ratifying the exercise of jurisdiction.  
20 The proceedings of the Chief Magistrate's Court were accordingly validated. It was directed that the accused persons are to continue appearing regularly before that court for the mention of their case in accordance with the law. I undertook to explain in a detailed ruling the reasons behind that decision, hence this ruling.

25 In his letter, the learned Chief Magistrate expresses doubt as to whether his court has jurisdiction over the case before him. "Jurisdiction" is an omnibus term which has several meanings depending on the context. It may be used when addressing the scope of affairs a court may seek to regulate and control. It may also mean the kinds of issues a court could possibly have on its plate, i.e. the question whether a court may hear a case and decide a matter may thus be  
30 formulated as an inquiry into the jurisdiction of that court. Alternatively it may mean the factual relationship between a court and a person or a thing. It may also, somewhat colloquially, refer to

a judicial entity itself. So it might be said that "other jurisdictions" deal with some issue in a particular way, which would refer to the practice of other courts. However in this context, it is used to describe the territory in which a court regularly exercises its authority.

5 It is trite that jurisdiction is a term of comprehensive import embracing every kind of judicial action and that the term may have different meanings in different contexts. It has been defined as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are joined or to the kind of relief sought  
10 (See: *A.G of Lagos State v Dosunmu (1989) 3 NWLR pt.111, pg. 552 S C*). It therefore means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon. A court must have both jurisdiction and competence in order to be properly seized of a cause or matter.

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The issue of jurisdiction was extensively dealt with by the Court of Appeal in the case of *Owners of Motor Vessel Lillian "s" v. Caltex Oil Kenya Limited [1989] KLR 1* in which Nyarangi JA, citing *Words and Phrases Legally Defined* vol. 3 I-N page 13 held;

20 By jurisdiction, is meant the authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular  
25 state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it had jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given. (emphasis mine).  
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The Court of Appeal further held that:

5 Jurisdiction is everything without it; a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

10 Jurisdiction therefore is the power or authority vested in court to "decide matters that are before it" or "to take cognizance of matters a formal way for its decision." One cannot speak of jurisdiction without the power or authority to make a decision on the merits. To have jurisdiction is to have the power to inquire into the fact, to apply the law and to declare the relief in a regular course of a judicial proceeding. This power or authority may be limited to a specific territory. Hence, "geographical or local jurisdiction" is the territory within which authority is granted to a court to deal with legal matters, to make legal decisions and judgments and to direct justice.

15 However Jurisdiction must not be confounded with venue. Jurisdiction is the authority to hear and determine a cause, in the sense of power rather than in the sense of selection. There is thus a distinction between "jurisdiction" and "venue." Whereas venue is simply a geographic location, jurisdiction has a geographic location alongside aspects that have nothing to do with geography or location. In criminal matters, jurisdiction is a composite expression comprising; subject matter (20 *ratione materiae*), personal (*ratione personae*), temporal (*ratione temporis*), or territorial (*ratione loci*) considerations. The mix-up in terminology stems for the fact that according to section 42 of *The Magistrates Courts Act*, all criminal prosecutions, whether of misdemeanours, non-capital felonies and capital felonies, must begin in a magistrates' court, yet magistrates' Courts have no jurisdiction over the latter category of cases, whose trial is the preserve of the High court. In that case, when dealing with the latter category of cases, a magistrate's court deals with issues of venue rather than subject matter jurisdiction.

30 Geographical location (*ratione loci*) when considered as a component of jurisdiction is for the determination whether a court may adjudicate a matter at all, while when considered as venue it is for the determination of which court, within Uganda, is the proper forum. When provisions as to geographical location are deemed as ones of venue, their benefit must be invoked at the preliminary stage of a proceeding or they are waived. If they are deemed ones of subject matter

jurisdiction, they usually can be invoked at any time during the action and may be the basis for attacking a judgment after it has been rendered.

By these requirements, a distinction is made between rules of conduct and rules of adjudication in criminal law. Although the primary basis of criminal jurisdiction is territorial, jurisdiction is used in the sense of proper court, which has the authority to hear a particular case whereas venue refers to the court in which the case is to be held. The term "jurisdiction" refers to a court's power to decide a case, while the term "venue" relates to the place, the geographical *situs*, where a court with jurisdiction may hear a case. Consequently, jurisdiction may exist to hear and determine causes of a certain class, and yet that jurisdiction may not be permitted to attach to certain cases by reasons of limitations of venue. While certain provisions may give the courts power to hear certain causes, other provisions may limit the rights of certain parties to avail themselves of that jurisdiction.

This constraint results from a combination of expediency and legal principle. A court has little interest in spending its scarce resources on trying offences that have little or no connection to its territory or persons in respect of whom it is unable to exercise control. At the same time, in a judicial system of territorially constrained courts, considerations of orderliness in the disposal of cases advocate against taking too keen a prosecutorial interest in acts occurring outside jurisdiction. It serves both the purpose of minimising the chances of conflict and duplication of judicial authority. Providing for the jurisdiction of courts on the basis geographical location is meant to give structure to the system of administration of justice by ensuring that there is orderly disposal of cases. It also helps to create efficiency within the system by reducing conflicting cognisance of cases by different courts at the same time. Enforcement is limited to measures that can be taken only within the confines of the jurisdiction and in accordance with its rules, and the enforcing court's judgment has no coercive force outside its jurisdiction. Consequently, the criminal laws of Uganda apply to everyone in the country, but procedural limitations curb the competence of the various courts in enforcing them. In this context, territorial jurisdiction, as distinct from venue, would have to be construed to mean that fundamental "competency" which is the non-waivable aspect of jurisdiction while "venue" is the non-fundamental, waivable aspect of jurisdiction.



Whereas there is a distinction between jurisdiction and venue, depending on the category of case brought before a magistrates court under section 42 of *The Magistrates Courts Act*, section 34 of the Act does not reflect it. Under the latter section, both jurisdiction and venue are defined by the location of criminal activity and the subject matter of the criminal activity. That section provides

5 that subject to the provisions relating to transfer conferred by the Act, every offence is to "ordinarily be inquired into or tried" by a court within the local limits of whose jurisdiction it was committed. Consequently the personal jurisdiction of courts in a criminal case is established by the location of where a crime is committed. In the same vein, the power of courts to take cognisance of offences is *prima facie* local, limited to the territory over which legislation has

10 granted it jurisdiction, and does not extend to offences committed beyond its confines. On the face of it, Courts can take cognisance or try offences perpetrated only by certain individuals or under certain circumstances, and within a specified territory.

A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of

15 law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. A court ought to exercise its powers strictly within the jurisdictional limits prescribed by the law. Acting without jurisdiction or *ultra vires* or contrary to the provisions of a law or its principles are instances of illegality (see *Pastoli v Kabale District Local Government Council and others* [2008] 2 E.A

20 300). For the reason that a court can derive its general jurisdiction only from the power which created it, the law. 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 (see *Kasibante Moses v. Katongole Singh Marwana and another*, H.C. Election Petition No. 23 of 2011).

25 As stated earlier, "local jurisdiction" is the adjudicative power of the court with reference to the territory within which it is to be exercised. The territorial jurisdiction of magistrates' courts is delimited by way of statutory instruments issued from time to time by the Minister of Justice, after consultation with the Chief Justice, in accordance with section 2 of *The Magistrates Courts Act*. *The Magistrates Courts (Magisterial Areas) Instrument, 2017*; SI No. 11 of 2017 currently in

30 force stipulates under item 19 thereof, the Gulu Chief Magisterial area comprises; a Chief



Magistrate' Court at Gulu, a Grade one Magistrate Court at Aswa, a Grade one Magistrate Court at Bobi, a Grade one Magistrate Court at Gulu and a Grade one Magistrate Court at Omoro.

5 According to section 6 of *The Magistrates Courts Act*, every magistrate appointed under the Act is deemed to have been appointed to, and have jurisdiction in, each and every magisterial area but may be assigned to any particular magisterial area or to a part of any magisterial area by the Chief Justice. According to section 3 of *The Magistrates Courts Act*, within each magisterial area, magistrates' courts are designated and are known as the magistrates court for the area in respect of which they have jurisdiction. The purpose of these provisions is to ensure that the  
10 authority of the various magistrates is limited to certain well defined territory. For that reason the Chief Magistrates' Court at Gulu has its local limits restricted to the geographical limits of the local government administrative units of Gulu Municipality, Aswa, Bobi, and Omoro.

The geographical aspects of criminal jurisdiction have divergent implications when construed  
15 from the perspective of magistrates courts as opposed to the High Court. Whereas section 4 of *The Penal Code Act*, confers jurisdiction upon the courts of Uganda, to every place within Uganda, and with regard to specified offences, to offences committed outside Uganda by a Uganda citizen or person ordinarily resident in Uganda, section 3 of *The Magistrates Courts Act* requires that magistrates courts are established by statutory instrument designating them as  
20 magistrates courts to be known as the magistrates court for the area in respect of which they have jurisdiction. Within these specified geographical areas, the various magistrates' courts have adjudicative jurisdiction by way of the power to determine compliance with legislation and the capacity to subject persons or things to their process, as well as enforcement jurisdiction by way of the capacity to induce or compel compliance or to punish noncompliance with their orders.

25 Thus, while a magistrate's court may be competent to try a misdemeanor offense or a non-capital offence, if the offense occurs outside its geographical territory, the court lacks jurisdiction over the offense. To the contrary, the High Court has only a county-wide territorial restriction. The High Court has unlimited original jurisdiction in all matters and such appellate and other  
30 jurisdiction as may be conferred on it by this Constitution or other law (see Article 139 (1) of *The Constitution of the Republic of Uganda, 1995*). In principle, if a charge for a capital offence

is placed before a competent court (i.e., magistrate's court), the High Court, no matter where located in Uganda, may have subject matter jurisdiction of the offense, even if located outside the circuit where the offense was committed.

- 5 Whereas magistrates courts are established under section 3 of *The Magistrates Courts Act* and  
*The Magistrates Courts (Magisterial Areas) Instrument, 2017; SI No.11 of 2017* as part of a  
system of multiple, homogenous units comprising different courts of various grades spread out  
throughout the country, the High is established by Article 139 (1) of *The Constitution of the*  
*Republic of Uganda, 1995*, as one Court. Its sub-division into units such as divisions and circuits  
10 is not a split of its unlimited original jurisdiction but rather an administrative arrangement for the  
determination of venue designed to bring its services closer to the people it serves and to  
promote judicial economy and efficiency in the disposal of cases under its jurisdiction.

- The power conferred on magistrates court by sections 42 and 168 (3) of *The Magistrates Courts*  
15 *Act* with regard to capital offences is limited to charging and committing for trial, which power is  
in the form of assistant, supplemental, ancillary or auxiliary jurisdiction in that it is afforded by  
law to a magistrate's court in aid of the High Court. Although the traditional meaning of ancillary  
jurisdiction is the court's authority to rule on issues and claims that it would not usually be  
allowed to hear, but which are related to another claim currently before the court, in this context  
20 it refers to that jurisdiction which allows a subordinate court to take cognisance of a case that  
would normally be outside of its subject-matter jurisdiction.

- This type of ancillary jurisdiction is based on considerations of judicial economy, aimed at  
limiting the workload of the High Court during the preliminary, pre-trial stages leading up to the  
25 trial of capital offences, triable only by the High Court. Being a jurisdiction that is ancillary in  
nature, contentions of lack of jurisdiction by a magistrate's court in respect of such a jurisdiction  
will sound only to the extent that the High Court lacks jurisdiction over the subject matter. The  
High Court will not have original criminal jurisdiction only if it is an offence that is not covered  
by section 4 of *The Penal Code Act*, conferring jurisdiction upon the courts of Uganda, to every  
30 place within Uganda, and with regard to specified offences, to offences committed outside  
Uganda by a Uganda citizen or person ordinarily resident in Uganda.

Therefore in bringing this matter to the attention of this court, the learned Chief Magistrate is not expressing doubt over matters of the jurisdiction of his court, but rather its propriety as a venue. For magistrates' courts, personal jurisdiction is based on territorial concepts, that is, a court can gain personal jurisdiction over a person only if the person has a connection to a crime committed within the geographic area in which the court sits or is within its area but committed an offence anywhere within Uganda as stipulated by section 3 of *The Magistrates Courts Act*, thus;

**31. General authority of magistrates courts.**

- Every magistrate's court has authority to cause to be brought before it any person who is within the local limits of its jurisdiction and is charged with an offence committed within Uganda, or which according to law may be dealt with as if it had been committed within Uganda, and to deal with the accused person according to its jurisdiction.
- In such cases, section 32 of the Act requires the magistrate to send the accused to the area where offence was committed. This provision is a recognition of the fact that certain actions that may be undertaken by a magistrates court are transitory and thus can be brought wherever the accused may be found. Nevertheless, in making the determination as to whether or not the person is before it in connection to a crime committed within the geographic area in which the court sits or is within its area but is charged with an offence committed within Uganda, a magistrate's court takes cognisance of the facts alleged in the particulars of the offence at the point the charge sheet is placed before that court with a view to the court taking action in respect of the alleged commission of an offence.
- It is thus on basis of the charge-sheet that a Magistrate takes cognisance of a case. A Magistrate takes cognisance of a criminal case when he or she has not only applied his or her mind to the contents of the charge sheet, but also has done so for the purpose of proceeding in a particular way, i.e. for taking action of some kind e.g. reading the charge to an accused, or issuing a search warrant, but without the desire to proceed with the trial of the case, for lack of subject matter or personal jurisdiction. Taking cognisance of the case is the first step in the assessment of proper exercise of jurisdiction or propriety of the venue. Taking cognisance of the case only for determination of propriety of venue, the Magistrate applies his or her mind to the contents of the charge sheet, and may take such procedural steps as reading the charge to the accused, or issuing

a search warrant, but without the ultimate specific purpose of a desire to proceed, because it is within his or her competence to do so as he or she has no subject matter or personal jurisdiction.

On the other hand, jurisdiction is exercised at the moment of taking cognisance of a case only where the court is competent to try the offence. In that case, a Magistrate applies his or her mind to the contents of the charge sheet, and may take such steps as reading the charge to the accused, or issuing a search warrant, but with the ultimate specific purpose of a desire to proceed with the trial of the case, because it is within his or her competence to do so because he has both personal and subject matter jurisdiction to do so. Jurisdiction over the offence is therefore acquired when a prosecution is commenced by the filing of a charge sheet in a court in the specified jurisdictional territory, competent to hear and determine the particular cause. Accordingly, both questions of jurisdiction and venue should be determined at the point where the prosecution has submitted a charge-sheet against certain named persons, before the magistrate signs the charge sheet and reads it out to the named accused. A Magistrate must be deemed to have taken cognisance of an offence when he or she, after satisfying himself or herself of its propriety, signs the charge sheet placed before him or her by the prosecution.

It is not in doubt that all crime is local. Both the jurisdiction over and venue of trial of an offence is vested in the court where the crime is committed. There is therefore need to demonstrate in the particulars of the charge sheet, a real and substantial connection between the offence or the accused person and the court. As mentioned before, for magistrates' courts, personal jurisdiction is based on territorial concepts, that is, a court gains personal jurisdiction over an accused person only if that person has a connection to a crime committed within the geographic area in which the court sits as provided by section 34 of *The Magistrates Courts Act*, thus;

**34. Ordinary place of trial.**

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.

It was argued by the learned Resident Senior State Attorney that by stating in the charge sheet that the accused are alleged to have committed the offence in "Arua and other places within

Uganda," this alone was capable of designating the Chief Magistrate's Court at Gulu as the appropriate venue. This argument is not persuasive at all. Prosecution owes the court a duty to disclose in the charge sheet facts that indicate a real and substantial connection between the offence or the accused person and the court. This is an important aspect of jurisdictional and venue determinations that should not be left as a matter of inference to be deduced from such vague statements as "other places within Uganda." To hold otherwise would be to allow room for uncertainty in the commencement of prosecutions. Applying the rule of adjudication (criminal procedure) is a necessary step in the determination of an alleged violation of a rule of conduct (substantive criminal law). The former is an external trigger, a condition for application of the rule of conduct. It is in that regard that determinations of jurisdiction and venue are triggered by specific places mentioned in the charge sheet not by speculative surmises based on vague statements contained therein.

Although not specifically stated as a requirement under section 23 (1) (b) of *The Penal Code Act*, by convention a charge of treason must specify the overt act(s) and the place(s) where they occurred. The overt act requirement is a procedural safeguard ensuring that some act in general was in fact done (since words alone do not constitute treason) and that put into context the stipulated act was part of a treasonous plot (that the treasonous nature was not fabricated by political enemies). The procedures simply stand as a safeguard that the accused did not just think or imagine treason, but actually began to act on a plot. The overt act required to charge someone with an offence must have occurred within the geographical jurisdiction of the court where the charge is preferred, and it should be specifically stated in the charge sheet. To ask court to infer that "other places within Uganda" includes Gulu is to abdicate that responsibility.

To illustrate the importance of this requirement further, section 35 of *The Magistrates Courts Act*, requires that trials should take place where the criminal act is done or consequence of the offence ensues. It provides thus;

***35. Trial at place where act done or consequence of offence ensues.***

When a person is accused of the commission of any offence by reason of anything which has been done or of 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.

Under the principles of statutory construction we are required, if possible, to interpret statutory language in such a manner as to give it meaning and a useful function. The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. The best evidence of legislative intent is the language of the statute itself, which must be given its plain,  
5 ordinary and popularly understood meaning. Each word, clause and sentence of a statute must be given a reasonable construction, if possible, and should not be rendered superfluous. In determining the meaning of a statute, a court will not read language in isolation, but must consider it in the context of the entire statute. Clear and unambiguous language will be enforced as written. In addition, a court may consider the reason for the law, the problems sought to be  
10 remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. Moreover, courts will presume that the legislature did not intend to enact a statute that leads to absurdity, inconvenience, or injustice.

The interpretation of section 35 of *The Magistrate's Courts Act* should give it meaning and  
15 purpose with relation to capital offences. In this context, if the territorial restriction contained therein is deemed to be a subject matter jurisdiction, then it would mean that no High Court Circuit outside the magisterial area where the offence was committed, could ever have subject matter jurisdiction over the offence. This would have the absurd effect of elevating administrative units of the High Court to the level of distinct "High Courts." Consequently,  
20 whereas section 35 of *The Magistrate's Courts Act* deprives a magistrate's court of jurisdiction of the person of the accused and the offence, if venue is improper, with regard to capital offences that provision should be construed as relating solely to venue, with no effect on the jurisdiction of the court. Hence, no jurisdictional significance whatever may be attributed to improper venue in relation to capital offences commenced before a magistrate's court, since in that context  
25 section 35 of *The Magistrate's Courts Act* relates solely to venue, and has no jurisdictional significance. Even though a charge for a capital offence is brought in the wrong magistrate's court, this fact does not impair the jurisdiction of that court to any extent whatever. This becomes a mere procedural irregularity that can be cured by, waiver, ratification or validation.

30 When considered in context, the plain language of section 35 of *The Magistrate's Courts Act* merges into two concepts: jurisdiction over the subject matter (the offence), the person (offender)

and the place or venue (geographical location) where the trial is to take place. It clearly states the normal rule as being that an offence should ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. Although use the expression "ordinarily" manifests an intention that the provision is not to be construed peremptorily, in the absence of statutory provisions to the contrary, venue must as well be laid in the jurisdiction where the offence is committed. Accordingly, determinations of both geographical jurisdiction and venue requires a demonstration in the charge sheet, of a nexus between the alleged criminal conduct, the alleged offender and the geographical limits of the territory over which the magistrate's court in which the charge is preferred, exercises authority.

One approach to the determination of territorial jurisdiction or venue is the gravamen or completion of the offence test. The gravamen of a criminal charge or complaint is the material part of the charge. exclusive jurisdiction belongs to the country where the essential aspects of the offence took place or where it was completed (see for example *R. v. Ellis*, [1899] 1 Q.B. 230; *R. v. Harden*, [1962] 1 All E.R. 286; *R. v. Stoddart* (1909), 2 Cr. App. R. 217 and Professor Glanville Williams; "Venue and the Ambit of Criminal Law" (1965), 81 L.Q.R. 276, 276-288, 395-421, 518 *et seq.*). Application of either the gist of the offence test or the completion of the offence test has the effect of limiting the courts' jurisdiction in criminal matters to a single location, namely, where the essential element of the offence occurred or where it was completed.

The other approach is the continuity of offences test which posits that any court within whose territorial jurisdiction a substantial or any part of the chain of events constituting an offence takes place may take jurisdiction (see for example *R. v. Godfrey*, [1923] 1 K.B. 24; *R. v. Wall*, [1974] 1 W.L.R. 930; *Secretary of State for Trade v. Markus*, [1976] A.C. 35 and *Treacy v. Director of Public Prosecutions*, *supra*; *R. v. Baxter*, [1972] 1 Q.B. 1).

Whereas section 37 (b) and (d) of *The Magistrates Courts Act*, permits inquiry into or trial of an offence by a court having jurisdiction over any of two or more geographical jurisdictions when an offence is committed partly in one local area and partly in another and where it consists of several acts done in different local areas, whichever of the two approaches is used in determining whether a crime should be prosecuted in a particular area, court inevitably considers the



substantial links that connect the crime to that jurisdiction. It is undeniable that there may be sufficient links to different jurisdictions to justify proceedings in more than one place but there is no way a court at the time of charging an accused person will be able to determine that a place within its territorial jurisdiction is one of such places unless it is explicitly stated in the particulars of the charge.

Territorial considerations are so important to a magistrate's court to the extent that even 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 is required to cause him or her to be brought before it and then 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 (see section 32 of *The Penal Code Act*).

Having determined that jurisdiction and venue are distinct legal concepts, in that jurisdiction relates to the power of a court to decide the merits of a case, while venue determines where the case is to be heard, it follows that statutory venue requirements with regard to capital offences whose prosecution is commenced in accordance with section 42 of *The Magistrates Courts Act* are procedural only and do not have any relation to the question of the jurisdiction of a magistrate's court.

That notwithstanding, considering that the purpose of a criminal trial is to dispense fair and impartial justice, uninfluenced by extraneous considerations, there are occasions when strict compliance with venue requirements may lead to the exact opposite. If it appears that the dispensation of criminal justice is not possible, impartially, objectively and without any bias, at any place, the appropriate court may transfer the case to another court, where it feels that holding of fair and proper trial is conducive. When it is shown that public confidence in the fairness of a trial would be seriously undermined, the court at its own motion or any of the parties may seek the transfer of a case. That power is contained in section 41 of *The Magistrate's Courts Act* which provides thus;

**41. Power of High Court to change venue.**

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial trial or inquiry cannot be had in any magistrate's court;

(b) that some question of law of unusual difficulty is likely to arise;

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the offence;

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) that such an order is expedient for the ends of justice or is required by any provision of this Act, it may order—

(f) that any offence be tried or inquired into by any court not empowered under the preceding sections of this Part of this Act, but in other respects competent to inquire into or try that offence;

(g) that any particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction;

(h) that an accused person be committed for trial to itself.

(2) The High Court may act either on the report of the lower court or on the application of a party interested or on its own initiative.

(3) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Director of Public Prosecutions, be supported by affidavit.

This provision enumerates, although not exhaustively, the extraordinary circumstances which would justify a departure from the stipulation that the place where the offence is committed is where the, inquiry into, prosecution and trial of a case has to be conducted. A motion to transfer is allowed on the ground that prosecution was commenced within the right jurisdiction, but for exceptional reasons, the case should be transferred to another venue outside jurisdiction, subject to any equitable terms and conditions that may be prescribed.

Although whether or not a particular person should be prosecuted in a specified court is the concern of procedural law, not a question of the reach of the criminal prohibitions of the State, the rules of venue in criminal cases are of fundamental importance to territorial jurisdiction and

venue so as not to compel an accused person to move to and appear in a different court from that within whose territory the crime was committed, as it would cause him or her great inconvenience in looking for his or her witnesses and other evidence in another place.

- 5 Courts thus begin with a presumption of reasonableness of the venue designated by the laws of procedure which can only be overcome by a compelling case that due to the presence of some other considerations, that venue is rendered unreasonable. It would be a negative reflection upon the credibility of not only the entire judiciary but also the prosecuting agencies, it would not only undermine order but also fairness, if the choice of forum is determined whimsically. It is no  
10 wonder therefore that in deciding cases, courts have to look beyond violation of the rules of conduct but holistically at the rules of adjudication as well.

- The right to a fair trial is guaranteed by article 28 (1) of *The Constitution of the Republic of Uganda* and it requires "a fair, speedy and public hearing before an independent and impartial  
15 court or tribunal established by law." As regards the pre-trial stage (inquiry, investigation, committal), the concept canvases criminal proceedings as a whole. This is because some requirements of that article, such as the "speedy" requirement, may also be relevant at the pre-trial stage of proceedings in so far as the fairness of the trial is likely to be seriously prejudiced by initial failures at that stage. Steps and measures taken right from the point of arrest have a  
20 direct influence on the conduct and fairness of the subsequent proceedings, including the actual trial. Accordingly, article 28 (1) of *The Constitution of the Republic of Uganda* is right from the point of arrest, throughout the investigation, at the point of charging and all other pre-trial proceedings. The right to a fair trial may be fundamentally impaired by a procedural irregularity at that stage. In criminal trials, proceedings may be stayed in the exercise of the judicial officer's  
25 discretion not only where a fair trial is impossible but also where it would be contrary to the public interest in the integrity of the criminal justice system that trial should take place.

- For example, in extreme cases courts have refused to countenance behaviour that threatens either basic human rights or the rule of law, for example in *Dr. Kizza Besigye and ten others v. The Attorney General, Constitutional Petition No. 07 of 2007*, a criminal trial was stayed on account  
30 of the fact that the accused could no longer receive a fair trial in light of what security and other

State agencies had done at the premises of and Headquarters of the third organ of State (the Judiciary) which included "the shedding of blood in the premises of the High Court, brutal assaults on prisoners who had been released on bail, violent arrest and manhandling prisoners as they were thrown on lorries as if they were sacks of potatoes, unlawful confinement of the Deputy Chief Justice, the Principal Judge and other frightened Judges and Registrars who were confined and besieged for over six hours in the High Court buildings and the unrepentant attitude of the Executive Arm of this Republic." The Constitutional Court found that this conduct constituted an outrageous affront to the Constitution, constitutionalism and the Rule of Law in Uganda. It stated; "This court cannot sanction any continued prosecution of the petitioners where during the proceedings, the human rights of the petitioners has been violated to the extent described above. No matter how strong the evidence against them may be, no fair trial can be achieved and any subsequent trials would be a waste of time and an abuse of court process."

That case serves as an example to show that in criminal trials, despite the fact that the charges may be grave, the merits of the case and that a fair trial may still be possible, proceedings have been stayed on broader considerations of the integrity of the criminal justice system. It is recognised that a person charged with having committed a criminal offence should receive a fair trial and that, if he or she cannot be tried fairly for that offence, he or she should not be tried for it at all.

Proceedings may be stayed in the exercise of the judge's discretion not only where a fair trial is impossible but also where it would be contrary to the public interest in the integrity of the criminal justice system that a trial should take place (see *Regina v. Horseferry Road Magistrates' Court, ex Parte Bennett (No 1)*, [1993] 3 WLR 90, [1994] 1 AC 42, (1993) 3 All ER 138, (1994) 98 Cr App R 114). The question there is whether the behaviour is "so unworthy or shameful that it was an affront to the public conscience to allow the prosecution to proceed," (see *Regina v. Latif*; *Regina v. Shahzad*, [1996] 1 WLR 104, [1996] 2 Cr App R 92, [1996] 1 All ER 353, [1996] Crim LR 92). The law is settled. Weighing countervailing considerations of policy and justice, it is for the judge in the exercise of his discretion to decide whether there has been an abuse of process, which amounts to an affront to the public conscience and requires the criminal proceedings to be stayed. In *Uganda v. Shabahurria Matia, H. C. Criminal Revisional Cause No.*

*Msk-00-CR-0005 of 1999 (unreported)* for example, a stay was ordered on account of the fact that the period of three and half years without committing an accused for trial, without an explanation for the delay by the state, was found to be oppressive, amounting to an abuse of the process of the court warranting the extreme remedy of ordering a stay of prosecution.

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Selecting a venue for any subsequent step taken in the process leading up to and including the trial is therefore not a matter to be taken lightly as it has a bearing on the concept of a fair trial. Selecting a forum is a necessary practice for any prosecutor filing a charge. The decision should be guided by the procedural laws regulating venue. Forum selection is simply a procedural part of litigation, when it takes place within the rules, but may easily turn into forum shopping. "Forum shopping" typically refers to the act of seeking the most advantageous venue in which to try a case. Whereas seeking a venue in which a fair trial can be better guaranteed would be a decision in the interest of justice, where it is sought for purposes of gaining some unfair advantage or opportunity to begin with the odds in one's favour, would be a subversion of justice in that in the latter situation it is designed to undermine the principle of equal protection of the law.

Forum shopping is abhorred when it involves conduct that either compromises the other party's fair trial interests or the integrity of the justice system. It may be evinced by misconduct, improper motive or bad faith in the approach adopted by the party, going beyond mere legitimate tactics before the court, or evidence of irremediable impairment to the fair trial interests or that the conduct has prejudiced the other party's ability to have a trial within a reasonable time. Courts have traditionally expressed a strong anti-forum shopping sentiment. Forum shopping is generally disparaged as an abuse of process because it calls into question the courts' and the judicial system's ability to be impartial and even-handed. In *McShannon v. Rockware Glass Ltd. [1978] A.C. 795*, Lord Diplock rejected existence of *forum non conveniens* (the non convenience doctrine positing the discretionary power that allows courts to dismiss a case where another court, or forum, is much better suited to hear the case) in common law stating that for the interests of all the parties and for the ends of justice, the jurisdiction must be exercised - however desirable it may be on grounds of public interest or public policy that the litigation should be conducted elsewhere and not in the English courts. There appears to be two categories of abuse

of process;- (a) conduct affecting the fairness of the trial; and (b) conduct that contravenes fundamental notions of justice and thus undermines the integrity of the judicial process. Forum shopping may result in either.

- 5 Concurrent jurisdiction between courts at the same level of hierarchy in the court structure may be the only legally acceptable means by which a litigant can select a venue or "forum shop" (horizontal forum shopping). Vertical forum shopping is discouraged by the principle that where an inferior and superior court have concurrent jurisdiction, then the matter must first be heard by the inferior court before it is presented before the superior court.

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The power of transfer of case is not one to be exerted as a matter of routine. It is a power to be judicially exercised and requires that the reasons be recorded. The court must first conduct an enquiry and then decide whether such transfer is in the interest of justice or whether the application has been made with an intention to defeat justice. If the grounds of filing such application are found to be false, frivolous or vexatious the court would dismiss the application.

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The powers of transfer of cases conferred upon Chief Magistrates are limited by section 171 of *The Magistrate's Courts Act* to cases of which he or she has taken cognisance for trial to another magistrate holding a court empowered to try the case within the magisterial area of the jurisdiction of that chief magistrate. Cases may be transferred based on improper venue but it follows that a Chief Magistrate cannot transfer cases of which no court within his or her geographical jurisdiction has taken cognisance.

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- For example in *Ankwatsa Mary v. Uganda, H.C. Crim. Rev. No. 004 of 2013* the Chief Magistrate Nakawa after taking plea and listening to the testimony of three witnesses, ordered the file to be transferred to the Chief Magistrates Court of Buganda Road. In an application to the High Court for the revision of that order, it was contended by counsel for the accused that the initial decision of the Chief Magistrate at Nakawa to proceed without jurisdiction was a nullity and that the subsequent decision of the Chief Registrar and Chief Magistrate of Nakawa to transfer the file from one magisterial area to another was unlawful. Dismissing that contention, the High Court held that since the charge sheet showed that the offences charged were

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committed at the Land offices Kampala which was within the Kampala Magisterial Area within the Chief magistrate's Court at Buganda Road and Mengo, 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. The reference of the file to the Chief  
5 Magistrate Court of Buganda Road to handle the matter was confirmed and an order made for the file to be accordingly forwarded.

The rules which guide the determination of what courts and magisterial areas criminal prosecutions may be commenced are fixed by sections 42, 31, 35 of *The Magistrates Courts Act*  
10 read together with *The Magistrates Courts (Magisterial Areas) Instrument, 2017: SI No.11 of 2017*. Departure from these rules is only acceptable in exceptional circumstances, determined by courts upon which that primary jurisdiction or venue is cast, at their own motion or upon application of either party. Exceptionally, the courts may refuse to take cognisance, hear or  
15 decide a case, if they believe it would be better for the case to be heard before a court having equivalent jurisdiction in another judicial area, because this would increase the likelihood of an efficient and impartial hearing of the particular case. Jurisdiction or venue may be declined or the proceeding transferred when the court is manifestly inappropriate relative to another more appropriate court that could exercise jurisdiction.

20 In making that decision, the court vested with primary jurisdiction or venue by the laws of procedure, takes into account, in particular: any inconvenience to the parties in view of their habitual residence, the nature and location of the evidence, including documents and witnesses, and the procedures for obtaining such evidence, their safety, and so on. The paramount consideration is the interest of justice. The case will not be transferred if the reasons advanced  
25 are unlikely to have any negative impact on the justice of the case.

For example in *Ranjit Singh v. Popat Rambhaji Sonavane AIR 1983 SC P.291*, the complainant while proceeding towards his house on 19<sup>th</sup> November, 1981 at about 8.00 p.m., was accosted by the nine accused persons who abused and threatened to kill him. He was robbed of a golden  
30 chain and an amount of Rs. 500/-. The complainant went to lodge the first information report to the police chowki, but the police declined to accept the information and take follow-up action.



Therefore, on 23<sup>rd</sup> November, 1981, the complainant initiated a private prosecution in the Magistrates Court. The learned Magistrate took cognizance and held a preliminary enquiry and thereafter the learned Magistrate framed a charge against the accused for having committed multiple offences under *The Penal Code Act*. The learned Magistrate committed the case to the  
5 Court of Sessions at Pune.

The complainant filed an application seeking transfer of the trial from Pune to Indore alleging that two of the accused were relations of the local police officers and because of an incident in the town of Ahmednagar in which the brother of the complainant was murdered, the entire police  
10 force of Maharashtra had become inimical to the complainant. He stated that he was forced to shift to Indore and if he was required to go to Pune for prosecuting the case, his safety was in danger and on that ground he sought transfer of the case. The accused opposed the application for the transfer of the case contending that they had been in jail unnecessarily for the last seven months and transfer of the case would further delay the hearing of the case which would  
15 necessitate their continued detention in jail.

On basis of assurances made by the State Attorney that the State would extend all possible facilities as directed by this Court to ensure the safety and security of the complainant which should put an end an apprehension about the safety and security of the complainant and would  
20 also knock-out the ground on which the petition for transfer was founded, the court found that the allegation made by the complaint as a basis for seeking transfer of the case was too nebulous a ground for transferring a case from Pune to Indore. The court further noted that all four witnesses to testify at the trial were from Pune. It instead chose to take necessary precaution for assuring the safety of the complainant when he would be required to attend the Court at Pune.  
25 The application for transfer of the case was rejected.

In contrast, in *Kaushalya Devi v. Mool Raj*, 1964 Cr. L.J. 233, the accused filed an application before the superior court seeking transfer of a case pending before a subordinate court to another court on ground that that the facts alleged by the complainant might perhaps constitute a civil  
30 dispute but the said facts had been deliberately twisted and a criminal charge had been made to harass the accused. The trial magistrate himself swore an affidavit opposing the application and

stating, *inter alia*, that the clause indemnifying the purchaser contained in the deed of sale on which the accused relied would not absolve him from criminal liability. Deciding that the case ought to be transferred, the superior court held;

- 5       The action of the Magistrate in making an-affidavit and opposing the application for transfer was wholly improper. In criminal trials, particularly, it was of utmost importance that the Magistrate who tried the case must remain fearless, impartial and objective; and if a Magistrate chose to make an affidavit challenging the application made by an accused person whose case was pending in his court, made the said affidavit on behalf of the Administration, and in the affidavit put a strong plea
- 10       opposing the transfer, all essential attributes of a fair and impartial criminal trial were immediately put in jeopardy. Even without considering the merits of the contentions raised by the petition or, it was expedient in the ends of justice that the case should be transferred to some other court of competent jurisdiction.
- 15       It is demonstrated by that case that a transfer of venue will be appropriate where it is expedient in the interests of justice. It will also be appropriate where there was every likelihood of physical harm being caused to the parties. The court considering such factors is not equipped to conduct a general inquiry and assessment of the general implications if it were to allow transfer of the case. Considerations of policy which cannot be dealt with in this way should be left out of account.
- 20       However tempting it may be to give effect to concerns about the expense and inconvenience to the administration of justice of prosecuting cases, such as this, in a court other than that within whose territorial jurisdiction the offence is alleged to have been committed, the argument must be resolved upon an examination of their effect upon the interests of the parties who are before the court and securing the ends of justice in their case. If any of the above conditions is satisfied,
- 25       the High Court may, acting either on the report of the lower Court, or on the application of an interested party, or on its own initiative (*suo motu*), order a transfer.

Therefore, only when a Magistrate to whom the rules confer authority as the proper venue has taken cognisance of a case committed within his or her geographical area, may he or she then

30       invoke section 41 of *The Magistrates Courts Act* to cause the High Court to transfer the case to another Chief Magistrate's Court. I find that based on the particulars of offence as stated in the charge sheet, and in accordance with sections 42, 31, 35 of *The Magistrates Courts Act* read together with *The Magistrates Courts (Magisterial Areas) Instrument, 2017; SI No.11 of 2017*, the proper venue for the commencement of this prosecution was the Arua Chief Magistrate's

Court. Consequently, it is that court that should have sought the transfer of the case and the justifications thereof ought to have been considered by the Resident Judge at Arua. To the extent that in the instant case the charge was preferred in the Chief Magistrate's court of Gulu before any magistrate's court in Arua, where the offence is explicitly alleged to have been committed, 5 took cognisance of it, this undoubtedly occasioned a procedural error.

Nevertheless, errors of this kind are considered only procedural, not amounting to a defect of jurisdiction. For example in *Slepicka v. The Illinois Department of Public Health*, 2014 IL 116927, the Illinois Supreme Court rejected a claim that improper venue was a jurisdictional 10 defect necessitating dismissal. In any event, under section 166 of *The Magistrate's Courts Act*, where a charge is brought against a person in a court having no jurisdiction to try the offence with which he or she is charged, the magistrate is required to remand the accused person in custody to appear before a court having jurisdiction to try that offence. It follows that filing of a case in an improper venue does not necessarily deprive the court of subject matter jurisdiction.

15 I accordingly hold that this error can be cured by this court taking upon itself the task of evaluating the material placed before it and determining whether or not it discloses sufficient justification for selection of Guku as venue instead of Arua being the place designated by the relevant laws, albeit by way of validation or ratification. A careful perusal of section 41 of *The 20 Magistrates Courts Act*, shows that the provision clearly enunciates that the paramount norms of transfer of venue are "expediency" and "the interests of justice." Where the apprehensions that an accused will not get a fair trial are unsubstantiated, or if such claims are based on flimsy, unreasonable or irrational grounds, the selection of venue cannot be validated retrospectively. The High Court will not validate, permit or encourage such transfer unless it is satisfied that 25 there are some grounds on which the apprehensions of the accused or the prosecution may be regarded as reasonable.

A person seeking change or transfer of venue is not under any obligation to establish conclusively that in absence of transfer the interest of justice in the specific case would fail. The 30 applicant only needs to reasonably substantiate his or her contentions regarding such application. There must be a reasonable apprehension on the part of a party to a case that justice will not be

done if proceedings are conducted by the court which would otherwise have been the appropriate venue. A mere allegation of apprehension is not enough, the court has to be satisfied that the apprehension is reasonable. The rules of procedure are designed to ensure that the parties will have a fair and impartial hearing at all stages of the proceedings. This process must establish the cause why the accused can't receive a fair trial in the jurisdiction where it is required by the rules of venue to take place. In a case where a significant number of the essential attributes of a fair and impartial trial are put in jeopardy, the section 41 (1) (a), or (d) or (e) of *The Magistrates Courts Act*, or a combination thereof may be invoked in a bid to promote a fair and impartial trial or inquiry, the general convenience of the parties or witnesses; or expedience for the ends of justice.

In the instant case, from what I have gathered from the record of the court below and from the submissions of counsel, the choice of venue was made by the prosecution. Considering the fact that had the prosecution followed the right procedure in seeking a transfer of venue, section 41 (3) of *The Magistrates Courts Act* would have exempted them from the need to back their grounds for seeking to do so with an affidavit, I will take into account the submissions of the learned Resident State Attorney, without the necessity of requiring proof. From his submissions, the decision was backed by the prosecution's apprehension of the likelihood of proceedings when initiated and conducted in Arua provoking "a violent situation that would give rise to more harm to both the accused, the people of Arua municipality and the security organs." I am inclined to believe the prosecution considering that treason is an offence of a political character, or one that is politically motivated, the potential for public approbation and panic accompanying any indictment of treason cannot be ignored. Very few offences, if any, have that particular or similar inflaming association.

On the other hand, the record of proceedings of the court below shows that a significant number of the accused, through their counsel, claimed to have suffered varying forms of physical torture during or shortly after arrest while in Arua, to the extent that the Chief Magistrate at Gulu deemed it necessary to direct the prison authorities in the Gulu Government Prison where they are currently remanded, to ensure that they are accorded their right "to be availed proper medical care at a facility of their choice..." This came about as a backdrop to counsel having chronicled

in some detail the more grave degree of injury sustained by some of the accused while in that jurisdiction. That the Chief Magistrate, who had the opportunity to see the accused in respect of whom those injuries were narrated to have been inflicted found it necessary to make such an order, this court that has not had the benefit of seeing the accused, has no basis for doubting the genuineness of those claims. It is no wonder that counsel for the accused did not oppose the decision by the prosecution, of selecting Gulu as the venue for the commencement of these proceedings. I therefore find that it has been proved to the required standard that it was in the interest of justice when the prosecution made that venue selection decision.

10 In any event, courts acknowledge that unlike subject matter jurisdiction which cannot be conferred by consent of the parties, territorial jurisdiction can be conferred by the consent of parties. For example in *People v. Jackson* (1983)150 Cal. App. 3d Supp. 1, 198 Cal. Rptr. 135, the appellant contended that his trial and conviction in the Alhambra Judicial District, located within Los Angeles County for an offence alleged to have occurred in the Judicial District of Alhambra in the County of Los Angeles was a nullity. During the trial, after he was found guilty, but before judgment was pronounced, he moved for a new trial and to arrest the judgment under the relevant provisions of the law. In his motions appellant argued that the court lacked jurisdiction since the victim "testified that the misdemeanour was committed on a fire road in the Thousand Oaks area which is located in the County of Ventura. The trial court found the testimony inconclusive as to whether the crime had occurred in Los Angeles County or Ventura County, but reasoned that lack of jurisdiction was waived under a provision of the Penal Code, when he failed to raise this ground prior to trial. The court held that all municipal courts in the State of California had subject matter jurisdiction over all misdemeanours committed in the State of California. A provision of the Penal Code defined territorial jurisdiction of the court and placed territorial jurisdictions for the misdemeanours committed in that county, and that another provision stipulated a procedure whereby if a case was filed in a county not having territorial jurisdiction then the case should be transferred. But absent that procedure Act permitted the trial court, once a trial has commenced, to hear the case to its conclusion. The court denied both motions.

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On appeal to the California Court of Appeal, the appellant argued that the trial court lacked jurisdiction to hear the case since the prosecution failed to meet its burden of proving venue in the Alhambra Judicial District. Dismissing the appeal, the court held;

5 Sometimes territorial jurisdiction is indistinguishable from subject matter jurisdiction. Whatever term is used, the concept of authority to decide a particular type of legal controversy is sometimes difficult or impossible to distinguish from that of territorial jurisdiction. For example, when reference is made to a court's authority to determine a matter of status or to determine interests in property, it can be said that the state's connection to the status or the property is a matter territorial jurisdiction or that it is one of subject matter jurisdiction. Indeed, sometimes the distinction can be intelligently made only by consideration of the differences in consequence that follow from the classification. If the matter is regarded as one of territorial jurisdiction, it is waived by a party who appears in the original action if he does not make proper threshold objection. If the matter is regarded as one of subject matter jurisdiction, the parties not inevitably waive it by litigating the merits and the court may raise the question on its own motion.....Although subject-matter jurisdiction cannot be conferred on a court by consent of the parties, territorial jurisdiction can be so conferred." (*People v. Tabucchi* (1976) 64 Cal. App. 3d 133, 141 [134 Cal. Rptr. 245].)

20 Both parties in the matter before the Chief Magistrate have consented to that venue. The power of transfer is intended to avoid any hardship, inconvenience and anomaly in the criminal justice system such as is likely to undermine the interests of justice. While no universal or hard and fast rules can be prescribed for deciding an application to transfer, which has always to be decided on the basis of the facts of each case, the convenience of parties, including the witnesses to be produced at the trial, is a relevant consideration. This includes the convenience of the prosecution, the accused, the witnesses and the larger interests of society. I found in this case that the relevant criteria was met and it is on that basis that I ratified or validated the proceedings now pending before the Chief Magistrates Court in Gulu, and I re-state that the accused persons are to continue appearing regularly before that court for the mention of their case in accordance with the law.

Dated at Gulu this 20<sup>th</sup> day of August, 2018

Stephen Mubiru  
Judge,  
20<sup>th</sup> August, 2018.