

1 **THE REPUBLIC OF UGANDA**

2 **IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO**

3 **CRIMINAL REVISION APPL. NO. 12 OF 2019**

4 **Arising out of criminal case No 760/2018**

5 **UGANDA (DPP):..... APPLICANT**

6 **VERSUS**

7 **SSONKO EDWARD:..... RESPONDENT**

8
9 **BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**

10 **RULING**

11 1. This Application was brought by way of Notice of Motion under Section 14(2)(c), 17 and 33
12 of the Judicature Act and section 48 and 50 of the Criminal Procedure Code Act.

13 The Applicant seeks to move this Honorable Court to call for and examine the record of
14 proceedings in Mukono Criminal case No CO-0760 of 2018 pending at the Chief Magistrates
15 court of Mukono for purposes of examining the propriety of the Ruling and Orders recorded and
16 passed by the trial court against the Applicant.

17 The application is supported by the affidavit of Ms. Tebasulwa Jane Flavia Mukiibi one of the
18 complainants in the criminal case mentioned above which states the grounds as follows:

19 a) The order to stay Criminal Case No Co-0760-2018 in preference of civil suit No 172/2018
20 was improper and offends the well-established legal position that gives criminal cases
21 precedence over civil matters.

22
23 b) The Application of section 209 of the Magistrates Courts Act as a basis for stay of the
24 criminal trial was a misapplication of the law as the same does not relate to a conflict
25 between criminal and civil cases.

c) The civil case is incapable of offering the requisite legal sanctions for the actions of destroying growing crops, Forcible entry, Forcible detainer and unlawful eviction of the complainants by the Respondent.

In essence the Applicant is seeking a revision of the decision of the learned Chief Magistrate of Mukono Her Worship Juliet H. Hatanga made on the 11th of May, 2019.

In her Ruling she decided to entertain the **Civil Suit No. 170 of 2018** and stayed **Criminal Case No. 760 of 2015**.

In the criminal matter, Ssonko Edward, hereinafter referred to as the Respondent was charged with the offences of destroying or damaging growing plants contrary to **Section 329(a) of the Penal Code Act**, Forcible Entry contrary to **Section 77 of the Penal Code Act**, Forcibly Detainer contrary to **Section 78 of the Penal Code Act** and Unlawful Eviction contrary to **Section 92(1) (e) of the Penal Code Act**.

It was alleged that on the 18th day of February 2017 at Mabuye village in Mukono District, the Respondent and others still at large willfully and unlawfully destroyed the growing plants to wit maize, cassava, bananas, coffee and cocoa plants of **Tebasulwa Jane Flavia Mukiibi** who is a Kibanja holder on the land comprised in Kyaggwe, Block 96 Plot 20 at Mpoma, Mukono District.

The Learned State Attorney Kimono Agnes represented the Applicant and Counsel Patrick Semakula represented the Accused/ Respondent.

2. Both Counsel filed written submissions that are on record and I have referred to them while writing this Ruling.

In her submission, the learned Resident State Attorney argued that the order to stay **Criminal Case No. 07660 of 2018** in preference for **Civil Suit No. 172 of 2018** was improper and offended the well-established legal position that gives criminal cases precedence over civil cases.

She also argued that the application of **Section 209 of the Magistrate's Court Act** as a basis for the stay of the criminal trial was a misapplication of the law as the same does not relate to the conflict between civil and criminal cases.

53 She continued to argue that the civil case is incapable of offering the requisite legal sanctions for
54 the actions of Destroying growing crops, forcible entry, Forcible detainer and unlawful eviction
55 for which the Respondent is charged.

56 She further argued that at the time that the civil case was instituted, there was an already ongoing
57 criminal case in respect of the aforementioned offence and the prosecution had already led
58 evidence of PW1, Tebasulwa Jane Flavia Mukiibi

59 She further submitted that the High Court has unlimited original jurisdiction over all matters to
60 revise the lower court decision and restate the correct position of the law above indicated and
61 order that the criminal case against the Respondent should proceed as before.

62 In response, the learned counsel for the Respondent submitted that the order for stay of **Criminal**
63 **Case No. 0760/2018** pending the determination of **Civil Suit No. 172/2018** was proper and
64 doesn't offend any law.

65 He further argues that the dispute between the parties is not of a criminal nature.

66 This is demonstrated in the Respondent's affidavit in reply which shows that the kibanja dispute
67 had been handled by a number of authorities and in their pleadings each of the parties contended
68 that the suit kibanja belonged to them. The most decisive question therefore pertained to the
69 ownership of the kibanja.

70 Having considered the submissions of both Counsels, I will now resolve the issue.

71 **3. Whether the order to stay criminal case No. C0-0760-2018 in preference for civil suit No.**
72 **172/2018 was improper and offended the well-established legal position that gives criminal**
73 **cases precedence over civil cases?**

74 Before I consider the merits of this application, I want to consider the law under which the
75 application is brought. **Section 50 (2)** of the Criminal Procedure Act provides for the power of
76 the High Court on Revision and is to the effect that no order under this Section shall be made
77 unless the DPP has had an opportunity of being heard and no order shall be made to the prejudice
78 of an accused person unless he or she has had an opportunity of being heard either personally or
79 by an advocate in his or her defense.

Section 48 of the Criminal Procedure Code Act further provides that, the High Court may call for and examine the record of any criminal proceedings before any Magistrates' 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 Magistrates court.

Section 17(1) of the Judicature Act is to the effect that the High Court exercises general powers of supervision over the magistrates' courts'.

2. With regard to its own procedures and those of the Magistrates' Court, the High Court shall exercise its inherent powers-

(a) to prevent abuse of process of the Court by curtailing delays of judgment including the power to limit and discontinue delayed prosecutions.

(b) to make orders for expeditious trial and

(c) to ensure that substantive justice shall be administered without undue regard to technicalities.

The above provision of the law illustrates that the inherent powers of the High Court are intended to curtail delays, to ensure expeditious trial and to ensure that technicalities are not used to defeat substantive justice. The High Court also has unlimited original jurisdiction over all matters to revise the lower court decision and restate the correct position of the law above.

In view of the above provisions of the law, perusal of the lower record revealed that on 1/10/2018 one Jane Flavia Mukiibi testified in the criminal case as PW1. Her evidence against Sonko Edward was basically a land dispute over a Kibanja. She stated "***I know the accused, he is Mr. Sonko. He came to my Kibanja and sprayed my crops and sealed it off with barbed wire. I no longer have access to my crops. The Kibanja is located in Mabuye village Kabenge.....The accused claims that the Kibanja belongs to him. At the police, he showed me a document and it is that document which stated that Benerdate Mukalazi was giving Edward Ssonko the Accused property belonging to Kawalya Mukalazi.***

I saw the document at the police.... This is the document that the accused brought at the police.... "It was all about her claim over the land.

She went on to state that she was given the Kibanja by her late Mother, Harriet Kawalya Kaggwa Nasikombi.

108 On 14th January 2019. Counsel for the accused informed court that ***“I am ready to proceed.***
109 ***However, the parties have a civil suit between them in respect to the Kibanja which is the***
110 ***subject of these proceedings. This court is handling the civil suit as well. When this case came***
111 ***up in December, this court had advised that we concentrate on the civil suit to determine the***
112 ***owner of the property”.***

113 The State Attorney responded that ***“much as there was an ongoing civil suit, the prosecution***
114 ***was uncomfortable with staying the proceedings. There are criminal elements in the criminal***
115 ***case that the state is interested in”.***

116 Court adjourned the case to enable the state cause a meeting to enable parties to deal with the
117 case in the most appropriate way forward in handling **Civil Suit No. 172/2018.**

118 On 18th February 2019 Ms. Kiconco Agnes for the state addressed court as follows:

119 ***“This matter is coming up for further hearing. The last time we had a discussion, where in***
120 ***counsel Ssemakula had told this court that the parties have filed civil proceedings before this***
121 ***court wherein the accused is the plaintiff seeking remedies for damages to his property which***
122 ***is on the said land and the complainant in this file are the defendants who have also filed a***
123 ***counter claim seeking similar remedies. We pray for Court guidance”***

124 The learned Chief Magistrate then gave a short adjournment to 20th February and came up with
125 the following ruling after perusing the civil case file.

126 ***“When this case came up for hearing on 14th January 2019, Counsel Ssemakula raised***
127 ***concern that the parties in this case are the same parties in civil suit No 172 of 2018. He***
128 ***further informed court that the parties herein are seeking for similar remedies in the civil suit.***
129 ***I have had the opportunity to peruse the civil suit No 172 of 2018 which is also before this***
130 ***court.***

131 ***I am of the opinion that by entertaining the civil suit, this court shall be at a better position to***
132 ***resolve the issues raised in this criminal case and grant the appropriate remedy. Consequently***
133 ***this case is stayed under section 209 of the MCA until after the determination of the civil suit***
134 ***No 172 of 2018”.***

135 Section 209 of the MCA provides for stay of suits as follows:

136 *“No magistrates court shall proceed with a trial of any suit or proceeding in which the matter*
137 *in issue is also directly or substantially in issue in a previously instituted suit or proceeding*
138 *between the same parties or between parties under whom they or any of them claim litigating*
139 *under the same title, where the suit or proceeding is pending in the same or any other court*
140 *having original or appellate jurisdiction in Uganda to grant the relief claimed”.*

141 The essential constituents of section 209 of the MCA are the following:

142 *1) That there are two concurrent suits or proceeding one of which is previous or filed earlier*
143 *than the other before the same court or any other court vested with jurisdiction to hear the*
144 *suit or proceeding*

145 *2) The suit or proceeding is between the same parties or parties under whom they claim or*
146 *litigate*

147 *3) The subject matter of the suit or proceedings are directly or substantially the same.*

148 The matter before court involves civil and criminal proceedings which are different in nature in
149 terms of remedies sought.

150 **Justice Lameck N Mukasa** now retired while handling the case of **Joseph Agenda Vs Uganda**
151 **HCT-00-CR-CM 003 of 2011** which had similar facts clearly brought out the distinction
152 between civil and criminal proceedings where he held that *there is a clear distinction between*
153 *civil and criminal actions. The civil proceedings determine the civil litigants’ civil claims or*
154 *liabilities and the standard of proof is on the balance of probabilities. There is a public interest*
155 *in the criminal proceedings and the required standard of proof is beyond reasonable doubt.*
156 *The civil proceedings are individualistic in nature while the criminal proceedings are public in*
157 *nature. Administrative policy therefore gives priority to the public interest in law enforcement.*

158 Under Criminal Law, the crime is considered to be an offence against society as a whole that is
159 why it is the state that starts the criminal prosecution and controls prosecutions generally even
160 where there is private prosecution. If the state finds merit in the case, it may take over or
161 discontinue the proceedings. A recent case in point is the case of Uganda versus Aidah Nantaba
162 and others. Mkn Criminal case No.153/2019 that was discontinued by the DPP.

163 The results in a criminal trial at the end of the proceedings are either to acquit or convict. The
164 court may acquit on no case to answer or after the defence is given.

165 Counsel for the state submitted in rejoinder that section 209 of the MCA was misapplied since
166 the same does not apply to conflict between civil and criminal and that the civil matter is not
167 capable of offering the requisite legal sanctions for destroying growing crops.

168 My understanding of Section 209 of the MCA is that it applies to both civil and criminal cases.

169 In this particular case the criminal case was filed before the civil matter and therefore a
170 previously instituted suit or proceeding.

171 In the civil matter, the accused is Plaintiff / Counter Defendant while the complainants are
172 Defendants/ Counter Claimants. They are therefore same parties involved, save for the state
173 which however prosecutes cases on behalf of complainants in criminal cases.

174 The subject matter is a Land dispute where each party is claiming ownership and destruction of
175 crops.

176 The Trial Chief Magistrates relied on section 209 to stay the criminal matter that was previously
177 instituted in preference of the civil matter.

178 At common law, criminal matters take precedence over civil matters, but the Trial Chief
179 Magistrate did not even apply common Law which is basically the law of precedence. She
180 applied the substantive Law in the Magistrates Courts Act.

181 Revisionary powers of the High court is not doubted and while exercising those powers, court
182 looks at the correctness of the proceedings, Application of the law to the facts, legality and
183 propriety .

184 In the instant case, the law provides ***for stay of the new suit or proceeding, not the previous suit***
185 ***or proceeding.***

186 On the element of propriety, ***the conventionally accepted principle is that criminal matters that***
187 ***involve wrongs against society generally should take precedence over the civil matters. This***
188 ***court considers destruction of growing crops, forceful eviction where one claims ownership of***
189 ***land as crimes against society and therefore should take precedence over Civil.***

190 These two points alone point to the fact that the trial Magistrate erred in law and fact when she
191 stayed the criminal proceedings in preference to the civil. She should have stayed the civil
192 proceeding and proceeded with the criminal matter.

193 It is however apparent from the two proceedings that the subject matter and cause of the conflict
194 is purely a land dispute where both parties claim ownership of the 6 or seven acres of land.

195 Article 120 (4) and (5) of the Constitution provides “The functions of the Director of Public
196 prosecutions under clause (3) of this article

197 (a) May, in the case of the functions under clause (3) (a). (b) And (c) of this article, be exercised
198 by him or her in person or by officers authorized by him or her in accordance with the
199 general or specified instructions.

200 120(5) “In exercising his or her powers under this article ,the Director of Public
201 Prosecutions **shall have regard to the public interest, the interest of the administration of**
202 **justice ,and the need to prevent abuse of the legal process”.**

203 The above provisions and especially Article 120(5) require the office of the DPP and his
204 representatives the state Attorneys to be mindful of cases that would appear to be abusing the
205 legal process, which is very common in land disputes. Courts have taken judicial notice of
206 the state criminalizing land disputes and would look for possible charges under the Penal
207 code Act to criminalize a civil land matter.

208 ***It is also common knowledge that disagreements in Land matters ESPECIALLY OVER***
209 ***LAND OWNERSHIP have also led to commission of crime in either defence of the land or in***
210 ***an effort to grab the land.***

211 ***It is therefore the responsibility of the court to execute its constitutional mandate of resolving***
212 ***disputes between the parties following the well laid legal principals of the law and procedure.***
213 ***Where evidence adduced before court shows that it is purely a land matter that was***
214 ***criminalized, by the officers of the DPP working in cohorts with the complainant, the court***
215 ***should pronounce itself on the criminal matter using the known standard and burden of proof***
216 ***and where necessary award damages for malicious prosecution against the complainants.***

217 *This might deter instances of criminalizing land or civil matters because there is no*
218 *justification whatsoever for criminalizing civil matters when we have functioning civil courts,*
219 *delays and challenges notwithstanding.*

220 The learned State Attorney in this case sought guidance from court which in my opinion gives
221 the impression that she is aware that the controversy between the parties is arising out of the land
222 dispute.

223 As to whether they have a strong criminal case is for the trial court to determine.

224 **Conclusion**

225 In view of the above I find that the learned Chief Magistrate erred in law and fact by staying the
226 previously filed criminal matter which was already under hearing in preference to the civil suit
227 that was filed after the criminal matter. The Application is allowed and order to stay the criminal
228 matter is hereby set aside.

229 It is further directed that the criminal case be fast tracked and concluded expeditiously.

230 The Application accordingly succeeds.

231 Dated this **02nd** day of **October 2019**.

232

233 _____

234 Margaret Mutonyi

235 **RESIDENT JUDGE**

236 **MUKONO HIGH COURT**

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