

almost stripped her naked. Counsel then submitted that detention for more than 48 hours was in violation of The Constitution which mandates the state to produce an arrested on 03/1/16 she was detained at Jinja road police station for 8 days without being released on police bond despite her cry. That further she was arrested by a male Police Officer who molested her and He stated that when the appellant was arrested there was a violation of her rights under article 23(4) of the constitution. That when she was arrested on 03/1/16 she was detained at Jinja road police station for 8 days without being released on police bond despite her cry. That further she was arrested by a male Police Officer who molested her and almost stripped her naked. Counsel then submitted that detention for more than 48 hours was in violation of The Constitution which mandates the state to produce an

The brief facts from the lower court are that, the appellant was charged with different counts. While the proceedings were on going the defence counsel raised a preliminary objection. He stated that the preliminary objection was capable of disposing off the case.

JUDGMENT:

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

UGANDA **RESPONDENT**

VERSUS

NANTUME JUDITH **APPELLANT**

(ARISING OUT OF CRIMINAL CASE. 436 OF 2016)

CRIMINAL APPEAL NO 130 OF 2017

(CRIMINAL DIVISION)

IN THE HIGH COURT OF UGANDA AT KAMPALA

THE REPUBLIC OF UGANDA

accused after 48 hours from the day of arrest. That hence the detention amounted to false imprisonment. That violation of a constitutional right renders prosecution a nullity and the sanction is that such a person is entitled to compensation. He relied on **Dr. Kiiza Besigye & Others Versus Attorney General - Constitutional Petition No. 07/2007.**

The state objected the preliminary objection and stated that the defence counsel has not furnished any proof that constitutional rights of accused were violated. That counsel would have applied for unconditional release through the Attorney General. That applying for the release of the accused when prosecution is about to close their case is a technicality.

The learned trial Magistrate then passed her ruling stating that violation of human right does not automatically lead to unconditional discharge of an accused without trial unless the violation was done in the course of the trial.

Counsel sought leave to appeal which was denied, but he stated he would seek leave from high court hence this appeal on grounds that:-

1. The trial magistrate erred in law and fact when she failed to rule on a point of law in respect of violation of accused's inherent rights.

2. The trial magistrate erred in law and fact when she failed to rule on a point of law in respect of the accused being molested and or stripped naked by a male police officer upon arrest.

"Appellate jurisdiction springs only from statute. There is no such a thing as inherent appellate jurisdiction".

No. 4 of [1971] EA P.50-SPRY Ag. President stated that:-
It has to be appreciated that there's no such right as an inherent right to appeal, the right to appeal is a creation of statute as it has been decided in a wealth of decisions, as was In Attorney General Versus Shah

"Clearly the above provisions do not confer a right of appeal to the High Court in respect of interlocutors matter, i.e. discretionary orders or rulings of the Chief magistrate in criminal matters".

The parties were asked to file their written submissions however the Appellant did not. The respondent did file their submissions. He started the submissions by stating that the appellant did not have a right to appeal against the magistrate's ruling. He relied on Charles Harry Twagira Versus Uganda -SCCA. No 3 of 2003. Where justice Tsekooko referring to section 216 (1) of the magistrate's court held that;

was a matter for constitutional court whereas not.

4. The trial magistrate erred in law and fact when she found that this

3. The trial magistrate erred in law and fact when she failed to judiciously evaluate evidence before her thereby arriving at a wrongful decision.

"It is trite law that there is no such a thing as an inherent appellate jurisdiction. Appellate jurisdiction must be specifically created by law. It cannot be inferred or implied".

It follows that this appeal is a nullity, court cannot exercise jurisdiction that is not bestowed upon it. The whole process is an illegality and court cannot sanction any illegality once brought to its attention.

Turning to the merits in this appeal, the appeal rotate around the issue of violation of human rights. As stated in the brief facts, the Appellant alleged that she was detained more than the required 48 hours and that she was arrested by a male officer who molested her and almost stripped her naked. It was counsel's submission that such violation bars in further proceedings against the appellant.

I have read through the record, and I agree with the learned Magistrate's findings that a violation of human rights does not automatically bar criminal proceedings against the accused person unless the human rights abuse was during the proceedings.

That same position was the reasoning in the case relied on by the Appellant **Dr. Kiiza Besigye & others Versus Attorney General - Constitutional Petition No. 07/2007**, the court at page 38 of the judgment stated that:-

This is not the same case, in this case. There is no evidence that the Appellant's rights were being violated during proceedings putting a threat to the right to the fair trial which is absolute. Violation of human rights therefore does not bar any criminal proceedings against the accused. The appellant can file a suit for abuse of human rights and claim for compensation. This appeal is hereby dismissed for lack of merits.

When you read the whole judgement comprehends the reasoning behind the judgement. The court clearly based its decision on the right to a fair trial. The petitioners in the above case were facing different charges in Mbarara, Arua, court Martial and the High court. They had been denied their right to bail under unexplainable circumstances. There was an evident hand of the executive in the trials of the petitioners, which interfered with the independence of the judiciary. It was very evident that the petitions would not get the right to a fair trial which was absolute. Dressed with the authority as court it had to make such pronouncements because court process was being abused at the expense of the petitioner's human rights.

"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 maybe, no fair trial can be achieved and may subsequent trials would be a waste of time and an abuse of court process";

This is a matter where the prosecution case was disrupted by this illegal appeal which, in my view was lodged to frustrate the substantive trial. To expedite ends of justice, it is directed that the Deputy Registrar of this court serves copies of this judgment on the Appellant's Advocate and the state. Let the original trial court's file be returned to the Chief Magistrate's Court, Nakawa who shall summon the parties and continue with the proceedings.

Dated this 22nd day of February 2019.


J. W. Kwesiga

Judge of the High Court.

22/02/2019.

To be served on:-

1. The Director of Public Prosecutions
Kampala.
2. Nantume Judith
C/o. Mugisha, Namutale Advocates,
Tel. 0702-611073.

3. Musoke godfrey
Complainant
Tel: 0714-450443.