



The Applicant operates the said motor vehicle under his business name of Nazrep Company. He attached a copy of the Certificate of Registration.

On 11<sup>th</sup> February 2021, the subject motor vehicle was returning from Rwanda and was involved in a motor accident at or around Kasaana on Kampala- Masaka highway. The driver of the vehicle was arrested charged and taken to the Magistrates' Court of Masaka where he pleaded guilty and he was sentenced a fine of 50 currency points and compensation of the victims with 38,760,000/=.

On 19<sup>th</sup> February 2021, his Worship Ziraba Arthur issued an order for the interim detention of the subject motor vehicle at Masaka CPS till the final determination of the matter. He attached a copy of the order.

The grounds of the applications as contained in the affidavits of Daisy Nantume the Coordinator of the Comesa Yellow Card Scheme the Insurers of the Applicant and Abdulsalaam Ahmed the Applicant's attorney, are brief that;

1. In February 2021, the insurance scheme received notification that the Applicant's vehicle was involved in an accident;
2. Following the accident, the Masaka Chief Magistrates Court charged, convicted and sentenced the driver of the Applicant's trailer, and ordered impounding o the vehicle until payment of compensation of Ugx. 38,000,000/= is paid in full;
3. The impounded vehicle does not belong to the convicted and sentenced driver Odera Benard;
4. The impounded vehicle belongs to the applicant which was not party to the criminal proceedings;
5. A Court order impounding the motor vehicle of a person who was not a party and hot heard, amounts to an illegality, a procedural error apparent on the face of the record and/or unlawful exercise of excess of court`s jurisdiction;
6. The illegal impounding of the motor vehicle has caused and continues to cause prejudice, great loss and a miscarriage of justice to the Applicant.

The Applicant filed written submissions and they are on court record. When the Parties appeared for hearing on the 8<sup>th</sup> day of April, 2021, the Respondent prayed for time within which to file a response to the Application and written submissions which was granted. However, the Respondent has neither filed a response to the Application nor written submissions.

This court also granted orders to have the Motor vehicle released on the 8<sup>th</sup> day of April 2021, and it was released pending determination of this application.

Counsel for the Applicant submitted that the Applicant brings this application as an aggrieved person under Section 50 (5) of the Criminal Procedure Code Act. That the Applicant is the owner of Motor Vehicle Reg. No. KCM 701SZC5113 that was impounded in CR TO No.0006 of 2021. It is also Counsel's submission that the learned Magistrate ought to have investigated the aspect of ownership of the subject motor vehicle before he could issue an order for its impounding. Counsel submitted further that the order for impounding the vehicle was made without giving the Applicant a right to be heard which was a subtle way of imposing criminal liability upon the Applicant and a miscarriage of justice.

Counsel further submitted that the trial court was unfair and unjust in ignoring the insurance's acceptance to pay the accident losses and impounding the vehicle in the circumstances caused financial loss to the Applicant. It is also Counsel's submission that the trial Magistrate exceeded its pecuniary jurisdiction in awarding Ugx. 38,760,000/= as compensation.

#### **Determination of the Application;**

The background of this application is that the accused/convict, a one Odera Benard was charged with and convicted of the offence of reckless driving C/S 108 (3) of the Traffic and Road Safety Act. He was driving Motor Vehicle Reg. No. KCM 7015/ZC 5113 Mercedes Benz Semi trailer, and he lost control and knocked Motor Vehicle Reg. No. UAM 541N, a Fuso, UAX 965 Toyota Noah and also damaged property at Petrol City. He pleaded guilty

to the charge and was subsequently convicted the trial Magistrate sentenced the accused to a fine of 50 currency points (1000,000/=) in the alternative of 12 months' imprisonment. The accused was also ordered to pay compensation of Ugx. 38,760,000/= and until it is payment in full, the motor vehicle Reg. No. KCM 7015/ZC 5113 was to be impounded by CPS Masaka.

The Applicant who has proved that he is the registered owner of the said motor vehicle has made this application for revision of the judgment and orders of the trial Magistrate, as an aggrieved Party.

Criminal Revision No. 2 of 2021 sought the same orders and the affidavit in support bears the same information except that it buttresses the commitment of the insurance company to settle all the compensation claims of the victims.

*Section 17 of the Judicature Act* provides for supervisory power of the High Court to the Magistrate court

*(1) "The High Court shall exercise general powers of supervision over Magistrates' courts.*

*(2) With regard to its own procedures and those of the Magistrates' courts, the High Court shall exercise its inherent powers to prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice".*

*Section 33 of the Judicature Act* provides for general power of court to give a remedy, it states that;-

*"The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all*

*matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided”.*

From the above provisions of the law, it is clear that High Court has power to revise criminal proceedings from the Magistrate court.

This Court`s revisionary powers are provided for under *Sections 48 and 50 of the Criminal Procedure Code Act*.

*Section 48 of the Criminal Procedure Code Act* provides that;

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

Under *Section 50 of the Criminal Procedure Code Act*;

*Any person aggrieved by any finding, sentence or order made or imposed by a magistrate’s court may petition the High Court to exercise its powers of revision under this section; but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed.*

The Applicant having been privy to the criminal proceedings in the lower court brought this application as an aggrieved party under *Section 50 of the Criminal Procedure Code Act*.

I have carefully perused the pleadings and submissions on record and will proceed to address the question as to whether the order for impounding the Applicant’s Motor Vehicle was justified and whether the compensation ordered by the trial Magistrate was justified.

***Issue one; Whether the order for impounding the Applicant's Motor Vehicle was justified***

The Applicant has adduced sufficient evidence to prove that Abdul Gafoor Kana is the registered owner of Motor vehicle KCM7015 which was subject of an order of court to be impounded until final payment of compensation by a one Odera Benard.

The Applicant in his uncontested affidavit in support of the application stated that he was not heard before the orders impounding his motor vehicle were made. He was also not a party to the proceedings that led to an order impounding his motor vehicle.

The right to be heard is a fundamental basic right. It is one of the cornerstones of the whole concept of a fair and impartial trial. The principle of ***"Hear the other side"*** or in Latin: ***"Audi Alteram Partem"*** is fundamental and far reaching. It encompasses every aspect of fair procedure and the whole area of the due process of the law. It is as old as creation itself, for even in the Garden of Eden, the Lord first afforded a hearing to Adam and Eve, as to why they had eaten the forbidden fruit, before he pronounced them guilty: ***See R V University of Cambridge [1723] 1 Str. 557 (Fortescue J.)***

The order for compensation was issued against Odera who was the convict in the matter and it had nothing to do with the applicant's property. It was therefore erroneous for the trial Magistrate to impound the applicant's motor vehicle till fulfilment of the compensation order.

It is the Applicant's submissions that impounding the vehicle was unfair, and it caused him financial loss yet he was not responsible for the Accused's criminal liability.

I am in agreement with Counsel's submission that criminal liability is personal and cannot be transferred to innocent third parties. To this end, and considering that the Accused person had pleaded guilty to the offence, impounding the Applicant's vehicle as a way of guaranteeing payment by the Accused/convict was unfair to the Applicant and occasioned a miscarriage of justice.

***Issue two; Whether the compensation ordered by the trial Magistrate was justified***

In exercise of this Court's revisionary powers, I find it necessary to address the question of compensation in the wake of new facts raised by the Applicant's insurance company.

In addition to the fine, the trial Magistrate ordered compensation of Ugx. 38,760,000/=.

***Section 197 (1) of the Magistrates Courts Act*** provides for orders for compensation for material loss or personal injury.it provides that;

“When any accused person is convicted by a magistrate's court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable.”

In the instant case, the complainants adduced evidence of material loss suffered as a result of the Accused/convict's accident/offence and the trial Magistrate relied on a brief quantum of the level of damage occasioned by each complainant to come up with the final compensation amount.

It is also the Applicant's submission that the trial Magistrate ignored the insurance's acceptance to pay the accident losses. I have perused the letter from Comesa Yellow Cards addressed to the OC Traffic Masaka Police Station showing they had received all documents to enable them process the claims up to the limit. I therefore find that in the interest of justice, it would have been prudent and just for the trial Magistrate to take into consideration the insurance's letter to settle the claim. Failure to take it into consideration and subjecting the Applicant's vehicle to being impounded resulted in financial loss and transferred liability which occasioned a miscarriage of justice.

The Applicant's insurance company through their coordinator attached a letter from their lawyers addressed to the potential victims' lawyers indicating the willingness to settle the claims. To that end, it is my considered opinion that the insurance claims arising out of the convict's offence can be handled through the insurance claim. Compensation ordered to the convict individually when there was already an insurance claim was therefore unfair and caused a miscarriage of justice to the Applicant and the convict.

On the issue of jurisdiction, the Applicant seeks to challenge the trial Magistrate's jurisdiction in awarding compensation of Ugx. 38,760,000/=. Counsel submitted that the trial Magistrate exceeded his jurisdiction as per Section 11(a) of the Magistrates' Courts (Amendment) Act which limits the Magistrate Grade One's pecuniary jurisdiction to Ugx. 20,000,000/=.

I have to note that Counsel for the Applicant cited Section 11(a) of the Magistrates Courts Act as Amended (*which is section 207 of the Principal Act*), relating to civil jurisdiction of Magistrates Courts not criminal jurisdiction.

In the instant case, the trial Magistrate exercised his jurisdiction under Section 161 of the Magistrates' Courts Act and sentencing powers under Section 162 (1)(b) which provides that; a Magistrate Grade I may pass a sentence of imprisonment for a period not exceeding ten years or a fine not exceeding four million eight hundred thousand shillings or both such imprisonment and fine.

To that end, the fine of 100 currency points (Ugx. 2,000,000/=) was adequate and within the trial Magistrate's jurisdiction and sentencing powers.

This court on the 8th day of April, 2021 issued an interim order for the conditional release of the Applicant's motor vehicle subject to payment of Ugx. 19,400,000/= to Court as security for due performance, pending determination of this application.

Having found that the order to impound the Applicant's motor vehicle was unfair and resulted into a miscarriage of justice, I hereby set it aside and order that the sum of Ugx.

19,400,000/= deposited into the Court Account as security for due performance deposit into the court be refunded to the Applicant unconditionally.

The final orders of this court are as follows;

- a) This application is hereby allowed
- b) The order of the trial Magistrate to impound Motor Vehicle Reg. No. KCM 701S ZC 5113 Mercedes Benz Axor Semi-Trailer is hereby set aside.
- c) The sum of Ugx 19,400,000/= deposited by the Applicant Abdul Gafoor Kana into the Court account as security for due performance should be refunded to the Applicant unconditionally.
- d) The order of compensation issued by the trial Magistrate without due consideration to the insurance claim is also hereby set aside and the complainants are hereby ordered to pursue and settle their claims with the Applicant's insurance company.

I so order.

Dated at Masaka this 20<sup>th</sup> day of May, 2021

**Victoria Nakintu Nkwanga Katamba**

**Judge**