

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)
CRIMINAL REVISION NO. 108 OF 2021
(ARISING OUT OF CRIM REVISION CAUSE NO. 21 OF 2021 AND
MAKINDYE CRIMINAL CASE NO. 527 OF 2018)
MASENGERE CHARLES LWANGA.....APPLICANT
VERSUS
UGANDA.....RESPONDENT
BEFORE HON JUSTICE TADEO ASIIMWE

RULING.

This Application was brought by way of Notice of Motion under Section 14 (2) and 33 of the Judicature Act, rules 2 and 3 of the judicature criminal procedure application rules and article 139 (1) of the 1995 constitution.

The Applicant seeks to move this Honorable Court to set aside the ruling in criminal miscellaneous cause number 21 of 2020 and issue consequential orders.

At the hearing, the applicant was represented by counsel Serunkuma Bruno while the respondent by Jonathan Muwaganya.

Both Counsel made oral submissions which I shall consider.

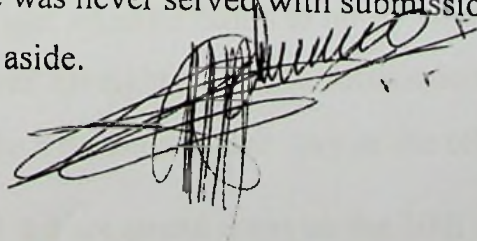
In his submissions, counsel for the applicant argued ~~at~~ that the respondents never served him with the written submissions in criminal application number 21 of 2020

hence denying his client a right to be heard since he did not reply to the respondent's written submissions which were not on record by 17th march 2021. That the alleged service by way of email went to a wrong email address which did not belong to him. That this Court has powers under article 28 of the constitution to grant a party a fair hearing. He further cited section 33 of the Judicature act inviting the Court to find a remedy to the applicant by setting aside the ruling dismissing criminal application no. 21 of 2020.

In reply Counsel for the respondent opposed the application arguing that the application is bad in law and based on hearsay evidence of the applicant.

He submitted that he filed and served the applicant's counsel on the email address he had provided. He referred court to annexure A as his proof of service to the applicant's counsel. That to date the submission were still reflected as a sent item in his email address. He faulted the applicant's counsel for not being vigilant when he dealt with a wrong clerk not attached to the judge handling the matter. That even if the applicant's submissions had been considered the decision of court would have been the same. He concluded by inviting this court to dismiss the application.

In rejoinder counsel for the applicant denied being the owner of the email address where the submissions were sent. That the said email address lacks letter "b" to complete his correct email. He insisted that he was never served with submissions and therefore the ruling of court should be set aside.

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RESSOLUTION

From the submission of both counsel and the pleadings on record, the central issue for court's consideration is about service of written submission in criminal revision cause number 21 of 2020.

I agree with the applicant's counsel that that parties are entitled to a fair hearing and that this court under judicature act can provide a remedies to any party. However, the said remedies are not given automatically. They are given to the deserving parties upon satisfaction of court.

In this application, it is evident on court record that written submissions in criminal revision number 21 of 2020 were filed on 17th March 2021 contrary to the argument of the applicant's counsel. A copy is on record. As regards service to the applicant's counsel, Annexure "A" to the respondent's affidavit indicates service via an email address. Although this was denied by the applicant's counsel, no other cogent evidence was led to show that a different email address was given to the respondent's counsel. Therefore, this court is satisfied that service of submissions via email was effected.

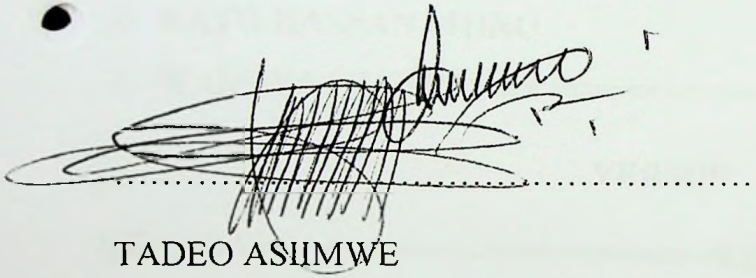
Even if court had found the said service to be faulty which is not the case, still the applicant's counsel had a remedy of notifying court about it which he did not do. Clear dates were given to both parties to file their respective written submissions but the applicant's counsel chose to sit on his right when he failed to notify court on his due date. This court takes it that he waived his right and since submissions is not a mandatory requirement, court had to make a decision in one way or the other.

To make matters worse, the applicant's counsel did not attend court on the 30th day of March 2021 when the ruling was delivered. He again took 41 days to file this

application. This clearly shows that the application is an afterthought only intended to delay the trial in the original case which this court will not entertain.

As a whole, I do not find merit in the application. The same is hereby dismissed.

In conclusion therefore, the preliminary objection is upheld and the application is hereby dismissed. The ruling of this court in criminal revision cause number 21 of 2020 is confirmed.

A handwritten signature in black ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is stylized with loops and a large initial 'T'.

TADEO ASIIMWE

JUDGE

14/12/2021