

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CRIMINAL DIVISION)**

**CRIMINAL REVISION NO. 21 OF 2020**

**(ARISING OUT OF MAKINDYE CRIMINAL CASE NO. 527 OF 2018)**

**MASENGERE CHARLES LWANGA.....APPLICANT**

**VERSUS**

**UGANDA.....RESPONDENT**

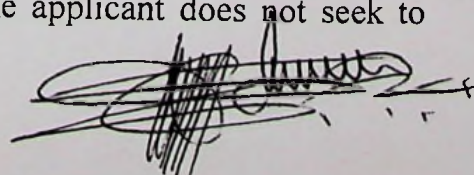
**BEFORE HON JUSTICE TADEO ASIIMWE**

**RULING ON PRELIMINARY OBJECTION**

This Application was brought by way of Notice of Motion under Section 17 of the Judicature Act, section 48 and 50 of the Criminal Procedure Code Act and rule 2 of the judicature (criminal procedure Act cap 13.

The Applicant seeks to move this Honorable Court to call for and examine the record of proceedings in Makindye Criminal Case No 527 of 2020 at the Chief Magistrates court at Makindye of examining the propriety, legality and correctness of the entire proceedings for being illegal, arbitrary, and brought Malldes by the respondent in the abuse of court process.

At the hearing, the learned state attorney Nuwamanya Jonathan raised a preliminary objection against this application for reasons that the applicant does not seek to



challenge a specific order as none was given by the trial magistrate and that this application was brought under sections 50 and 48 of the CPC.

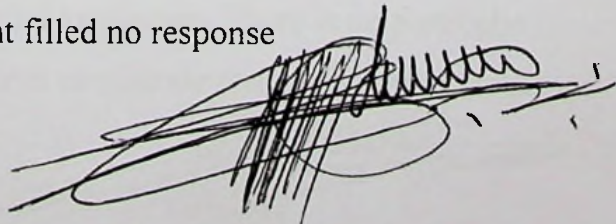
Both Counsel were ordered to file written submissions by 18/03/2021 but only the learned state attorney filled written submissions on the preliminary objection but the applicants counsel did not reply.

In his submissions, the learned state attorney submitted that section 50(5) and 40 of the CPC are specific to what is subject to a revision, to wit, order, sentence and judgement of court. That the applicant in this case seeks to revise no order, or judgement or sentence since none exists in the trial court. That from the record of proceedings, the case suffered several adjournments for different reasons, but without any ruling or order made by the trial Magistrate, that would warrant a criminal revision.

Further, that in the application itself, there is no specific finding, sentence, or order of trial for which this court is being invited to revise. That the application only alludes to general defenses.

He finally submitted citing the case of **Okiror James vs Uganda crim revision no. 3 of 2010** and **Juliet Katusiime & anor vs Uganda criminal revision no. 2 of 2011** that even if there had been a ruling or order by the trial court, it would be an interlocutory order which cannot be subject to a revision. That unless the trial court makes a final order, there is no basis for a criminal revision.

As earlier stated, counsel for the applicant filled no response





## RESSOLUTION

From the submission of counsel and the pleadings on record, the issue for court to determination is whether this application was properly filled before this court.

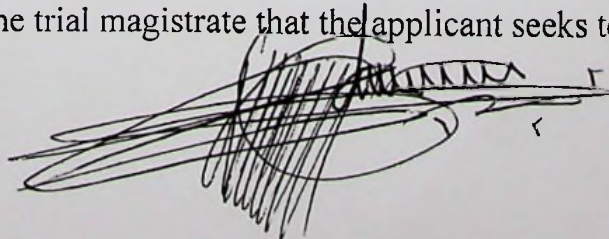
Before I consider the merits of this application, I want to consider the law under which the application is brought. **Section 50 (2) of the Criminal Procedure Act** provides for the power of the High Court on Revision and is to the effect that; -

*"no order under this Section shall be made unless the DPP has had an opportunity of being heard and no order shall be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or 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.*

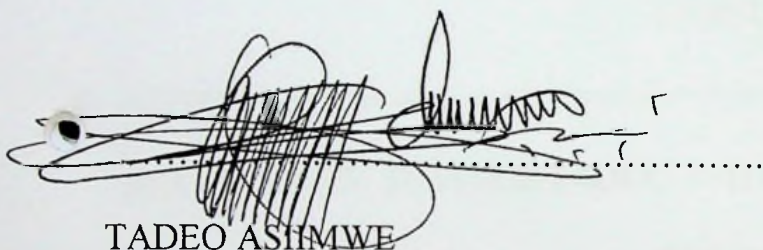
From the reading of the above sections of the law, it is very clear that that criminal revision is only available where an order, finding or sentence has been passed.

In this case however, the applicant brought this application for court to examine the lower court record pending before a trial magistrate. There is no particular order, finding or sentence passed by the trial magistrate that the applicant seeks to revise.



In the absence of an order, a finding or sentence passed, criminal revision is indeed not available to the applicant in this application. The preliminary objection has merit.

In conclusion therefore, the preliminary objection is upheld and the application is hereby dismissed.

A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a series of loops and a final flourish. The signature is written over a horizontal dotted line.

TADEO ASHMWE

JUDGE

30/03/2021