

The grounds of this application are contained in the motion and in the affidavit supporting the motion but briefly are that; -

1). The applicant was arrested and charged with the offence of obtaining money by false pretence, produced before city hall where he was advised to plead Guilty by the Trial Magistrate Fore a lesser sentence and was sentenced to 8 (Eight months in prison)

2. the applicant entered in to a civil contract of investment with the complainant in the above criminal case worth Ug. Hs. 34,000,000/= (thirty-Four Million Shillings) only.

3. that the applicant under the contract was supposed to pay a monthly fee of Ug shs 7,500,000/= inclusive of interest.

4. that the applicant made some payments, later defaulted, was arrested and taken to Kira Road Police station and charged at city hall court with obtaining money by false presence.

5. The applicant was convicted to 8 (Eight Months in prison and Ordered to pay Ug shs. 34,000,000/= (Thirty-Four Million) only.

6. that the trail magistrate entertained a matter that was of civil in nature and outside her jurisdiction.

That it is just and equitable that the said decision of her worship Khayiza Beatrice be revised and set aside by striking out the said conviction order.

At hearing the Learned State Attorney Nandala Lilian represented the respondent while Counsel Joseph Luziga represented the applicant.

Both counsel were directed to file written submissions by 17th march 2021. However only the applicant's counsel filled written submissions on

time. The respondent's counsel filled submissions out of time and I shall not consider the in this ruling.

In his submission, the applicants counsel in support of the grounds in the motion Argued that the applicant was charged with the offence of obtaining money by false pretence yet the facts giving rise to the charge arouse from a contract between the complainant and the applicant where the applicant defaulted on his monthly installments. That the dispute between the convict and the complainant was civil in nature and the trial magistrate had no jurisdiction to hear it as a criminal matter.

He further cited the case of **SUNDAY Alex V Uganda (criminal appeal no. 29 of 2018 and Terrah Mukiwa V r (166) E.A 425.** and stated that the legal frame work that governed the alleged transaction as purely of a civil nature removing it from the realm of criminal law. Further that parties who make promises that do not materialize, should be left to settle their disputes in a civil court. He finally invited court to read through the lines and analyse all the evidence in support of this application and find that the subject matter of the criminal case was purely of a civil nature and that the trial magistrate improperly entertained the said criminal case.

As earlier stated, I shall not consider the submissions of the respondent as they were filled out of time.

RESOLUTION

From the submissions of the applicant's counsel and the pleadings on record, the gist of this application is that the applicant was charged with an offence of obtaining money by false pretence, he pleaded guilty and was convicted. That the facts leading to the above charge arouse from a contract and therefore purely of civil nature and that the magistrate had no jurisdiction to entertain such matters. That the said contract was

executed in Nsimbiziwoowe zone in Nakawa division and that it should have been the Nakawa chief magistrates court to handle the matter.

This court has inherent powers to examine lower court record and satisfy its self as to the legality and correctness of the proceedings in order 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.

To begin with, Criminal jurisdiction of magistrates is governed by 161 of the MCA.

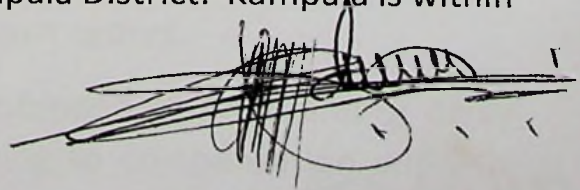
The jurisdiction of a magistrate Grade 1 is found under section 161(2) which provides as follows; -

"A magistrate grade 1 may try any offence other than an offence in respect of which the maximum penalty is death or imprisonment for life;"

In the lower court criminal case no. 3622 of 2018, the applicant was charged with offence of Obtaining money by false pretence whose maximum sentence is Five (5) years imprisonment.

On territorial jurisdiction, I am aware that sections 31,34 and 35 of the Magistrate's courts Act, are to the effect that criminal matters are to be heard in the local jurisdiction where they are alleged to have been committed.

In this case, the charge sheet is very clear, that the offence was committed at Nsimbiziwoowe zone in Kampala District. Kampala is within the jurisdiction of City Hall court.

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Clearly from the above provisions and the offence the for which applicant was charged, a magistrate grade one in the original case was trying a criminal matter with in her jurisdiction.

As regards the applicant's submission that the charges were of civil nature, I agree with the authorities cited by the applicant entirely. However, I wish to state that a magistrates do not sanction charges. It is the duty of the office of the DPP to prefer charges based on the evidence they have, a reason why the burden of proof is placed on them to prove their case beyond reasonable doubt at the conclusion of the hearing.

Courts would only be able to determine whether the matter is criminal or civil after consideration of evidence on record. This opportunity to evaluate the evidence was not available to the magistrate as the accused did not object to the charges and pleaded guilty on day one and the magistrate proceeded to convict and sentence him. Therefore, the magistrate cannot be faulted for handling a criminal case deemed to be civil in nature in the absence of evidence of an existing Civil suit with the same subject matter between the parties pending before court.

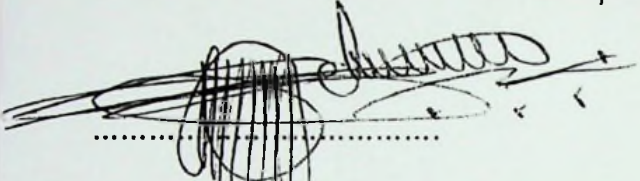
It would have been different if the magistrates' decision was based on a full trial as was in the cases cited by counsel for the applicant in his submissions above.

As a whole the magistrate Had no basis by merely looking at the charge sheet too make an informed decision.

I have not found any illegality or irregularity on record to warrant a revision and setting a side of the lower court orders.

I find this application an afterthought intended to avoid and or delay compliance with the court orders relating to compensation which is permitted under section 182 of the M.C.A.

In conclusion I find no merit in this application and the same is here by dismissed. The lower court file should immediately be returned to the lower court to enable the complainant execute the orders therein.

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 flourishes.

TADEO ASIIMWE

JUDGE

19/03/2021