

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
REVISION CAUSE NO.11 OF 2022
ARISING FROM LUWERO CRIM CASE NO.130 OF THE 2018
SENKAYI HARUNA-----APPLICANT
VERSUS
UGANDA-----RESPONDENT

BEFORE HON: JUSTICE ISAAC MUWATA

RULING

The applicant filed this application seeking for the following orders to be revised;

- 1. The decision by the trial magistrate not to acquit the applicant in the proceedings dated the 18th day of March 2022 of charges which stem from a decision that was nullified by the High Court and ordering the state to further prosecute the applicant be revised.**
- 2. That the proceedings in criminal case No.130 of 2018 be quashed for grossly violating the applicant's constitutional rights.**

The application was supported by the affidavit of the applicant which I have considered.

Applicants submissions

The applicant submitted that revision can be exercised where a decision of a magistrate has resulted into grave injustice. He submitted that the continued

prosecution of the applicant over charges stemming from a court decision that was set aside by the High court resulted into grave injustice.

He contended that by the trial magistrate refraining from making a decision and postponing it to only after the prosecution had closed its case resulted into a grave injustice which court cannot overlook. He further submitted that the continued prosecution of the applicant is illegal and unlawful.

Respondents submissions

Counsel for the respondent submitted that the orders contested by the applicant and recorded by the trial court are interlocutory orders. They are neither subject to appeal in the pendency of trial nor subject to revision by this honorable court. He referred to the case of Charles Harry Twagira Vs Uganda where the court held that only a final order of the lower court can be subject of a revision order.

Consideration

Section 48 of Criminal Procedure Code Act, vests the High Court with powers to call for the records of the magistrates' court. Then the power of the High Court to consider an application for Criminal revision is premised under Section 50 of the Criminal Procedure Code Act Cap 116. Section 50 which provides for the Power of High Court on revision states that: -

1) In the case of any proceedings in a magistrate's court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, when it appears that in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 34 and 41 and may enhance the sentence;
(b) in the case of any other order, other than an order of acquittal, alter or reverse the order.

From the above provisions, it's clear that criminal revision is exercisable only when it appears that in the proceedings in the magistrate's court, an error material to the merits of any case or involving a miscarriage of justice has occurred. The High Court is then empowered to enter a Revision Order, in case of a conviction, or in case of any other order other than an order of acquittal.

The order subject to revision above is the final order of the lower court. This position has been settled in various cases. The court while interpreting section 50(1) (b) of the Criminal procedure code in **Charles Twagira Vs Uganda Crim. Application No.03 of 2003** noted that only a final order of the lower court can be subject of a revision order. It went on to add that merely because a Magistrate's Court has taken a wrong view of law or misapprehended the evidence on the record cannot by itself justify the interference or revision unless it has also resulted in grave injustice.

In the instant case, there is no such final order of the lower court, the decision by the trial magistrate not to acquit the applicant is entirely within his discretion as the judicial officer, and as this court, interfering with the matter before its concluded would be wrongly exercising this courts powers under section 50 of the Criminal Procedure Code Act.

Furthermore, the charges referred to stem out a decision of the lower court which was set aside by the High Court vide Civil revision application No.23 of 2019.It's from this that the applicant is now seeking an acquittal from the lower court.

I have perused the record and must note that there is a clear distinction between civil and criminal matters. The civil proceedings determine the civil litigant's rights while criminal proceedings are public in nature, to attempt to use an order made by a civil court to compel the lower court to have the applicant acquitted in an application of this nature before the case is brought to its logical conclusion would be in itself an abuse of the powers vested in this court under section 17(2) of the Judicature Act.

If the applicant is innocent, then this shall be proved by the lower court. It's thus prudent that this court allows the lower court to conclude the matter and if the applicant is dissatisfied he may appeal if he so wishes. To entertain each and every point of objection would unduly undermine procedures and effective trials and would open gates to abuse of the process of Court and the due administration of justice. **See: Okiror James Vs Uganda Criminal Revision Cause No. 003 of 2010**

In light of the above the decision of the trial Court does not call for Revision as it is not a final Judgment or decision. The application is misconceived and premature and is accordingly struck out.

The file is referred back to the trial magistrate for conclusion of the matter.

I so order.

JUDGE

31/05/2022