

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL REVISION NO. 15 OF 2021

**(ARISING OUT OF BUGANDA ROAD M/A 12 OF 2021 & CRIMINAL
CASE NO. 116 OF 2018)**

MUKESH BABUBHAI SHUKLA.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

BEFORE HON JUSTICE TADEO ASIIMWE

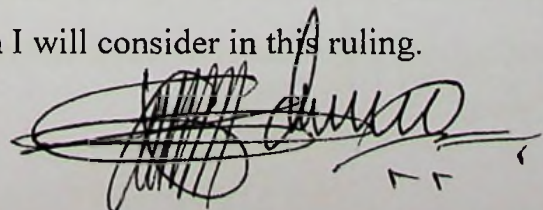
RULING

This Application was brought by way of Notice of Motion under Section 14(2)(C), section 17 and 33 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 Buganda road Criminal Case No 1166 of 2018 at the Chief Magistrates court at Buganda Road to quash the proceedings and dismiss the charges against the applicant for lack of territorial jurisdiction.

At the hearing, the applicant was represented by counsel Badiru Bwango while the respondent was represented by Amy Grace.

Both Counsel made oral submissions which I will consider in this ruling.



In his submissions, the learned counsel for the applicant submitted at length relying on sections 48 of the criminal procedure code, section 34 of the MCA and statutory instrument no.45 of 2007 Arguing that Buganda road lacked territorial jurisdiction to try the applicant and that this court has powers to call for the record for purposes of revision due to the procedural irregularity. He argued that the documents mentioned the charge sheet were uttered in Makindye outside the territorial jurisdiction of Buganda road court which makes the trial a nullity. To support his argument, he cited the case of **Uganda versus Hon Kassiano Wadri & Others Criminal Revision no. 2 of 2018 and Criminal Revision No. 6 of 2018**. He further submitted that he raised the issue of jurisdiction with the trial magistrate who opted to continue with the trial promising to make a determination in the final judgement. In his view this amounts to procedural irregularity. He invited court too find that Buganda Road has no jurisdiction and dismiss the charges against the applicant for lack of jurisdiction.

In Reply, the state attorney argued that the offences of forgery against the applicant in counts 1-6 and 13 were committed in Kampala central according to the charge sheet and such fall within the territorial Jurisdiction of Buganda Road Court. She conceded that the rest of the counts of uttering were committed in Makindye. She further argued that the offences were committed in different places but in a series. In her view the offences were committed in two different areas a situation which is cured by section 37 (b) and (d) of the M.C.A. which allow any of the 2 Courts to try the matter. She invited Court to find that Buganda Road Court had territorial Jurisdiction to try the applicant.

In rejoinder Counsel for the applicant argued that section 37 does not apply to this case as it deals with situations of uncertainty. He invited court to apply section 34 of the M. C.A and find that Buganda Road court has no Jurisdiction to try the applicant

on the charges of uttering false documents from counts 7-12. He invited court to strike the said 6 count off the charge sheet.

RESSOLUTION.

From the submission of counsel and the pleadings on record, the issue for court' determination is whether Buganda road court had jurisdiction to try the applicant.

Before I consider the merits of this application, let me 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 this court has powers to revise orders of the lower courts by determining the legality and or correctness and propriety of the record.

The black's law dictionary 2nd edition, defines jurisdiction as the power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by

law, upon a state of facts, proved or admitted, referred to the tribunal for decision, and authorized by law to be the subject of investigation or action by that tribunal, and in favor of or against persons (or a res) who present themselves, or who are brought, before the court in some manner sanctioned by law as proper and sufficient.

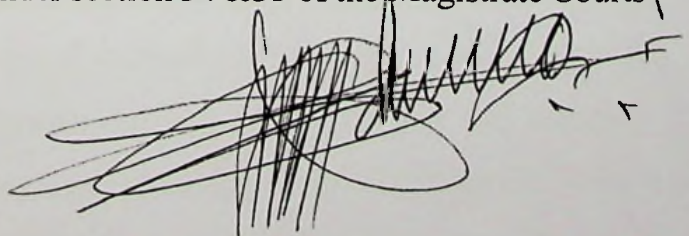
The above definition has been expounded on in a number of cases including criminal revision no 2 of 2018: Uganda versus Hon. Kassiano Wadri 7 OTHERS quoting the case of OWNERS OF MOTOR VESSELS VERSUS CALTEX OIL KENYA LTD 1989 (KLR) where court of appeal held that; -

“jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of the proceedings pending other evidence...”.

I agree with the above position of court. Therefore, it becomes very essential for court to determine the issue of jurisdiction if in question before taking any further step in the matter.

In criminal case number 1166/2018 from which this application arises, the trial magistrate differed a ruling on the issue of jurisdiction which I find to be improper. However, this does not necessarily render the lower court trial invalid before this court is satisfied on the issue of territorial jurisdiction as raised by the applicant both in the lower court and in this application.

Territorial jurisdiction is provided for under section 34 & 35 of the Magistrate Courts Act which states as follows;

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"Subject to the provisions relating to transfer conferred by this Act, every offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed".

Section 35 stipulates:

"When a person is accused of the commission of any offence by reason of anything which has been done or any consequence which has ensued, the offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued"

Section 37 states:

Trial where place of offence is uncertain

(a) it is uncertain in which of several local areas an offence was committed;

(b) an offence is committed partly in one local area and partly in another;

(c) an offence is a continuing one and continues to be committed in more local areas than one.

(d) an offence consists of several acts done in different local areas, the offence may be inquired into or tried by a court having jurisdiction over any of those local areas.

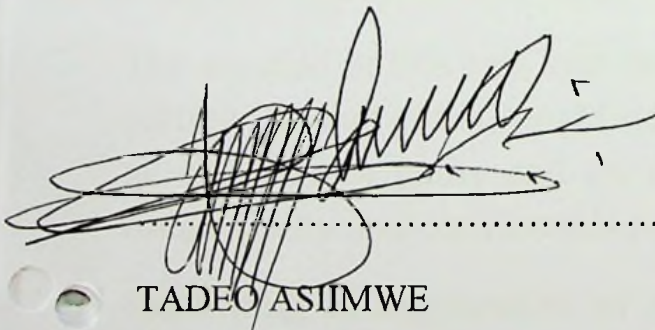
In the case from which this application arises, it is not in dispute that some offences were committed in central Kampala and others in Makindye Division. However, the said offences were committed in a series of the same transaction in different local jurisdiction and by virtue of section 37 above can be tried by either of the two courts in the said local areas. Therefore, the case against the applicant may properly be tried either in Makindye court or Buganda road court. It is a choice by prosecution to decide on where they want to prosecute the matter since the law permits both courts.

I don't agree with the applicant's counsel argument that section 37 is not applicable to this case. The said section 37 above covers cases/ offences committed in a series of the same transaction in different areas and offences of several acts done in different areas as in this case. The fact that the offences were committed in different local areas actually invites application of section 37

I therefore find that the trial magistrate of Buganda road Court has jurisdiction to entertain the case against the applicant.

This application therefore lacks merit and the same is hereby dismissed with the orders that the applicant appears in the trial court to continue with the trial in criminal case no.1166 of 2018.

I so order.

A handwritten signature in black ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is stylized and somewhat messy.

JUDGE

11/03/2022