

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
CRIMINAL APPLICATION NO.10 OF 2023
5 ARISING FROM BUGANDA ROAD CRIMINAL CASE NO.622 OF 2022
KINTU NTEZA FELIX-----APPLICANT
VERSUS
UGANDA-----RESPONDENT
BEFORE HON: JUSTICE ISAAC MUWATA
10 RULING

The applicant brought this application under section 48,50(1) and 5 of the Criminal Procedure Code Act and Sections 33(2) of the Judicature Act seeking the following orders;

1. That the record in Buganda Road Chief Magistrate vide Criminal Case No.622 of 2022 Uganda v Kintu Nteza Felix be called for by the High Court.
2. That the ruling and order dated 1st February 2023 of His Worship Ottawa Fidelis vide Criminal Application No.64 of 2022 be revised and set aside.
3. That the proceedings in Buganda Road Chief Magistrate vide Criminal Case No.622 of 2022 be declared a nullity
4. That the proceedings in Buganda Road Chief Magistrate vide Criminal Case No.622 of 2022 be stayed pending the determination of the civil suit between the applicant and the complainant vide civil suit No.707 of 2014

The grounds of the application are contained in the affidavit of the applicant but briefly are that the applicant has a pending suit with the complainant in the High Court Land Division vide HCCS No.707 of 2014 which is still pending final determination.

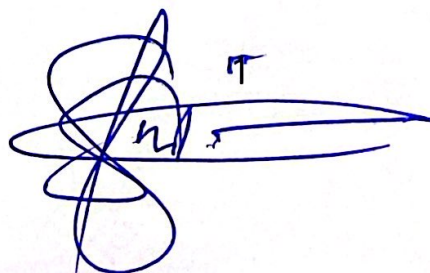
- 30 That criminal case no.622 of 2022 and HCCS No.707 of 2014 are based on the same facts and that the matters in issue in the criminal case are also directly and substantially in issue with the civil suit previously instituted at the High Court Land Division.

The parties filed their written submissions which I have considered.

35 **Representation**

At the hearing of the application, Counsel Tomusange Anthony was for the applicant while Ainebyona Happiness represented the respondent.

Consideration



40 The main question essentially in this application is whether this court can stay the proceedings in criminal Case No.622 of 2022 pending the determination of HCCS No.707 of 2014 pending in the Land Division of the High Court. The applicant proceeded by way of revision.

45 The revisionary powers of the High Court are provided for under section 48 and 50 of the Criminal Procedure Code Act. The purpose of which is to correct manifest irregularities or illegalities and give appropriate directions. The court is also empowered to determine the regularity of any proceedings of any such subordinate court. **See: section 48 & 50 of the Criminal Procedure Code Act.**

50 The applicant is seeking to stay the proceedings in criminal Case No.622 of 2022 pending the determination of HCCS No.707 of 2014 pending in the Land Division of the High Court. He contends that the matters in issue in the criminal case are directly and substantially in issue with the civil suit previously instituted at the High Court Land Division.

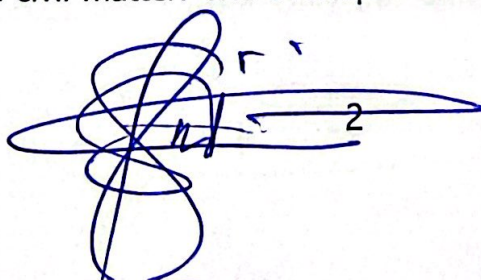
55 There is no universal principle that proceedings in a criminal case must necessarily be stayed when a similar or identical matter is pending before a civil court. This is purely a matter of discretion. **See: Sebulime Baker Vs Uganda High Court Criminal Appeal No. 21 of 2018**

60 Stay of proceedings is a serious matter to be entertained only in the most deserving cases as it impacts the right to expeditious trial. It is a discretionary power exercisable by the court upon consideration of the facts and circumstances of each case.

65 The High Court has discretionary powers to order a stay of proceedings under its inherent jurisdiction and case management powers pursuant to section 17(2) of the Judicature Act. It should be also emphasized that in an application for stay, it is not for this Court to make a final determination regarding the dispute between the parties, it only needs to be satisfied that a bonafide contention exists to warrant the stay of proceedings.

For the court to exercise this power, the applicant must show that there is a real risk of serious prejudice and that this prejudice may lead to an injustice.

70 The court must also exercise this discretion bearing in mind the competing considerations between the parties which include among others the need for expeditious trials and the need to prevent abuse of court process. The applicant must also prove that there is an overlap between the issues in the criminal matter and the civil matter. The overlap in this case would be the substantial



75 issues for determination by the two courts. The burden therefore is on the applicant to show why the proceedings should be stayed.

In the instant case, the applicant is charged with the offense of obtaining money by false pretense contrary to section 305 of the Penal Code Act. The amount of money he is alleged to have obtained with false pretense is Uganda Shillings 80 **195,000,000/=**. The complainant in this matter is Interlink Education Services Ltd.

In the civil suit at the High Court Land Division, the complainant is the plaintiff while the applicant is defendant No.14. The claim against the defendant is for recovery of shs. **195,000,000/=**. The suit land is in respect of land comprised 85 in Busiro Block 220, Plot 64 Land at Gimbo. The applicant filed his written statement of defense and the suit is still at the stage of scheduling.

Section 209 of the MCA provides for stay of suits. It provides that;

90 **"No magistrates court shall proceed with a trial of any suit or proceeding in which the matter in issue is also directly or substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim litigating under the same title, where the suit or proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed".**

95 In the case of **Uganda V Ssonko Edward Criminal Revision No. 12 of 2019**, the court while considering the provisions of section 209 of the Magistrates Courts Act laid down the essential elements required before a court may stay a suit.

100 **1) That there are two concurrent suits or proceeding one of which is previous or filed earlier than the other before the same court or any other court vested with jurisdiction to hear the suit or proceeding**

2) The suit or proceeding is between the same parties or parties under whom they claim or litigate

105 **3) The subject matter of the suit or proceedings are directly or substantially the same.**

The above section applies to both civil and criminal cases.

I have perused the record, the charge sheet, plaint and written statement of defense attached to the application. It is evident t that the issues in the criminal matter are directly and substantially the same as the issues before the civil

110 court. The central issue being the transaction in respect of the suit land which gave rise to this dispute in both the criminal and civil cases.

115 The subject matter in the criminal proceedings is the same as that in Civil Suit No.707 of 2014 filed in in the High Court (Land Division). In the civil suit, the Plaintiff is seeking orders of recovery of shs. 195,000,000/= arising out of an agreement of sale and purchase of land comprised in Busiro Block 220 Plot 64 situate at Gimbo and in the criminal suit, the applicant is accused of falsely obtaining 195,000,000/= from the complainant in respect of the same suit land.

120 The suit is also proceeding between the same parties save that in the civil suit, there are other defendants. The plaintiff in the civil suit is the complainant in the criminal matter and the accused is the 14th defendant in the civil matter. On the face of it, the subject matter of the proceedings is directly or substantially the same.

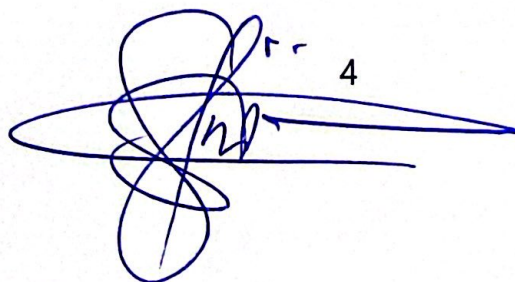
125 As I have already noted, the transaction of shs. 195,000,000/= in respect of the suit land is central to both proceedings. Whether the applicant falsely obtained these monies from the complainant will have to be determined in both of these proceedings since the complainant alleges misrepresentation in the civil claim. The presence of these identical issues for determination between the two proceedings strongly suggests that the criminal proceeding could fairly be
130 characterized as the alternative of the civil proceeding.

Furthermore, I have also noted that the civil suit in respect of the suit land was commenced before the criminal proceedings. In the case of **Simba Properties Investment Co. Ltd Vs Vantage Mezzanine Fund II Partnership and 6 others Misc. Application No.0414 of 2022**, the court noted that where a
135 civil suit has been filed before a criminal proceeding has started, it may be advisable to stay the criminal proceeding as the result of the civil trial maybe conclusive in the matter.

140 Allowing the criminal matter to proceed will create a likelihood of conflicting judgements between the lower court and the High Court Land Division with regard to the impugned transaction. It is thus desirable in such circumstances that the criminal proceeding ought to be stayed till the disposal of the civil suit.

It would amount to an abuse of process of law to allow two competing proceedings in the civil court and criminal court to proceed simultaneously in respect of the same subject matter and on the same facts as it is in this case.

145 The court must balance between the prejudice claimed by the applicant to be created by the continuation of the criminal proceedings against the interference

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which would be caused to the respondent's right to prosecute the matter and have it heard without delay.

150 The court in **Sebulime Baker v Uganda Supra** held that staying proceedings before the trial court does not also mean that they are illegal and it does not in any way interfere with the power of Director of Public Prosecutions to institute criminal proceedings. The contention by counsel for the respondent therefore that stay of proceedings in a criminal matter interferes with the power of the DPP to institute proceedings is not necessarily true.

155 In this case, I find that the applicant will be prejudiced by the continuation of the criminal proceedings. The learned trial magistrate ought to have considered the provisions of section 209 of the Magistrates Courts Act and stayed the criminal matter which he didn't. Having found that the learned trial magistrate did not properly consider section 209 of the Magistrates Courts Act, his decision
160 declining to stay the proceedings is hereby set aside.

It is only prudent and just that the criminal matter is stayed pending the determination of HCCS No.707 of 2014.

The application is accordingly allowed. The proceedings in Buganda Road Criminal Case No.622 of 2022 are hereby stayed.

165 I so order.

JUDGE

11/10/2023

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