

**Kaketo v Uganda (Criminal
Revision 18 of 2023) [2023]
UGHCCRD 111 (27 September 2023)**
[2023] UGHCCRD 111

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The background to this application is that the applicant was charged, tried, and convicted of the offence of stealing a motorcycle, contrary to section 265 of the Penal Code Act and sentenced to 13 months imprisonment. The applicant was dissatisfied with the sentence, hence this revision application.

- 30 The grounds of the application, as set out in the application and further expounded in the supporting affidavit of the applicant but briefly, are as follows.
- 1. That the applicant was arrested and sentenced to 13 months in prison on the offence of stealing a motorcycle contrary to Section 265 of the Penal Code Act.
- 35 2. That the motorcycle for which the applicant was convicted of stealing was his personal property, having purchased it from the complainant for a valuable consideration.
- 3. That the applicant would not steal his property and, therefore, did not commit any offence.
- 4. That it is just and equitable, the conviction and sentence be revised and quashed.
- 40

Representation

During the hearing, the Applicant was represented by M/s Luzige, Lubega, Kavuma & Co. Advocates, while Ms. Apolot Joy Christine, a Senior State Attorney from the office of the 45 Director of Public Prosecutions, was represented by the Respondent.

Submissions for the Applicant

It is the applicant's submission that on 2 January 2023, he purchased the subject motorcycle 50 No. UFT 071P Baja Boxer from the complainant, Mweru Parvin, at a consideration of Ug. Shs. 10,000,000, and the sale agreement was guaranteed by Ssekide Shuhar, who signed it. Upon execution of the agreement, the applicant paid Ug. Shs. 400,000, and the parties agreed that the applicant would be paying Ug. Shs. 90,000 per week until the entire amount is completed within 2(two) years.

55 The applicant further submitted that he made weekly instalments to the complainant and that by 20th February 2023, the applicant had cleared the debt in the sum of Ug. Shs. 640,000 with a balance of Ug. Shs. 9,360,000.

Around 28th January 2023, the motorcycle was stolen, and the applicant reported the incident to Kanyanya Police Station. Unfortunately, he was instead arrested in February and taken to 60 Nabweru Court, where he was advised to plead guilty and pay Ug. Shs. 1,000,000 so he could get out on that day and continue making weekly instalments.

Under that agreement, the applicant pleaded guilty and was surprised when they convicted and sentenced him to 13 months' imprisonment. It is his submission that the subject motorcycle was his, and the complainant was only entitled to the balance of the purchase

65 price for which he had two years to clear.

The applicant further argues that the case does not reveal a case of stealing a motorcycle contrary to Section 265 of the Penal Code Act. He argues that the case shows a purchase transaction between the complainant and the accused person, as indicated in the sales agreement dated 2 January 2023.

70 The applicant further stated that the court was aware of the agreement in which the complainant was required to pay them Ug. Shs. 1,000,000, accept the charge and then be released by the court. It is further submitted that the facts show that he did not steal but was given the motorcycle by the complainant. During sentencing, the trial magistrate ordered the compensation of the complainant in the sum of Ug. Shs. The balance demanded in respect to

75 the motorcycle is 8,610,000. The applicant added that after purchase, the motorcycle became the applicant's property, and the complainant's only remedy was to sue for the balance in the civil court, whether the motorcycle was stolen or not by the terms of the agreement.

The Trial Magistrate should have taken a keen interest in finding out whether the facts read before her constituted a criminal offence and failure to do so caused a miscarriage of justice 80 and contrary to Article 28(7) of the Constitution, which stipulates that "no person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.

Counsel for the Applicant called upon the court to invoke its powers under Section 48 of the Criminal Procedure Code Act and Sections 17 and 33 of the Judicature Act on the ground that 85 the proceedings before the trial Court were irregular and contrary to the law.

Submissions for the Prosecution

Counsel for the prosecution/respondent also relied on and cited Section 48 of the Criminal Procedure Code Act, which empowers the Court to call for records.

It is the counsel's submission that criminal revision is exercisable only when it appears that 90 the proceedings in the magistrate's court contain an error material to the merits of any case or involving a miscarriage of justice. The High Court is then empowered to enter a revisional order in the case of a conviction or case of any other order other than an order of acquittal.

It is the counsel's submission that judgment is the court's final order envisaged under Section 50(1) (b) of the Criminal Procedure Code and that a final order in criminal litigation is the 95 appealable order. It is the counsel's submission that the fact that a decision may cause a party an inconvenience or place him at a disadvantage in the criminal litigation that nothing but an appeal can cure does not make such a decision susceptible to criminal revision.

Counsel further cited Section 17(2) of the Judicature Act, which empowers the High Court to exercise its inherent powers to prevent abuse of the court process by curtailing delays. 100 Furthermore, counsel submitted that in the trial court proceedings, there appears to be no error material to the merits of any case involving a miscarriage of justice to warrant revision. The respondent's counsel further argues that the applicant's submissions do not raise any ground regarding the correctness, legality or propriety of any finding, sentence or order recorded or passed and the regularity of any proceedings of the Magistrate's Court.

- 105 It is further submitted by the respondent's counsel that the complaint is not on the procedure of plea taking but rather the sentence given to him and that his only remedy was to appeal against the sentence. She further stated that the application is in gross violation of Sections 48 and 50 of the Criminal Procedure Code Act and Section 17 of the Judicature Act cap 13. Counsel asked the Court to dismiss the application for being defective and to sustain the
- 110 orders and findings of the trial Court.

In rejoinder, Counsel for the applicant reiterated his earlier submissions and further submitted that the facts reveal a civil transaction between the complainant and the accused person, governed by the sale agreement dated 2 January 2023.

It was further submitted that the orders the trial court gave were contrary to Article 28(7) of 115 the Constitution and the precise terms of the contract between the parties. He invited the Honourable Court to exercise its revisionary powers and set aside the sentence and orders of the Trial Magistrate. Both parties are guided by the contract they signed.

Issues

- 120 1. Whether or not this is a proper application for revision?
- 2. What are the remedies available?

Consideration of the Application

The law and evidence

Section 48 of the Criminal Procedure Code Act provides that;

The High Court may call for and examine the record of any criminal proceedings before any magistrate's court for the purpose of satisfying itself as to the correctness, legality or propriety

130 *of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the magistrate's court.*

Section 50(1) (b) provides for powers of the High Court on revision and states as follows;

"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 135
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;

b) In the case of any other order other than an order of acquittal, alter or reverse the order."

Section 17 (1) of the Judicature Act provides that;

The High Court shall exercise general powers of supervision over magistrates' courts.

140 According to Black's Law Dictionary (9th edition), revision is "a re-examination or careful review for correction or improvement or an altered version of work". The mandate of this court to make a Revisionary Order is enshrined in Section 50 (1) of the Criminal Procedure Act.

In this case, the applicant was charged with the theft of a motorcycle contrary to Section 265 of the Penal Code Act. The applicant is contesting the 13-month imprisonment sentence and

145 further states that the facts reveal a civil transaction between the complainant and the accused person, governed by the sale agreement dated 2 January 2023. On the other hand, the respondent argues that the application is unsuitable for revision by the High Court.

It should be noted that Section 50(5) of the Criminal Procedure Code Act provides that.

Any person aggrieved by any finding, sentence or order made or imposed by a magistrate's 150 court may petition the High Court to exercise its powers of revision under this section. Still, no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed.

I disagree with the Respondent's counsel stating that revision applies only to a final order about the above section. The Applicant has a right to bring a revision application in this court 155 to enable it to correct any mistakes that could have occurred during the trial.

The purpose of examination of the record of the subordinate court is, therefore, to correct the conclusions of that court, if necessary. Revision is an exercise of discretion that must be done judiciously. Discretion here is the faculty of deciding or determining by circumstances and what seems fair, right, equitable and reasonable in those circumstances.

160 According to the record of the proceeding, two accused persons were charged. However, the applicant pleaded guilty while the 2nd accused was acquitted as the matter was dismissed for want of prosecution.

The applicant was charged under Section 265 of the Penal Code Act, which provides for stealing a vehicle and states that;

165 "If the thing stolen is a [vehicle](<https://ulii.org/akn/ug/act/ord/1950/12/eng%402014-05-09#defn-term-vehicle>), the offender is liable to imprisonment for seven years."

However, the summary of the facts shows that the convict pleaded to stealing a motorcycle, which is a different provision from what he was charged with.

From the evidence on record, it is evident that the facts don't disclose the offence of theft of a vehicle, which clearly shows that the Applicant was charged under the wrong law. The

- 170 indictment was defective, and it is unclear whether this anomaly was overlooked by both the Trial court and the counsel. Thus, the Applicant should not have been allowed to take a plea in the first place, and the evidence called against him on the defective charge is null and cannot stand. Since the statement of the offence did not bear the provision creating the offence of theft, the charge sheet statement was in breach of the mandatory requirements
- 175 of Sections 85 and 88 of the Magistrates' Courts Act.

Revision entails examination by the High Court of the record of proceedings of the Magistrates Court for purposes of the High Court satisfying itself as to the correctness, legality, and regularity of proceedings of the Magistrates Court. See *Mabalangaya Vs Sanga* [2005] 1 EA (CAT).

180 It was a miscarriage of justice for having charged and convicted the Applicant on such a defective charge because it resulted in a failure of justice.

The Application for revision succeeds, and I direct that the Applicant should be released immediately from Prison unless he is facing other charges. The Prosecution can decide to 185 prefer the charges of theft of a vehicle afresh if it so wishes

Gadenya Paul Wolimbwa JUDGE 25th September 2023

I request the Deputy Registrar to deliver this Ruling on 27th September 2023.

Gadenya Paul Wolimbwa JUDGE 25th 195 September 2023

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Prepared on 12 October 2026 · Esheria