

UGANDA / JUDGMENT

Kamoga v Uganda (Criminal Appeal 646
of
2023) [2024] UGCA 336 (4 December 2024)
[2024] UGCA 336

COURT

Court of Appeal of Uganda

BEFORE

Egonda-Ntende, JA, Cheborion-Barishaki, JA, Asa
Mugenyi, JA/ JCC

CASE / FILE NUMBER

Criminal Appeal 646 of 2023

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
[Coram: Egonda-Ntende, Barishaki Cheborion, and Mugenyi, JJA] CRIMINAL
APPEAL 646 OF 2023

(Arising from High Court Criminal Case HCT010- CR-SC- 2017 at Mukono) 10

UGANDA VERSUS

KAMOGA MUHAMMADI

JUDGMENT OF THE COURT

INTRODUCTION 1.

This is an appeal against the orders of the High Court delivered at Kampala by 20 Muwata, J., on 21st November 2023 in Criminal Application 646 of 2023 for revision which stayed criminal proceedings in Criminal Cases 835 and 836 of 2023 at Entebbe.

BACKGROUND 25 \$2.\$

On 29th September 2023, the respondent was arraigned before the Chief Magistrate's Court at Entebbe in Criminal Cases 835 and 836 of 2023. In Criminal Case 835 of 2023, the respondent was charged with malicious damage to property contrary to S. 335(1) of the Penal Code and unlawful eviction contrary 30 to S. 92 of the Land Act. In Criminal Case 836 of 2023, the

appellant was charged with forgery of transfer forms for land contrary to Sections 342 and 347 of the Penal Code, and uttering false documents contrary to S. 351 of the Penal Code and obtaining registration by false pretenses contrary to S. 312 of the Penal Code. 35

3. GROUNDS OF APPEAL

The appellant in an amended memorandum of appeal dated 10th July 2024 raised the following grounds of appeal

- 1. The learned judge erred in law when he misinterpreted the applicability of Sections 48, 50(1) and 5 of the Criminal Procedure Code Act and Sections 17(1) and 33 of the Judicature Act occasioning a miscarriage of justice.
- 2. The High Court judge erred in law when he heard HCT criminal application no. 36 of 2023 when the respondent had no locus to petition the High Court for revision and thereby occasioned a miscarriage of justice.
- 3. The High Court judge erred in law when he granted an order staying criminal proceeding in HCT criminal application 36 of 2023 without jurisdiction occasioning a miscarriage of justice.
- 4. The High Court judge erred in law in misapplying S. 209 of the Magistrates Court Act thereby arriving at a wrong decision, which occasioned a miscarriage of justice.

Representation

At the hearing of the appeal on 24th July 2024, the appellant was represented by Ms. Happiness Ainebyona, Chief State Attorney, while the respondent by Mr. Joseph Kyazze.

4. SUBMISSIONS OF PARTIES

a) APPELLANTS' SUBMISSIONS

The appellant submitted that Under S. 36 of the Criminal Procedure Code Act that "the appellate court may upon any appeal from any order other than a conviction, acquittal or dismissal, alter or reverse the order." It further submitted that the court has powers to re-evaluate the High Court proceedings and orders. It requested the Court to evaluate and reverse the orders of the High court.

The appellant cited a legal maxim 'Ex turpi causa non oritur action' meaning a court cannot sanction what is illegal. It also cited *Malula International Limited v. His Eminence Cardinal Nsubuga and another* UGSC 2 (8 April 1982) where it was stated that.

"a court of law cannot sanction that which is illegal and that an illegality once brought to the attention of the court, overrides all questions of pleadings, including any admission made thereon."

The appellant submitted the decision in Miscellaneous Application 36 of 2023 was marred with several errors.

The appellant submitted that the respondent's application raised an issue of whether the High Court had jurisdiction to exercise revisionary powers over the criminal proceedings in Entebbe Chief Magistrate's Court Criminal Cases 835 and 836 of 2023. The High Court judge stayed the criminal proceedings and held

30 that

"The jurisdiction of this court to grant an order to recall and stay proceedings in criminal cases is provided for under Sections 48, 50(1Xb) & 5 of the Criminal Procedure Code Act and Sections 17(21 and 33 of the Judicature Act"

The High Court judge held that the application fell under the revisionary powers 3s of the High Court. The appellant opposed the said holding on the ground that

⁵ the jurisdiction of the High Court is exercised only where there is a finding, sentence or order passed by a magistrate's court.

The appellant submitted that S. 48 of the Criminal Procedure Code Act provides that

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

The appellant submitted that the High Court did not call for the record of the 1s lower court nor examine it. The appellant submitted that under S. 50(1)(b) of the above Act.

"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 the proceedings an error material to the 20 merits of any case or involving a miscarriage of justice has occurred, the High Court may in the case of any other order, other than an order of acquittal, alter or reverse the order."

It cited S. 50(5) which provides that.

"any person aggrieved by any finding, sentence or order made or imposed by a 25 magistrate's court may petition the High Court to exercise its powers of revision." The appellant submitted that the respondent was not aggrieved by any findings, sentence or orders as discussed and therefore had no locus to petition the High Court for revision. The appellant cited Uganda v Nkalubo Augustine (Miscellaneous Application 2T of 2020, 12o21l UGHCCRD +2, CACA 130 of 2021 30 where the court held.

"the High court only calls for and examines the record of any criminal proceedings before any magistrate's court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and jurisdiction is exercised only where there is a finding, sentence or order recorded or passed."

35 The court on S. 59 of the Criminal Procedure Code Act stated

⁵ "court exercises jurisdiction under section 50 CPCA when there is a conviction, acquittal or any other order and clearly there has to be an order of the court for section 50 to come into operation."

The appellant submitted that the application for revision was argued as an application for stay of criminal proceedings and had the effect of terminating the

proceeding. He also submitted that in this case, there was no conviction, acquittal or any other order to be revised by the High Court.

The appellant contended that the High Court judge misinterpreted and misapplied S. 17 of the Judicature Act which provides for the High Court exercising judicial powers to prevent abuse of process of the court. The appellant submitted that the respondent abused court process by petitioning High Court with without locus causing delay of the criminal trial. It submitted that the powers under S. 17(2) of the Judicature Act are exercised judiciously to ensure expeditious trial and technicalities are not used to defeat justice.

The appellant contended that the High Court judge erred when he misapplied S. 33 of the Judicature Act which provides;

"The High court shall, in the exercise of the jurisdiction vested in it by the constitution, this Actor any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far possible all matters in controversy between parties may be completely and frnally determined and all multiplicities of legal proceedings concerning any of those matters avoided"

The appellant submitted that Criminal application 36 of 2023 was not properly before the High Court, and therefore S. 33 was also misapplied by the Judge in staying the respondent's criminal trial. 30

On ground 4, the appellant submitted that the trial judge misapplied S. 209 of the Magistrate's Court Act which provides. 35

- 5 „No magistrate's court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties whom they or any of them claim, litigation under the same title, where that suit or proceeding is pending in the sarne or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed"

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The appellant submitted that this section does not apply to criminal cases and in High court proceedings. It stated that S. 209 falls under Part xx of the Act which covers civil jurisdiction of magistrates' courts and provisions relating to exercise of that jurisdiction. S. 209 applies to stay of civil suits and does not apply to criminal cases. The appellant submitted that S. 209 of the Magistrates courts Act according to the long title to the act is only applicable to Magistrates' courts and is inapplicable to proceedings in High court.

The appellant cited *sarah Kulata Basanguta u uganda SCCA 3 of 2018* where it was stated that.

„criminal proceedings may emanate from the same facts but it doesn't deter prosecutors to institute criminal proceedings because the facts are similar to that of civil case."

25 The appellant contended that the trial judge erred in law and fact when he stayed criminal proceedings of trial of the respondent for forgery crimes, which are not the subject of the civil suits thereby occasioning a miscarriage of justice. The appellant submitted further that the Supreme court held in *sarah Kulata Basanguta u Uganda (supra)* that,

„...it cannot be a correct proposition of the law that where a civil suit is pending between two parties, no criminal proceedings may be instituted against one of the parties arising from the same facts."

The appellant submitted that the respondent's application was an abuse of court processes intended to delay criminal justice and defeat the powers of the Director of Public Prosecutions.

s b) RESPONDENT'S SUBMISSION

In reply, the respondent submitted that it has become quite fashionable for litigants in land disputes, which are the subject of pending suits to resort to criminal prosecutions of their adversaries in a manner intended to oppress using 10 and abusing the office of the DPP. The respondent submitted that the DPP relies on the decision of *Sarah Kulata Basanguta u Uganda (supra)* as the weapon to condone the abuse of criminal justice system. He contended that the above decision does not give a blanket mandate to the DPP to criminalize civil land disputes. The decision must be construed in light of Article 20 of the 1995 Constitution and the overall purpose of criminal prosecution. The respondent submitted that under Article 20 (41& (5) of the Constitution the mandate of the DPP is to prefer criminal charges against anyone. However, in exercising such powers the DPP is required to have regard to public interest, the interest of administration of Justice and the need to prevent of abuse of the legal process. 20 He submitted that this appeal is an example of attempts by litigants, who are parties to land disputes which are the subject of ongoing litigation in civil courts, using the office of the DPP to prefer charges against their adversaries in total

abuse of the criminal justice system and its purpose.

ZS The respondent submitted that the subject matter giving rise to the Appeal arose from a purely land dispute between the Complainant Peter Bibangamba and the respondent. The land is in Busiro, Wakiso District which is the subject of criminal prosecution against the respondent. It is also subject of Kamoga Mammad. u Peler Bibanganba HCCS 516 of 202L pending before the High Court.

30 The respondent submitted that the transactions between the complainant, Peter Bibangamba and the respondent originated from a purely contractual arrangement evidenced by a memorandum of understanding executed between the parties. The respondent submitted that at all material times, the dispute over the land is been purely a civil contractual and land matter and is the subject of ⁵ determination before the High Court and the Court of Appeal. He alleged that the DPP despite the civil suits began criminal prosecutions against him'

The respondent invoked S. 17(2) of the Judicature Act, S. 33 of the Judicature Act, Sections 48 and 50(1) of the Criminal Procedure Act. He quoted Egonda-10 Ntende, J., (as he then was), in Shabahuria Matia u Uganda Criminal Revision Cause MSK 00 CR 000S OF 1999, [1999] UGHC 1 where he stated that the essence of S. 17(2) of the Judicature Act is that it

u... serves to prevent in case of criminal prosecutions, the maintenance of proceedings that are either instituted for improper motive or purpose, or 15 proceedings that are oppressive or vexatious to your petitioner's person."

In this case, the respondent submitted that the High Court found that the applicant demonstrated circumstances that warranted a stay of proceeding in Criminal Cases g3S and 836 before the Magistrate Court of Entebbe at Entebbe pending the determination of HCCS 516 of 202L and Civil Appeal 225 of 202i in 20 the Court of APPeal.

The respondent submitted that facts and issues in the criminal cases were also directly and substantially the same as in the civil suit. The respondent submitted that the charges against the applicant touched the issue of ownership of land which involved the legality of documents executed and the actions taken including taking possession of parts of land. The issues in the land matter are the same as in the criminal matter raising a possibility of conflicting decisions on the same subject matter. The respondent contended that the criminal proceedings are an attempt to criminalize a purely land dispute with the intention of subjecting the respondent to embarrassment and prejudice and compromise his right to be heard in the civil suits and appeal. The respondent contended that he would suffer substantial loss if the criminal proceedings are not stayed.

5 The respondent submitted that the jurisdiction of the High court to grant to recall and stay proceedings in criminal cases derives from Sections 48 & 50 of the Criminal Procedure Code Act, Sections 17 and 33 of the Judicature Act. It was contended that the said provisions in essence confer inherent discretionary powers upon the High court to stay or otherwise terminate proceedings upon 10 which are an abuse of court process. The respondent cited Uganda (DPP) ^u Ssonko Edward. Criminal Revision 12 of 20L9 [2019] UGHCCRD 42 which set the conditions precedent that must obtain before the High Court can invoke its jurisdiction under

Sections 48 & 50 of the Criminal Procedure Code Act, Sections 17 and 33 of the Judicature Act.

The respondent submitted that the magistrate proceeded and entertained the charges against him contrary to S. 209 of the Magistrates Courts Act. He contended that the act of the Magistrate's court entertaining the charges, and ordering the respondent to take plea to the charges constitutes a finding or order in the proceedings within the context of S 50 of the Criminal Procedure Code Act. He submitted that this constituted an error material to the merits of any case or involving a miscarriage of justice and is an irregularity in the proceedings of the magistrate's court. The respondent repeated what transpired in the High Court which is captured in the record of proceeding and the judgment of the said ²⁵ court and we do not need to repeat it.

On ground 4, the respondent reiterate his objection. He cited Uganda (DPP) ^u Ssonko Edward (supra), where it was held that;

"in a situation where both criminal and civil proceeding are initiated, Section 209 of the MCA applies to both criminal and civil cases and bars a magistrate from trying any suit or proceeding in which the matter is directly and substantially in issue in a previously instituted suit or pending between the parties."

⁵ The respondent also cited Musumba Yahaya & Anor u Uganda Criminal Revision Cause 4 of 2019 I202U UGHC 8 cited with approval in Nalwoga Anna Lilian ^u Uganda Criminal Revision 01 of 2021 I2022I UGHCCRD 96 where it was held

> "Issues of land should not be confused with criminal issues. Claim of ownership is a civil right that ought to be allowed to be proved in a civil court and should never be criminalized as it would amount to prosecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them."

The respondent concluded that the judge was justified to grant the stay of proceedings.

The respondent submitted that this appeal does not arise from a conviction, sentence or acquittal. He submitted that an appeal is a creature of statute. Appellate jurisdiction springs only from statute. There is no such a thing as inherent appellate jurisdiction. Jurisdiction cannot be prescribed by mere inference. The respondent cited Nalukenge u Uganda (Criminal Appeal 67 of 2008) I2I4I UGCA 27 which in turn cited Baku Raphael Obudia and Obiga Kania u The Attorney General (Supreme Court Constitution Appeal 1 of 2005)

2003 UGSC 3 where Odoki CJ noted; "It is trite law that there is no such a thing as an inherent appellate jurisdiction. Appellant jurisdiction must be specifically created by law. It cannot be inferred or implied." The respondent submitted that the order appealed from arose out of a Miscellaneous application. The appeal is against an order of the High Court staying further criminal proceedings against the appellant. It submitted that appellant has not cited any law creating an

automatic right of appeal to this court. It concluded that the appellant therefore has no automatic right of appeal. He submitted that the applicant needed to first seek leave of the High Court under Rule 42 (1) of the Rules of this Court. 30

The respondent submitted that the appellant amended the memorandum of leave without seeking court's leave. It objected to grounds 2, 3 and 4 of the amended memorandum of appeal. It submitted that issue of locus in ground ²

- ⁵ was not raised before the High Court judge nor addressed by him. He submitted that memorandum of appeal constitutes the appellant's pleadings. The respondent submitted that the appellant is confined to the grounds and any amendment must be brought within reasonable time and it must not introduce purely new grounds and must not materially depart from the original grounds.
- 10

The respondent submitted that grounds 3 and 4 offend Rule 86 (1) of the Court of Appeal Rules. Ground 4 does not state manner the Judge misapplied S. 209 of the Magistrates Court Act. It does not specify which wrong decision was reached by the judge and which miscarriage of justice was occasioned to the appellant. It submitted that ground 3 is a general ground that does not specify the error of the court. 4.5 The requirement under Rule 86(1) of the Court of Appeal Rules is mandatory and not regulatory. It is not enough for counsel to simply complain and state that the judge erred in law and a miscarriage of justice was occasioned. The error which the trial judge committed must be specified.

5. DETERMINATION

The respondent raised a number of preliminary points which the Court of Appeal has to address before or if it has to go into the merits of the appeal. Unfortunately, the said preliminary points were raised in the respondent's reply and the appellant did not address them in a rejoinder as it did not file one.

The first preliminary was that the Court of Appeal does not have jurisdiction to entertain the appeal. The respondent argued that jurisdiction is a creature of 30 statute. He argued that there is no law that confers jurisdiction on the Court of Appeal to entertain ruling from an application for review granting a stay of proceedings by the High Court. S. 10 of the Judicature Act provides that "An appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this Act or any other law." The respondent filed an 3s application in the High Court under Sections 5, 48 and 50(1)(b) of the Criminal pg. 11

- ⁵ Procedure Act. There is no Criminal Procedure Act but the Criminal Procedure Code Act, which must have been the basis for the respondent's application. We hope that the respondent is not arguing that the Court of Appeal does not have jurisdiction because it filed its application under a non-existent law. The High Court judge stayed the criminal proceedings and held that

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"The jurisdiction of this court to grant an order to recall and stay proceedings in criminal cases is provided for under Sections 48, 50(1Xb) & 5 of the Criminal Procedure Code Act and Sections L7(21 and 33 of the Judicature Act."

Therefore, the court relied on the Criminal Procedure Code Act. S. 36 of the Criminal Procedure Code Act provides for the powers of an appellate court. [t states

"Powers of appellate court on appeals from other orders

The appellate court may on any appeal from any order other than a conviction, acquittal or dismissal alter or reverse the order."

- When one files an appeal in respect of a criminal matter to the Court of Appeal against an order of the High Court whether on or other than a conviction or acquittal the former becomes an appellate court. Under S. 36 of the Act, the Court of Appeal may alter or reverse the order if need arises. Since the respondent filed for remedies in its application under the Criminal Procedure Code Act which provides for the powers of an appellate court, it cannot deny that 20
- the Court of Appeal has appellate powers over orders arising from the High Court which it provided under the Act. The first preliminary point is overruled. 25

The second preliminary point by the respondent was that the appellant filed an amended memorandum of appeal without seeking court's leave. S. 67 of the 30 Judicature (Court of Appeal Rules) Directions provides that "(1) The appellant ffi&y, at any time, with the leave of the court, lodge a supplementary memorandum of appeal." At times there is a thin line between an amended and a supplementary memorandum of appeal because in an amended memorandum of appeal, the appellant raises supplementary grounds. The respondent objected 35 to grounds 2, 3 and 4 of the amended memorandum of appeal. We notice that

pg.12

⁵ the appellant filed an amended memorandum of appeal without seeking court's leave. Therefore, it is struck off.

The appellant filed a memorandum of appeal on 19th December 2023 which the respondent is not challenging. Since it is on court record, the court will go by the said memorandum of appeal. A perusal of the first memorandum of appeal shows that it had more grounds than what was in the supplementary. In the supplementary memorandum of appeal, the appellant abandoned grounds 3, 4 and 7 of the original memorandum which it did not address in its submissions. Therefore, as a Court we shall consider that since the appellant did not address the said grounds, it has abandoned them. In short, instead of the appellant informing the court that it wished to abandon certain grounds, it filed an amended memorandum of appeal. The respondent ought to have noticed that the amended memorandum was filed with the intention of saving time in addressing

grounds that the appellant was no longer interested in. So, we are moving in circles. 10 15 20

S. 66(2) of the Judicature (Court of Appeal Rules) Directions states that the memorandum of appeal shall set forth concisely without argument or narrative the grounds of objection to the decision appealed against. Grounds 2,4,5,6 and 7 of the memorarldum of appeal are argumentative and or narrative and do not comply with the rules. We shall therefore not entertain them. It is grounds 1 and 3 which bring out the dispute on appeal. That is did the High Court have jurisdiction to stay proceedings and whether the application for stay of proceedings was competently brought before the court?

The respondent relied on the following laws in its application for stay of proceedings. S. L7 of the Judicature Act which states.

" 1) The High Court shall exercise general powers of supervision over magistrates' court.

- ⁵ 2) With regard to its own procedure and those of the magistrates' courts, the High Court shall exercise its inherent powers
- a) to prevent abuse of process of the court by curtailing delays, in trials and delivery of judgment including the power to limit and discontinue delayed prosecutions:
- b) to make orders for expeditious trials;
- c) to ensure that substantive justice shall be administered without undue regard to technicalities."

The appellant also relied on S. 48 of the Criminal Procedure Code Act which 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 of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the magistrate's court." 15

However, under the said provision the court has to satisfy itself on the legality, correctness, legality or propriety of any finding, sentence or order of the magistrate's court. We notice that there was no finding, sentence or order passed by the magistrate's court. The court could not examine proceeding when there is no existing order made by the magistrate's court. 20

²⁵ The respondent also relied on S. 50(lxb) of the Criminal Procedure Code Act.

"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 the proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may in the case of any other order, other than an order of acquittal, alter or reverse the order."

Once again, the said provision states that the High Court may alter or reverse the order. S. 50(5) of the Act states

Any person aggrieved by any finding, sentence or order made or imposed by a magistrate's court may petition the High Court to exercise its powers of revision

5 under this section; but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed. The respondent contended that the act of the Magistrate's court entertaining the charges, and ordering the respondent to take plea to the charges constitutes a finding or order in the proceedings within the context of S 50 of the Criminal 10 procedure Code Act. The respondent argued there was no order from the magistrate's court for the High Court to alter or reverse. There has to be a court decision that amounts to an order, or a sentence or finding. In *Ugandau Nkalubo Augustine CACA 130 of 202L, l2o21l UGHCCRD 42* the court held.

"the High court only calls for and examines the record of any criminal proceedings 15 before any magistrate's court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and jurisdiction is exercised only where there is a finding, sentence or order recorded or passed."

There has to be an order of the magistrate for the High Court to review or stay. By making an order for stay when there was no application for stay before the ZO magistrate's court, the High Court was usurping the powers of the lower court. The High Court cannot review or entertain an appeal when there is no order from the lower court. It cannot exercise supervisory nor appellate jurisdiction in the absence of an order.

25 30 Another point of contention was on the stay of proceeding in the criminal matters because of civil suits filed. Criminal cases focus on offenses against the state and public order, while civil cases address disputes between individuals or entities seeking to enforce private interests. Criminal matters are generally considered to be of public interest. This is because crimes are viewed as offenses against society as a whole, not just against individual victims. It is difficult to discern how litigation involving private interests can take precedence over public interest litigation. In *Sarah Kulata Basangwa u Uganda (supra)* it was stated that.

"criminal proceedings may emanate from the sEune facts but it doesn't deter prosecutors to institute criminal proceedings because the facts are similar to that 35 of civil case."

- ⁵ In *Ugan6a u Sonko Criminal Revision 12 of 2}tg*, the High court correctly held that the order to stay Criminal Case No Co-0760-2018 in preference of civil suit No lT2l2O18 was improper and offends the well-estabthished legal position that gives criminal cases precedence over civil matters. Criminal and civil cases serve different purposes and can proceed concurrently. Criminal proceedings emanating from the same facts as civil proceedings, cannot be stayed because of the latter unless there are serious grounds that may affect a party's right to ^a fair hearing as provided for in the constitution. In this matter we do not see the grounds. 10

- 15 The respondent submitted that it is fashionable for litigants in land disputes, which are the subject of pending suits to resort to criminal prosecutions of their adversaries in a manner intended to oppress using and abusing the office of the Dpp. The mandate of the Dpp is provided for in Article 120 of the Constitution. Article 120(5) of the Constitution provides that in exercising his or her powers
- so under this Article, the Director of Public Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process. Article 120(6) states that in the exercise of the functions conferred on him or her by this article Director of Public Prosecutions shall not be subject to the direction or control of any person or authority. The
- 25 Dpp has the authority to initiate, conduct and discontinue criminal prosecutions without interference. Where a party is aggrieved by the DPP's decision there are legal remedies provided. A party may inform the DPP about the unfairness of its decision of prosecution, who if satisfied may apply for a withdrawal or determinate the prosecution or nolle prosequi. In the event of prosecution, a party
- 30 may challenge it or provide a defense during a trial. In the event of conviction, ^a party may still appeal. An aggrieved party still has an option to file a suit under the tort of malicious prosecution. There are other mechanisms to ensure that while the DpP has significant powers there are not absolute. However, to stay criminal proceedings while civil proceedings are continuing is not one of the 35 mechanisms envisaged unless there are exceptional circumstances.
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The appellant contended that the trial judge erred in law and fact when he stayed criminal proceedings of trial of the respondent for forgery crimes, which are not the subject of the civil suits thereby occasioning a miscarriage of justice. This is a valid reason why the trial judge ought not to have stayed the criminal proceedings. If a party commits a crime in pursuit of its civil rights, he or she can still be prosecuted. If one alleges that the transfer instrument was forged, investigation and prosecution of the culprit should continue.

Taking the above into consideration, the appeal is allowed. The order of the High Court staying proceedings of the criminal matters is quashed. The prosecution 15 of the criminal matters may proceed.

Dated at Kampala this. Him day

Fredrick Egonda-Ntende **Justice of Appeal**

Barishaki Cheborion **Justice of Appeal**

Dr. Asa Mugenyi

Justice of Appeal

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