

UGANDA / JUDGMENT

Kasukah v Uganda

(HCT-01-CR-CM-0028-2024)

[2025] UGHC 446 (11 June 2025)

[2025] UGHC 446

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-CR-CM-0028-2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-CM-0028-2024 (ARISING FROM FPT-00-CR-C0-710 OF 2023) <table>
KASUKA GODFREY APPLICANT VERSUS <table> UGANDA RESPONDENT BEFORE:
HON. JUSTICE VINCENT WAGONA RULING

Introduction:

1. The Applicant was charged with the offence of assault occasioning actual bodily harm contrary to Section 236 of the Penal Code Act. It was alleged that on 29th October 2023 at Karambi II, Karambi Ward, North Division in Fort Portal City, the Applicant and others assaulted Kushemererwa David thereby causing him actual bodily harm. After hearing the prosecutions' evidence, the trial Court found that a prima facie case had been established and it therefore put the Applicant to his defence.

- 2. Being dissatisfied with the said Ruling on a prima facie case, the Applicant filed this Application under **Section 98** of the Civil Procedure Act and **Order 52** of the Civil Procedure Rules seeking Orders that; -
- (1)The decision of the learned trial magistrate of findings that there is a prima facie case against the applicant in Criminal Case No. 710 of 2023 be revised;
- (2)The decision of the trial magistrate to continue entertaining criminal prosecution against the applicant in Criminal Case No. 710 of 2023 be revised;
- (3)Costs of this Application be provided for.

Grounds of the Application:

- 3. This Application is premised on grounds that;
- (1)The Applicant is a court Bailiff trading as, Straight Auctioneers & Court Bailiffs.
- (2)The Applicant was instructed by Court to execute a warrant in LD Matter No. 031 of 2022 against a one Kusemererwa David & Anor.

- (3)During the execution of the warrant the judgment debtor, (Kusemererwa David) lodged a criminal complaint of assault against the Applicant.
- (4)The allegations of assault against the Applicant arise from the Applicants execution of a court order.
- (5)The learned trial magistrate exercised jurisdiction illegally or with material irregularity on injustice in ruling that there is a prima facie case against the Applicant.
- (6)The learned trial magistrate is failing to exercise his jurisdiction to discontinue the criminal proceedings against the Applicant.

Representation and Hearing:

4. The Applicant was represented by *M/s Ahabwe James & Co. Advocates* while the Respondent was represented by the Office of the Director Public Prosecutions. Both counsel addressed me by way of written submissions which I have considered.

DECISION:

5. **Section 127 of the Magistrates Courts Act, Cap 19** provides that; -

*"127. Discharge of accused person when no case to answer"

If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall forthwith acquit him or her."

- 6. Therefore, in the middle of the proceedings after hearing the prosecution's evidence, the court is required to make a finding whether a prima facie case is made out against the accused person. A prima facie case was defined in case of **Ramanlal T. Bhatt v R (1957) E. A 332 at 335**, as follows: *It may not be easy to define what is meant by a prima facie case, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.*"

- 7. The instant Application was filed under **Section 98** of the **Civil Procedure Act** and **Order 52** of the **Civil Procedure Rules**. However, this court derives its revision powers against decisions of magistrates' court from **Sections 48 and 50** of the **Criminal Procedure Code Act, Cap 122**. The filing of the instant Application under the Civil Procedure Act and Rules

was therefore erroneous. However, in the interest of justice, the Application will be determined on its merits.

8. Section 48 of the Criminal Procedure Code Act, Cap 122 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." While Section 50 (1) provides that; -

"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."

- 9. Therefore, under **Section 50** of the **Criminal Procedure Code Act, Cap 122**, the High Court has jurisdiction only to revise final orders of a magistrate's court. In the case of **Semuyaga vs. Uganda [1975] 1 EA 186** the court held that; -

"Uganda v. Dalal, [1970] E. A. 355 and Hassan Yusufu v. Uganda Cr. App. 36/74 (unreported). In those cases, it was held that interlocutory decisions made in the course of a trial in a magistrate's court could not be challenged in revisional proceedings; only a final order can be the subject of such proceedings. We do not doubt the validity of those authorities..."*

- 10. In the instant case, the magistrates court has not yet made any final orders in **FPT-00-CR-C0-710 OF 2023**. The Ruling on a no case to answer against which the Applicant seeks revision orders is interlocutory in nature and cannot be subject to revision under **Section 50** of the **Criminal Procedure Code Act, Cap 122**.
- 11. **The Blacks' Law Dictionary, 4th Edition, page 498** defines an interlocutory decree as a provisional or preliminary decree, which is not final and does not determine the suit, but directs some further proceedings

preparatory to the final decree. An order putting an accused person to his or her defence is not final in nature since it does not finally determine the charges brought against the accused person, and as such, cannot be revised by this Court.

The instant Application therefore fails and is accordingly dismissed with no orders as to costs. The case is hereby remitted back to the trial court which is directed to conclude it expeditiously.

I so Order.

Dated at Fort Portal this 11th day of June 2025

Vincent Wagona

High Court Judge

FORTPORTAL

Ruling delivered on the 19th day of June 2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2025/446/eng@2025-06-11>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/kasukah-v-uganda-hct-01-cr-cm-0028-2024-2025-ughc-446-11-june-2025-unknown-topic-unknown-court-2025--6a3ea4d83b1caa91297e4c68>

Prepared on 12 October 2026 · Esheria