

UGANDA / JUDGMENT

Mabirizi v Among (Criminal Appeal 3 of 2025) [2025] UGHACAD 10 (25 April 2025)

[2025] UGHACAD 10

COURT

HC: Anti corruption Division (Uganda)

BEFORE

Gidudu, J

CASE / FILE NUMBER

Criminal Appeal 3 of 2025

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA ANTI-CORRUPTION
DIVISION CRIMINAL APPEAL 003 OF 2025 (Arising from criminal case No 89 of
2023)

UGANDA

KIWANUKA MABIRIZI PRIVATE PROSECUTION BY MALEH
APPELLANT VRS

AMONG ANITA ANNET.....

BEFORE: GIDUDU, J

JUDGMENT

This appeal is against the decision of the Chief Magistrate dated 9th February, 2025 wherein she dismissed the appellants' complaint. The appellant had instituted a private prosecution of Hon. Among Anita Annet, the Speaker of Parliament, on charges of Money Laundering §C/S§ 3(c), 116 and 136 of the Anti-Money Laundering Act Cap118.

The Chief Magistrate dismissed the complaint because the police report did not reveal any offence of corruption or money laundering. It was her finding that, prima facie, the commission of an offence had not been disclosed to warrant any further action.

Briefly, the chief magistrate had referred the appellant's complaint to the police to investigate. The police filed a report of their investigations dated 6th December, 2024.

It would appear that before the police filed their report, the appellant filed an application §(14/2024) asking the Chief Magistrate

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to direct the Inspector General of Police to provide court and copy to (appellant) *details of ownership, control, occupation,* him management and up-to-date valuation reports of all the property stated in the appellant's complaint.

The appellant also filed an application \$(15/2024)\$ seeking orders to restrain the Registrar of Titles from authoring dealings on property cited in the complaint until the case is disposed of. Further, he sought orders restraining the Chief Licensing officer of motor vehicles from authorizing any transactions on vehicles cited in the complaint until the case is disposed of.

The Chief Magistrate dismissed both applications on grounds that the police report had rendered them unsustainable because prima facie no offence had been disclosed.

The appellant filed the following grounds to challenge the decision of the Chief Magistrate. He represented himself and argued the appeal in person.

- 1. The learned Chief Magistrate erred in law and fact in disposing the complaint before entertaining his applications number 14 and 15 of 2024.
- 2. The learned Chief Magistrate erred in law and fact in relying on a police report which was not availed to the appellant.
- 3. The learned Chief Magistrate erred in law and fact in not giving the appellant opportunity to comment on the police report before she determined the case.
- 4. The learned Chief Magistrate erred in law and fact when she relied on the police report and ignored the appellant's affidavit.
- 5. The learned Chief Magistrate erred in law and fact when she relied on the police report before disposing of applications 14 and 15 of 2024.
- 6. The learned Chief Magistrate erred in law and fact when she held that prima facie, the offence of money laundering was not disclosed.

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7. The learned Chief Magistrate erred in law and fact in holding that the police report exonerated the accused of the allegations in the complaint.

This being a first appellate court, my duty is to subject the evidence to fresh and exhaustive scrutiny to draw my own conclusions without ignoring the judgment appealed from.

The appellant filed written submissions. He abandoned ground 4 which in my view was a repetition of ground one. He argued ground one separately and combined the rest of the grounds omnibus.

Ground 1. \$10\$

The complaint in this ground is that the learned Chief Magistrate was wrong to dispose of the complaint before she had determined the two applications. He complained further that the Chief Magistrate had written to the police to investigate the case without his knowledge.

He criticized the Chief Magistrate for not directing the IGP to provide the required information on the disputed properties and for not causing a stay of any transactions on the vehicle transfers. It was his view that the information sought would have given the chief Magistrate better material to form an opinion that the police report. He also complained that in this whole process his participation was denied. Besides he is of the view that his affidavit had more evidence than the police report.

Grounds 2, 3, 5, 6 and 7.

The main complaint in these grounds is that the trial Chief Magistrate after getting a report from the police, did not afford the appellant opportunity to respond to it before she decided the case. He contends that he was not given opportunity to challenge the police report. It was his view that since the police report found that Hon Annet Anita Among possessed some of the property the appellant had complained of, it was necessary for the court to summon her to explain how she obtained that property. It was not

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open for the police to investigate how she obtained it and clear her. This is the main thrust of the appellant's complaint.

He cited several cases such as *Fangmin Vrs Belex Tours and Travel* Civil Appeal 6 of 2013 (SC) for the proposition that where court gets information adverse to the party it must avail that opportunity to respond to it. He also cited *Kazinda Vrs Uganda* criminal appeal 179 of 2020 where the COA held that it is upon the appellant to justify or explain the significant rise in income in his defence because such information is within his knowledge.

Consideration by court: -10**Ground One.**

The issue in ground one is whether or not the Chief Magistrate erred in law when she did not dispose of **Miscellaneous** Applications 14 and 15 of 2024 before deciding the fate of the complaint.

The appellant argued that if the Chief Magistrate had directed the IGP to obtain details of ownership, control, occupation, management and up-to-date valuation reports of all the property listed in the complaint, she would have found that *prima facie* an offence had been disclosed.

In dismissing the applications in issue, the Chief Magistrate observed that she had been directed in **Criminal Appeal 3 of 2024** between the same parties that she should refer the complaint to the police for investigation before she considers if prima facie, an offence had been disclosed or not it was her view that since she had done so and obtained a report, there was no value in directing either the IGP or Registrar Land Registration to provide information as requested.

Without much ado, I find the request for an order of court to direct the Inspector General of Police to provide details of ownership, control, occupation, management and up-to-date valuation reports of all the property to be improper and outside the law governing private prosecutions in Uganda.

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Section 42 of the Magistrates' Court Act, Cap 19 in subsection 7 provides as follows: -

- (7) Notwithstanding subsection (6), a magistrate receiving any charge or complaint may, if he or she thinks fit for reasons to be recorded in writing, postpone the issuing of a summons or $\overline{\$}$ an investigation, further warrant and may direct investigation, to be made by the police into that charge or complaint; and a police officer receiving such a direction shall investigate or further investigate the charge or complaint and report to the court issuing the direction.

The Chief Magistrate followed this provision because it was not possible that a Local Chief as provided in sub-section 4 of section 42 of the MCA could provide information to the Magistrate relating to offence of money laundering.

When the Chief Magistrate decides to refer the matter to the police it is a decision which does not require the consent of the complainant. The appellant seems to believe that this was his case and the Magistrate was only assisting him to prosecute.

The criticism that he was not copied in is misconceived. It is within the mandate of the Magistrate who receives the complaint to objectively verify the allegation without influence from the complainant.

Once the complainant files his or her complaint, he or she leaves the matter to court to decide. The complainant should not and must never tell a Magistrate how to decide the case. It is assumed that by the time the complainant files a complaint, he or she has gathered enough information to sustain charges.

The Magistrate is required to verify those allegations first. It is, therefore, a misconception for the appellant to argue that his affidavit was enough for the magistrate to draw charges and prosecute the accused without input from any other authority.

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That is against the law of private prosecution contained in **Section 42** of the MCACap 19.

Besides, if a Magistrate writes to the Director CID to investigate a matter, why should a party ask the same Magistrate to write to the IGP? The Inspector General of Police does not investigate crimes. That is a function of the CID. Even if the IGP was asked to investigate a case, he or she would direct the CID to investigate such a case referred to his or her office!

It is, therefore, my finding that under section 42 of the MCA, Cap 19, there is no provision for a private prosecutor whose complaint 10 has not been validated by the Magistrate to make an application seeking additional evidence to support his/her claim. There is no provision in section 42 of the MCA, Cap 19 for the purported motions in Miscellaneous Applications 14 and 15 of 2014. The same should have been dismissed for being incompetent. The two were null and void. They were correctly dismissed. They were irrelevant and not provided for under the law.

I wish to add that criminal law is structured. There is no provision for inherent powers like in civil suits. The law for private prosecution in Uganda is so limited in scope. It would require an Act 20 of Parliament to provide for applications such as the ones the appellant filed and the involvement of a Magistrate. Short of that there is no justification for the complaint in ground one. It fails.

Grounds 2, 3, 5, 6 and 7.

The gist of the complaint in the above grounds is that the trial Chief Magistrate ruled that "...there was no sufficient evidence pointing to corruption and money laundering.."

The appellant submitted that Misc. Application 14 of 2024 which the Magistrate failed to determine before getting the police report was intended to obtain that "sufficient evidence".

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Further, the appellant criticized the Chief magistrate for not serving him with the police report and hearing his side before believing the report of investigations. He contended that he was denied opportunity to be heard.

The two motions filed by the appellant were purported to be brought under the Provisions of National Objectives and Directive Principles of State Policy, Articles 3(4), 8A, 17(1), 21(1), 28(4)(a), 126(1), 128(3) and 232(2) of the Constitution; Sections 9, 11, 42(1)(c)(3-7) of the MCA.

With respect, the provisions cited in the motions are a fishing expedition. They do not give the appellant locus standi to engage the court to assist him obtain or generate evidence to support his complaint to court.

Judicial Officers in criminal trials are insulated from descending into the arena of the dispute so as to remain neutral. The Common Law System which we espouse does not permit a Judicial Officer to do what the appellant wanted to be done.

Further, a Court could only entertain an application once there were framed charges. But in this case the Chief Magistrate had not yet drawn up a charge sheet. Technically there was no substantive matter from which an application could arise.

I should add that under section 42 of the MCA, Cap 19, a complaint made by a private prosecutor is subject to verification by the Magistrate before charges are drawn up. The process of verification is contained in sub-section 5 and 7 of section 42 of the MCA, Cap 19. They provide as follows: -

- (5) After satisfying himself or herself that prima facie the commission of an offence has been disclosed and that the complaint is not frivolous or vexatious, the magistrate shall draw up and shall sign a formal charge containing a statement of the offence or offences alleged to have been committed by the accused.

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- (7) Notwithstanding subsection (6), a magistrate receiving any charge or complaint may, if he or she thinks fit for reasons to be recorded in writing, postpone the issuing of a summons or investigation, warrant and may direct an \$or\$ further investigation, to be made by the police into that charge or complaint; and a police officer receiving such a direction shall investigate or further investigate the charge or complaint and report to the court issuing the direction.

Clearly, a complaint from a private prosecutor requires statutory *verification or validity* by the Magistrate before charges are drawn up. It is not correct for the appellant to assert that his affidavit was sufficient to cause the drafting of charges and summoning the accused to court. The Magistrate must be satisfied that prima facie, a crime has been committed. This is a judicial process. It is necessary to protect people from wild and imaginary allegations. Courts deal with credible evidence which require that the Magistrate must be satisfied that allegations are credible and not frivolous or vexatious.

A private prosecutor cannot file a shallow complaint in court and ask the court to issue orders to generate more evidence to beef up his/her complaint. What the Magistrate is required to do is to verify the allegations as they appear in the complaint. That is the request made to the Local Chief.

The Magistrate may, however, ask the Police to investigate the allegations. In this process, the participation or hearing of the complainant is not provided for. This is not a civil suit. It is a judicial process under criminal law. The cases cited by the appellant relating to the right to be heard are not applicable at this stage because there is no charge sheet yet. There is no accused in court yet.

Money Laundering is a technical offence requiring sophisticated investigations beyond the competence of a private prosecutor. There

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must be a predicate offence from which proceeds of crime flow. Such complaints should be made to the police or the IGG who have the legal authority, resources and tools to investigate and obtain evidence in sophisticated crimes such as money laundering.

It has not been shown why the appellant is striving to go it alone. Has the Police, the Inspectorate of Government or DPP or the State House Anti-corruption unit refused, ignored or shown reluctance to attend to the appellant?

It is not appropriate to engage a Magistrate in the investigation process of a criminal offence and then expect such a Magistrate to be neutral during the trial. There should be an elaborate law for that to happen otherwise allegations of bias would arise. A Court should try cases investigated by other agencies and not by itself unless a specific law provides so.

In Conclusion, after reviewing the record and the law applicable it is my finding that the appeal has no merit. The complaint was subjected to police investigation and found to be alarmist. There was no credible evidence to sustain charges. The participation of the Magistrate in gathering evidence to bolster the complaint before drawing up charges is not backed by any **provision in section 42**

of the MCA, Cap19. The provisions cited by the appellant in the motions are not specific to the application. They do not provide locus or the procedure to bring the applications complained of.

Similarly, the participation of the appellant in the process of verification of the charges is not provided for under the law that the complaint was made. That process is supposed to be objective and independent by the Magistrate. She did exactly that. Any undue influence from the appellant would have deprived the Magistrate of her neutrality in determining if, prima facie, an offence is disclosed or not.

In the result, the appeal is devoid of merit and is dismissed.

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Gidudu Lawrence JUDGE 25th April, 2025

ORDER

The \$A/R\$ is directed to deliver this judgment to the appellant

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Gidudu Lawrence

JUDGE

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25th April, 2025

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