

UGANDA / JUDGMENT

Mumbere v Uganda (Miscellaneous
Application 39 of 2023) [2024]
UGHCICD 3 (18 March 2024)

[2024] UGHICD 3

COURT

HC: International Crimes Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

Miscellaneous Application 39 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(INTERNATIONAL CRIMES DIVISION) HCT-00-ICD-CM-0039-2023 5 (ARISING FROM
HCT-00-ICD-SC-0011-2018) (ARISING FROM JINJA CHIEF MAGISTRATE CRIMINAL
CASE NO. AA-64/2016) (ARISING FROM POLICE CRIMINAL CASE NO. KASESE CRB
NO. 881 OF 2016) HIS MAJESTY CHARLES WESLEY

| MUMBERE
IREMANGOMA
..... | APPLICANT |

|-----|-----|

| VERSUS | |

| UGANDA | RESPONDENT |

|||

BEFORE: HON. LADY JUSTICE ALICE KOMUHANDI KHAUKHA

RULING

Introduction

This Ruling is in respect of an Application brought by way of Notice of Motion for Orders that:

1. The Applicant's property to wit: a residential house which acted as his palace 25 (Buhikira Royal Palace) situated on Kibanzaga Road Plot No. 36 Kasese Municipality; Supreme Vehicle Toyota Land cruiser with Number Plate Omusinga 1; a Toyota Noah van; a Pick-up lead car ford with Number Plate Royal Guard; and a personal Pistol (Israel make) which H. E Yoweri Kaguta

Museveni bought for him; 30 rounds of ammunition; two magazines; Pistol case; the Rwenzururu Kingdom Administrative building situated at Alexander Street, Kasese Municipality; and many others which were seized during his arrest on 27/11/2016 should be released and returned to him on grounds that the case was

5 withdrawn by DPP on 13/06/2023.

Appearance and Representation

The Applicant was represented by Mr. Alfred Makasi of M/S Makasi & Co. Advocates while the Respondent was represented by Ms. Lillian Omara, Chief State Attorney, and 10 Ms. Marion Ben-Bella, Senior State Attorney both from the Office of the Director of

Public Prosecutions.

Counsel for both parties were given time frames within which to file their submissions but the same were not adhered to. Counsel for the Applicant was directed by this Honourable Court to file his submissions by the 4th 15 day of March 2024 while Counsel for the Respondent was directed to file submissions in reply by 11th March 2024. A rejoinder, if any, was supposed to be filed by Counsel for the Applicant by 14th March 2024. Instead, Counsel for the Applicant filed his submissions on 13th March 2024 and none were filed by Counsel for the Respondent. Due to the disregard of the Court 20 directives, the submissions of Counsel for the Applicant **have not been** considered while determining this matter.

The Application

The grounds upon which this Application is premised are contained in the Applicant's 25 Affidavit in Support of the Application which can be summarized as follows:

- 1) That the Applicant was arrested on 27/11/2016 from Buhikira Royal Palace by security operatives and was charged with the offences of Treason, Terrorism, Murder, and Malicious damage to property, among others;
- 2) That upon the Applicant's arrest, property to wit: a residential house which acted as his palace (Buhikira Royal Palace) situated on Kibanzaga Road Plot No. 36 Kasese Municipality; Supreme Vehicle Toyota Land cruiser with Number Plate Omusinga 1; a Toyota Noah van; a Pick-up lead car ford with Number Plate 5 Royal Guard; and a personal Pistol (Israel make) which H. E Yoweri Kaguta Museveni bought for him; 30 rounds of ammunition; two magazines; Pistol case; the Rwenzururu Kingdom Administrative building situated at

Alexander Street, Kasese Municipality; and many others were seized;

- 3) That on 13/06/2023, the case against the Applicant was withdrawn by the DPP 10 by entering a *Nolle Prosequi;*
- 4) That upon the advice of his lawyers, the Applicant believes that it is his human and Constitutional right to apply for a Court Order for the release of the said property;
- 5) That it is in the interest of justice that this Honourable Court exercises its 15 discretion in favour of the Applicant.

The Respondent opposed the Application through an Affidavit in reply sworn by Mr. Thomas Jatiko, Assistant Director of Public Prosecutions in the Office of the Director of Public Prosecutions attached to the International Crimes Department which may be 20 summarized as follows:

- 1. That the deponent guided investigations in Police Criminal Case No. CRB No. 881 of 2016 and is now prosecuting Court Criminal Case No. HCT-00-ICD-SC-0011-2018 where the Applicant and others were jointly indicted for Treason, Misprision of Treason, Murder, Attempted Murder, and Aggravated Robbery, 25 and as such, he is conversant with the facts and evidence in this case;
- 2. That although proceedings against the Applicant and some others were discontinued, the proceedings against Prime Minister Thembo Kitsumbire who

was jointly charged with the Applicant is ongoing before this Honourable Court for charges of Treason, Misprision of Treason, and Terrorism;

- 3. That the items listed in paragraph 1 of the Application and paragraph 5 of the Affidavit supporting the Application are subject of HCT-00-ICD-SC-0011-2018 5 as exhibits, scene of crime, and Government property as such he opposes the Application for release of the said items because if such an order is granted, it will essentially dispose of Police exhibits, interfere with the crime scene and give ownership of a firearm to a private individual in total disregard of the law and procedures;
- 10 4. That any firearm (pistol) can only be privately owned subject to the grant of a licence from the Government of Uganda and can be withdrawn at any time;
- 5. That the Application is improper before this Honourable Court as the Applicant is requesting the Court to dispose of exhibits that have not yet been brought under its jurisdiction;
- 15 6. That the Applicant knows the right authority/authorities from whom to request for the release of the items but has not done so and rushed to court well knowing that the ongoing criminal trial against the Prime Minister, Thembo Kitsumbire would be frustrated if the Order is granted;

- 7. That it is in the interest of justice and fairness that the Application is not allowed.
- 20

Issue

Whether the Applicant's property listed in his Application should be released and returned to him on grounds that the case against him was withdrawn by DPP.

25 Resolution of Issue

This Application was brought by way of a Notice of Motion under Articles 26 and 120 of the Constitution of the Republic of Uganda, 1995 (as amended); Section 134 of the

Trial on Indictments Act, Rule 13 of the Constitution (Management of Exhibits) (Practice Directions) 2022; and Rule 2 of the Judicature (Criminal Applications) Rules.

Article 26 of the Constitution of the Republic of Uganda, 1995 (as amended) provides

5 for protection from deprivation of property. It stipulates that:

(1) Every person has a right to own property either individually or in association with others.

(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied—

(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, 10 *public safety, public order, public morality or public health; ..."* **[Emphasis Mine]**

Article 120 of the Constitution of the Republic of Uganda provides for the Director of Public Prosecutions (DPP). Clause 3 Paragraph (d) thereof stipulates one of the functions of the DPP as:

- 15 *to discontinue at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the Court."* **[Emphasis Mine]**

- 20 Section 134 of the Trial on Indictments Act, Cap. 23 provides for the Power to enter nolle prosequi. It stipulates that:

(1) In any case committed for trial to the High Court, and at any stage thereof before verdict, the Director of Public Prosecutions may enter a nolle prosequi, either by stating in Court or by informing the Court in writing that the State intends that the proceedings shall not continue, and

25 *thereupon the Accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he or she has been committed to prison shall be released, or if on bail his or her recognisances shall be discharged; but such discharge of an Accused person shall not operate as a bar to any subsequent proceedings against him or her on account of the same facts."* [Emphasis Mine]

Rule 13 of the Constitution (Management of Exhibits) (Practice) Directions, 2022 provides for management of exhibits under special circumstances in particular vehicles. It stipulates that:

(1) Any vehicle confiscated as an exhibit must be handed over to the Police and stored at the Police 5 *premises pending the directions of Court.*

(2) Any forensic testing or fingerprint extraction should be done before the vehicle is handed over to the Police for storage."

Rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S. I 13-8 provides 10 for Applications in criminal cases. It stipulates that:

"All Applications to the High Court in criminal cases shall usually be in writing and, where evidence is necessary, be supported by an Affidavit."

The Applicant in his Affidavit in Support to the Application states that he was advised 15 by his lawyer, whose advice he verily believes to be true, that he had a fundamental and Constitutional right to apply before this Honourable Court for his properties which were seized by Police upon his arrest on 27th November 2016 on grounds that the case was dropped by entering a *nolle prosequi* by the DPP under Article 120 of the Constitution of Uganda, 1995 (as amended).

In response, the Respondent contends that the Application is improper before Court because the said properties are intended exhibits in HCT-00-ICD-SC-0011-2018 against the Prime Minister, Thembo Kitsumbire, scene of crime and Government property, and disposing them of would be improper especially since the said exhibits

25 have not yet been brought under this Court's jurisdiction.

Having considered the pleadings of both parties, I hereby make the following findings:

1. Article 26 of the Constitution which the Applicant seeks to rely on to claim his property right provides for compulsory deprivation of property which is not applicable in the instant case. The Applicant has not provided this Court with any evidence in his Affidavit that he has been compulsorily deprived of his property. On the contrary, it is his evidence and confirmed by the Respondent that the said items were retrieved as exhibits during a criminal investigation;
- 5 2. In agreement with the Respondent, the Applicant is aware that whereas the DPP entered a *nolle prosequi* and discharged him of all the offences in HCT-00-ICD-SC-0011-2018, the case is still subsisting in the Court with one Accused person to wit: Mr. Thembo Kitsumbire

who was a Prime Minister in the kingdom of the Applicant. He is facing the same charges that the Applicant was charged with. 10 This matter is still at the pre-trial stage and the properties the Applicant lists in his Application may be exhibits that the Prosecution intends to rely on in the said ongoing case. Making any order disposing of them at this stage may negatively affect the case in light of the contestation by the Respondent;

- 3. I am satisfied that the deprivation of the said properties is justifiable in the 15 circumstances because HCT-00-ICD-SC-0011-2018 is still ongoing. In particular, on 11th March 2024, the Prosecution in agreement with Counsel for the Accused marked disclosures, which were inclusive of the said listed property as Identified Prosecution Exhibits;
- 4. In light of the above, this Application is premature. This Court is yet to give its 20 Ruling on the confirmation of charges and before then, handing back the listed properties in the Application to the Applicant could be prejudicial to this case if the charges are confirmed against the remaining Accused person in HCT-00- ICD-SC-0011-2018 and he has to be committed for trial;
- 5. The Applicant also brought his Application under Rule 13 of the Constitution 25 (Management of Exhibits) (Practice) Directions, 2022 which provides for the management of exhibits under special circumstances, in particular, vehicles. It was the Applicant's statement in his Affidavit in support that the listed vehicles were seized by the Police upon his arrest on 27/11/2016. This does not in any

way offend the said Rule 13 which Counsel for the Applicant seeks to rely on. The law does not provide for handing back of a vehicle confiscated by Police but instead provides for how it should be exhibited;

- 6. Disposal of exhibits is provided for under Rule 27 of the Constitution 5 (Management of Exhibits) (Practice) Directions, 2022. Sub-rules 4 and 5 of the same stipulate that exhibits should not be released or destroyed until the right of appeal is exhausted and exhibits shall be disposed of by Order of Court **before, during, or after the trial depending on their nature** , respectively. [Emphasis Mine] According to the list of properties mentioned in the Application, I am 10 satisfied that they are not in the category of exhibits that should be released before the pre-trial stage of HCT-00-ICD-SC-011-2018 is completed.

Conclusion

In light of the above, therefore, this Application wholly fails and is hereby dismissed.

Dated at Kampala this 18th day of March 2024

20 Alice Komuhangi Khaukha

JUDGE18/03/2024

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