

UGANDA / JUDGMENT

Semakula & 3 Others v Uganda (Criminal Revision 40 of 2023) [2024] UGHCCRD 55 (21 August 2024)

[2024] UGHCCRD 55

COURT

HC: Criminal Division (Uganda)

BEFORE

Gadenya, J

CASE / FILE NUMBER

Criminal Revision 40 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL REVISION NO. 040 OF 2023

(Arising from Buganda Road Criminal Case No. 0424 of 2023)

SEMAKULA PATRICK

NANGOBI REBECCA

MUTYABA TIMOTHY

NALONGO KANTONO ZAINA APPLICANTS

VERSUS

UGANDA RESPONDENT

BEFORE

JUSTICE GADENYA PAUL WOLIMBWA

RULING

The Applicants brought this application by way of Notice of Motion under **Article 274(1) & (2) of the Constitution of the Republic of Uganda, 1995 as amended, Sections 14(2) (c), 17(2) and 33 of the Judicature Act, Cap. 13, Sections 48 and 50 of the Criminal Procedure Code Act, and rule 2 of the Judicature Criminal Procedure Act** against the Respondent seeking the following orders.

1. That this Honourable Court be pleased to call for and examine the record of proceedings in Buganda Road Criminal Case No. 0424 of 2023.
2. That this Honourable Court be pleased to revise and set aside the ruling and orders of the Chief Magistrate of Buganda Road at Buganda Road in Criminal Case No. 0424 of 2023.
3. A declaration that the Chief Magistrate Court of Buganda Road at Buganda Road has no geographical jurisdiction to try Criminal Case No. 0424 of 2023.
4. That Criminal Case No. 0424 of 2023 be transferred to a court with geographical jurisdiction.
5. An order that the criminal proceedings in Buganda Road Criminal Case No. 0424 of 2023 be stayed pending the outcome in High Court Family Division HCCS No. 25 of 2023.
6. That it is an abuse of court process to allow forum shopping.
7. Costs of the application be provided for.

The application is supported by the applicant's affidavits and the grounds briefly are as follows;

1. That there is a pending civil case in the High Court of Uganda Family Division, vide HCCS No. 25 of 2023 wherein the will is the basis of HCCS No. 25 of 2023.
2. That if the criminal case is heard before the civil case is determined, there is a risk of conflicting decisions by High court of Uganda and the Chief Magistrates Court of Buganda Road at Buganda Road.
3. That this is a proper case for revision by this Honourable Court.
4. That the particulars in the criminal case arose from the judicial process.
5. That it is in the interest of justice that this application be granted; the ruling and orders be revised and set aside by this Honourable Court.

Brief facts

The background of this application is that the Applicants were charged before the Chief Magistrate Buganda Road on one count of Forgery contrary to sections 342 and 348 of the Penal Code Act, one count of Conspiracy to commit a felony contrary to section 390 of the Penal Code Act, four counts of uttering a false document contrary to sections 347 and 351 of the Penal Code Act and one count of intermeddling with property of the deceased contrary to section 11(1) (2) of the Administrator General's Act, all in various locations in Kampala District.

At the hearing, counsel for the Applicants/Accused made an application for a stay of criminal proceedings in Buganda Road Criminal Case No. 0424 of 2023 pending hearing and determination of High Court Family Division HCCS No. 25 of 2023 on the ground that it pertains to the same subject matter and all charges in the criminal matter are directly or substantially the same as issues pending in the civil suit and that since the offences were allegedly committed in Komamboga which is outside the geographical jurisdiction of the Chief Magistrates Court of

Buganda Road.

The trial court heard the application and dismissed it, hence the instant application for revision before this court.

Representation.

M/S Alma Associated Advocates appeared for the Applicants, while Senior State Attorney Joy Christine Apolot from the Office of the Directorate of Public Prosecutions appeared for the Respondent. Both parties filed written submissions.

Issues:

1. Is this a proper application for revision?
2. Did Buganda Road Chief Magistrates Court have the geographical jurisdiction to try Criminal Case No. 0424 of 2023?
3. Should the criminal proceedings in Buganda Road Criminal Case No. 0424 of 2023 be stayed?

Submissions of counsel for the Applicants.

On Issue one.

Counsel cited Sections 48 and 50(1) (b) of the Criminal Procedure Code Act that provides for powers of the High Court on revision. He also cited Section 17 (1) of the Judicature Act, which provides that the High Court shall exercise general powers of supervision over magistrates' courts. He stated that in the instant facts, the Applicants were charged with the offences of forgery of a will, conspiracy to commit a felony, uttering of a false document to H/W Katushabe, His Lordship David Matovu and the Wasswa Ricky of Kira Road Police Station. The will that forms the basis upon which all the other counts arise is also the same issue as before the High Court Family Division, wherein the complainants sought to cancel the letters of administration that were obtained based on a forged will.

Counsel further cited Section 50(5) of the Criminal Procedure Code Act, which provides that 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 under this section. However, no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed.

He stated that the purpose of examination of the record of the subordinate court is, therefore, to correct the conclusions of that court, if necessary. He called upon the court to exercise its powers of revision. He called upon this court to look at the case of **Kaketo Farouq Vs—Uganda Criminal Revision No. 18 Of 2023**.

On Issue two.

Counsel for the Applicants argued that according to the evidence, the will attached to the application was drafted in Komamboga. He notes that the Applicants were charged with forgery of a will as count one, the basis from which all the seven counts stem from, was drafted and or made in Kisasi, Komamboga, which falls under Kawempe division. He states that the charge sheet states under count one that the will was drafted in Kampala District. He further states that Kampala District is not a magisterial area and that the magisterial areas known under the law are Buganda Road Chief Magisterial Court, Makindye Chief Magisterial Court, Nakawa Chief Magisterial Court, Nabweru Chief Magisterial Court and Mengo Chief Magisterial Court and that therefore, a charge sheet must be very certain as to the place where the said offence was committed. It must be clearly described to define jurisdiction. He contends that count one, as it appears on the charge sheet, is too vague for any person to know where the alleged offence was committed.

He further stated that if the State is to amend the charge sheet and put the alleged particulars of forgery, including the place and time, the Chief Magistrates Court of Buganda Road shall not have geographical jurisdiction to entertain the criminal proceedings. He noted that the learned trial magistrate seemed to cling himself on count three because the case was reported to Kira Road police station, which is not within the jurisdiction of Kawempe. He noted that Section 37 of the Magistrates Court Act, which the learned trial magistrate relied on, is not applicable. He, therefore, stated that it is on the above premise that the Applicants challenge the geographical jurisdiction of the Chief Magistrates Court of Buganda Road at Buganda Road because the will was drafted in Kisasi, Komamboga, which falls under Kawempe division, which falls under Nabweru magisterial area.

He also further contends that the Applicants were charged with the offences of uttering a false document to H/W Katushabe and uttering a false document to His Lordship Justice David Matovu in Makindye Division. However, one wonders why the complainant did not complain to Katwe or Kawempe police station but chose to go and report to Kira Road Police Station.

In conclusion, he submitted that Kira Road police station has no connection or relationship whatsoever with the offences committed as the offences were allegedly committed in the Kawempe and Makindye divisions but reported in another police station. He invited the court to look at the case of **Ankwatsa Mary vs Uganda HCT-00-CR-CV-004-2013** and also relied on the case of **Uganda vs Wadri & 3Ors (Criminal Revision No. 0002 of 2018) [2018] UGHCCRD 151*.***

On Issue three.

Counsel relied on section 209 of the Magistrates Courts Act, which provides that no Magistrate's court shall proceed with the trial of any suit or proceeding 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 under whom they or any of them claim, litigating under the same title where that suit or proceedings is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed. He further relied on the case of **Uganda v Ssonko (Criminal Revision Appl. No. 12 of 2019) [2019] UGHCCRD 42**, where the court

stated the essential ingredients of section 209 of the Magistrates Court Act to be proved before the court stayed proceedings.

He invited this Honourable Court to be persuaded by the authority of **Musumba Yahaya and Another Vs. Uganda, (Criminal Revision Cause 4 of 2019) [2021] UGHC 8 (10 March 2021)**.

He stated that determining whether the letters of probate were granted lawfully will have a bearing on the criminal proceedings, as seen in the case of **Springs International Hotel Limited Vs. Hotel Diplomat and Bonny M Katatumba Civil Suit No.227 of 2011****. He also invited this Honourable Court to take judicial notice of the growing trend of criminalising family disputes.

In conclusion, he stated that since the complainants, who are the plaintiffs, filed a complaint in the High Court Family Division seeking cancellation of the letters of probate obtained on the basis of a forged will, it is his humble submission that the determination in the High Court Family Division will have a bearing on the criminal proceedings, thus the need for the criminal proceedings to be stayed. He stated that the instant application satisfies the conditions for revision.

Submissions of counsel for the Respondent.

On Issue one.

On perusing the submissions by counsel for the Respondent, I found that she didn't make any submissions on issue one regarding whether or not this is a proper application for revision. I assume she left it to the court to make its judgment.

On Issue two.

Counsel for the Respondent cited sections 34 and 35 of the Magistrates Court Act, which provides that the case will be ordinarily tried where it was committed. She further referred to Section 37(b) of the Magistrates Court Act, which provides that where an offence is committed partly in one local area and partly in another, courts have jurisdiction to try that offence.

She states that Criminal Case No 424/2023 facts fall under section 37(b). She states that the forged documents were uttered at Kira Road Police station, which falls under the jurisdiction of the Chief Magistrate of Buganda Road, while the will was forged in another magisterial area. Therefore, she urges that the case be rightly before the Buganda Road Chief Magistrate.

On Issue three.

Counsel for the Respondent submitted that no case law provides that criminal proceedings must be stayed in favour of civil proceedings. She cited the Supreme Court of **Sarah Kulata Basangwa Vs. Uganda, Supreme Court Criminal Appeal No.03 of 2018** stated that it cannot be a correct proposition of the law that where a civil suit is pending between two parties, no criminal proceeding may be instituted against one of the parties arising from the same facts. She also cited the case of **Musumba Yahaya and Another Vs. Uganda, (Criminal Revision Cause 4 of 2019) [2021] UGHC 8 (10 March 2021)** where the learned judge noted that no statutory law requires that

a civil or criminal matter should take precedence over the other and the MCA made no provision for staying of criminal proceedings in preference of hearing a civil matter.

She further cited the case of **Uganda vs. Ssonko (Criminal Revision Appl. No. 12 of 2019) [2019] UGHCCRD 42**, in which the court stated the ingredients of section 209 of the Magistrates Court Act Cap 16. She stated that where the above circumstances exist, a suit may be stayed.

She submitted that the Applicants' argue that the Magistrates Court is obliged to stay proceedings if there are two concurrent suits or proceedings, one of which is previous or filed earlier than the other before the same court or any other court vested with the jurisdiction to hear the suit or proceeding. In this case, Criminal Case No. 424 of 2023 was instituted at Buganda Road Chief Magistrates Court, while civil suit No. 25 of 2023 was instituted on 30/01/2023 at the High Court's Family Division. She conceded that both suits were proceeding concurrently in the different courts with jurisdiction to hear them and answered the ground in the affirmative.

On whether the subject matter of the suit or the proceedings is directly or substantially the same, she relied on ***Criminal Case No. 424 of 2023 Uganda Vs. Semakula Patrick and HCCS No. 25 of 2023*** stated that the two are different. She states that the 2 cases are different in terms of remedies sought. She noted that the trial magistrate was correct to decline the stay of the criminal cases in favour of the civil case and that this is the proper position of the law.

She relied on the case of **Joseph Zagyenda Vs. Uganda (Crim. Appl. No. 11 of 2011) [2011] UGHC 59**.

She has relied on the cases of **Sebulime Baker vs Uganda (High Court Criminal Appeal No. 21 of 2018) [2018] UGHCCRD 226** and **Kanyamunyu Mathew vs Uganda (Criminal Miscellaneous Application No. 151 of 2020) [2020] UGHCCRD 144**, in which Justice Stephen Mubiru stated that the retributive objective of punishment drives the contemporary justice system in Uganda.

Counsel stated that the Accused persons are charged with an offence criminalised under the laws of Uganda. The offences charged are offences that are generally on the rise in Uganda. It would, therefore, surely interest the public to know that the perpetrators of such heinous crimes have been brought to book.

Counsel states that her understanding of **Section 209 of the Magistrates Courts Act** applies to civil and criminal cases. She states that in this particular case, the criminal case was filed before the civil matter and, therefore, a previously instituted suit or proceeding. In the civil matter, the accused is the Plaintiff/Counter defendant, while the complainants are the Defendants/Counterclaimants. She states that they are, therefore, the same parties involved, save for the state, which, however, prosecutes cases on behalf of complainants in criminal cases.

The subject matter is a land dispute where each party claims ownership and destroys crops. The Trial Magistrates relied on section 209 to stay the criminal matter previously instituted in preference of the civil matter. In common law, criminal matters take precedence over civil matters, but the Trial Chief Magistrate did not even apply common Law, which is the law of precedence. She applied the substantive Law in the Magistrates Courts Act. Revisionary powers

of the High Court are not doubted. While exercising those powers, the court looks at the correctness of the proceedings—application of the law to the facts, legality and propriety. In the instant case, the law provides for the stay of the new suit or proceeding, not the previous one.

She states that as much as one of the plaintiffs in the civil suit is an accused person in the criminal case, upon charging the Applicants, the state took over the matter and became the party to the suit. Therefore, it is incorrect to say that the parties in both suits are the same. This ground is answered in the negative.

She also cited the case of **Jefferson Lid vs Bhetcha, 1979 WLR 898***,* and stated that the Applicants did not bring out the real dangers they are expected to suffer if the two cases are allowed to proceed concurrently and how the continued prosecution of the criminal case would constitute a miscarriage of justice to the applicant in terms of his ability to defend himself in court in the civil matter.

In conclusion, she prayed to this Honourable Court not to grant orders to stay Criminal Case No. 0424 of 2023 pending the hearing and determination of High Court Family Division HCCS No. 25 of 2023 because the criminal case is public, and administrative policy gives priority to the public interest in law enforcement.

Submissions in Rejoinder by counsel for the Applicants.

In rejoinder, counsel for the Applicants noted that the submissions of counsel for the Respondent were not helpful to the court. He further submitted that the State Attorney didn't address the court on the issue of whether the Chief Magistrates Court of Buganda Road at Buganda Road has geographical jurisdiction to try this matter but instead addressed the court only on the issue of whether the criminal proceedings in Buganda Road Criminal Case No. 0424 of 2023 can be stayed pending the outcome in High Court Family Division HCCS No. 25 of 2023. He noted that the State Attorney conceded to the issue of geographical jurisdiction.

Counsel referred to the case of **Prof. Oloka Onyango Vs Attorney General Constitutional Petition No.6 of 2014***,* where it was held that "every allegation in a plaint if not specifically or by necessary implication denied in a pleading by an opposite party shall be taken to be admitted". He invited this Honourable Court to be persuaded by the reasoning in the case of **Energo Projekt Niskogradnja Joint Stock Company Vs Brigadier Kasirye Gwanga and Anor HCCS No.186 of 2009**. He prayed that the application would be allowed on this ground alone since the State has admitted by implication. He noted that he reiterated their earlier submissions.

Consideration of the application by the court.

I have carefully studied and reviewed the lower court's record, considering the submissions of both counsel and the laws and authorities referred to therein. I have also considered other applicable authorities that were not cited.

I shall resolve all the issues 1, 2 and 3 separately in that order.

Resolution of issue one.

This issue relates to whether or not this is a proper application for revision.

The **Criminal Procedure Code Act, Cap. 122** does not define the term revision. However, the **Black's Law Dictionary**, 9th Edition by Bryan and Garner gave a persuasive definition of the term as a re-examination or careful review for correctness or an altered version of work. Therefore, revision entails the High Court re-examining the record or orders made by the lower court to satisfy itself as to the propriety or correctness, regularity or legality of the proceedings or orders made by the Lower Courts.

The power of revision is derived from the general and supervisory powers of the High Court under **Section 17(1) of the Judicature Act, Cap. 16**,* which provides for the High Court's supervisory power to the Magistrate Court. The main concern under the section below is ensuring that justice is administered without regard to technicalities.

(1) "The High Court shall exercise general powers of supervision over Magistrates' courts."

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."

Section 50 (1)(b) of the **Criminal Procedure Code Act, Cap. 122** 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;

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

Further, **Section 50 (5) of the Criminal Procedure Code Act, Cap. 122** allows any person aggrieved by any finding or order made by the magistrate's court to petition the High Court to revise it.

Under ***Section 50 (5)* of the *Criminal Procedure Code Act, Cap. 122***;

"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 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."

Section 33 of the Judicature Act, Cap. 16 provides for the general power of the court to give a remedy; it states that-

“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or 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 as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided”.

From the reading of the above provisions of the law, it is clear that this court has the power to revise criminal proceedings from the Magistrate court. I have perused the file at the Buganda Road Chief Magistrates Court pertaining to the criminal case against the Applicants, and it is my finding that there is indeed an order of court dated 15/09/2023 that is subject to revision in this matter. I therefore answer issue one in the affirmative.

This application is a proper application for revision.

Resolution of issue two.

Territorial/geographical jurisdiction is envisaged in section 34 of the Magistrate Courts Act, which provides that;

“Subject to the provisions relating to transfer conferred by this Act, every offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed”.

Further, section 35 of the Magistrate Courts Act stipulates that:

“When a person is accused of the commission of any offence by reason of anything which has been done or any consequence which has ensued, the offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued”

I have considered the ruling in **Ahmed Kawoya Kangu Vs. Bangu Aggrey Fred & Anor SCC Application no. 4 of 2007**, where Hon. Justice Bart Katureebe (as he then was) held that jurisdiction of the Court is not a matter for implication but must be prescribed by law.

B. D Chipeta in his book, *A Magistrate’s Manual* at page 3 defines jurisdiction to mean:

the extent to which, or limits within which, such a court can lawfully exercise its powers, and what powers.

While he defines:

Territorial jurisdiction means the geographical areas within which a court can exercise its powers.

In **Arther Tindimwebwa & Others Vs. Joy Muhereza & Anor HCT-05-CV-CA-0055-2010***, Justice Andrew Bashaija observed that:

It is settled that jurisdiction is always a creature of statute, and where the statute does not expressly confer such jurisdiction, a court cannot competently entertain the matter.

The charge sheet in the instant application shows that the offences charged in count 1, which, of course, form the genesis of the other counts, were committed in the Kampala District but didn't specify where exactly in Kampala District. The other counts were committed at Kira Road Police Station, Makindye and Komamboga, all within Kampala District.

I am persuaded by the submission of the Senior State Attorney who argued that under **section 37 (b) of the Magistrates Courts Act**, when an offence is committed partly in one local area and partly in another and where it consists of several acts done in different local areas, the offence may be inquired into or tried by a court having jurisdiction over any of those areas.

For ease of reference, **sections 37 of the Magistrates Courts Act** provides as follows:

When—(a)it is uncertain in which of several local areas an offence was committed;(b) an offence is committed partly in one local area and partly in another;(c) an offence is a continuing one and continues to be committed in more local areas than one; or(d)an offence consists of several acts done in different local areas, the offence may be inquired into or tried by a court having jurisdiction over any of those local areas.

Under the above provision, a court can try an offense which is partly committed in its jurisdiction and other jurisdictions just like what happened in the case under consideration.

The offenses in the case under consideration were committed in diverse places in Kampala. Count I, which forms the genesis of the other counts, was committed in the Kampala District, but it is uncertain, in which part of Kampala the forgery was done. Forgeries by their nature are committed in fluid circumstances and it may be very difficult for the prosecution to prove with exactitude the specific village or parish in Kampala City where the alleged offense was committed. It is enough as the prosecution laid out in the charge that the forgery was committed in Kampala where Buganda Road Court derives its territorial jurisdiction.

The other counts were committed in Kira Road, Makindye and Komamboga. These counts were committed within the geographical areas of Buganda Road, Makindye and now Kawempe Magisterial Area, which has not yet been operationalised. Under section 37 of the Magistrates Courts Act, any of these Magisterial Areas can try these offenses as it would not make sense to try each of these offenses in the magisterial area where they committed. Therefore, since some of the offenses were committed within the geographical boundaries of Buganda Road Chief Magistrates Courts, the case is properly before the court.

Resolution of issue three.

Counsel for the Applicants prayed that the criminal case be stayed pending the determination of the civil suit before the High Court Family Division to avoid a miscarriage of justice. On the other hand, counsel for the Respondent cited a number of authorities in opposition to the stay of the criminal proceedings.

Both counsel for the Applicants and the Respondent cited the case of **Musumba Yahaya and Another *Vs.* Uganda**, (Criminal Revision Cause 4 of 2019) [2021] UGHC 8 (10 March 2021) where the learned Justice Eva K. Luswata (as she then was) had this to say partly;

“I note that no statutory law requires that a civil or criminal matter should take precedence over the other and the Magistrate’s court Act made no provision for staying of criminal proceedings in preference of hearing a civil matter. However, the authorities available seem to suggest that due to their public nature, and the fact that they address wrongs against society generally, criminal matters should take precedence.”

Further, counsel for the Respondent cited the case of **Joseph Zagyenda Vs. Uganda (Crim. Appl. No. 11 of 2011)** [2011] UGHC 59, where Justice Lameck N. Mukasa (as he then was), while highlighting the dichotomy between civil and criminal proceedings, held ***that:***

“There is a clear distinction between civil and criminal actions. The civil proceedings determine the civil litigants’ civil claims or liabilities and the standard of proof is on the balance of probabilities. There is a public interest in the criminal proceedings, and the required standard of proof is beyond reasonable doubt. The civil proceedings are individualistic in nature while the criminal proceedings are public in nature. Administrative policy, therefore, gives priority to the public interest in law enforcement.”

Counsel for the Respondent cited the case of **Sarah Kulata Basangwa Vs. Uganda, Supreme Court Criminal Appeal No.03 of 2018** in opposition to the stay of the criminal proceedings; however, I find the said authority distinguishable from the instant case. It discusses that a pending civil case does not bar the institution of criminal proceedings or the stay of criminal proceedings pending a civil suit. The discussed limitations of investigations by IGG under Section 19 (1) of the Inspectorate of Government Act, 2002, of which the court found that the IGG is not barred from instituting criminal proceedings pending a civil matter. This authority, though good law, does not apply to the instant case.

The above notwithstanding, the law in our jurisdiction is apparent; **s*ection 209*** of the Magistrate’s Court Act provides as follows;

“No Magistrate court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed”.

In the case of **Uganda Vs. Ssonko (Criminal Revision Appl. No. 12 of 2019)** [2019] UGHCCRD 42, as cited by both counsel for the Applicants and the Respondent, the learned Justice Margaret Mutonyi clearly stated, while referring to section 209 of the Magistrates Court Act that;

The essential constituents of section 209 of the MCA are the following:

1) That there are two concurrent suits or proceeding, one of which is previous or filed earlier than the other before the same court or any other court vested with jurisdiction to hear the suit or proceeding

2) The suit or proceeding is between the same parties or parties under whom they claim or litigate

3) The subject matter of the suit or proceedings are directly or substantially the same.

On the first constituent that there are two concurrent suits or proceeding, one of which is previous or filed earlier than the other before the same court or any other court vested with jurisdiction to hear the suit or proceeding, in this particular case, it is clear that there are indeed two suits or proceedings, one in the High Court Family Division vide HCCS No. 25 of 2023 according to annexure C of the affidavit in support of the Notice of Motion filed on 30/01/2023. Then there is, which was sanctioned in court on 21/05/2023. The criminal case was filed after the civil matter, five months after the other, and therefore, it was a previously instituted suit or proceeding. Thus, this application passes the first test.

On the second constituent that the suit or proceeding is between the same parties or parties under whom they claim or litigate, it is clear from the evidence that the 1st applicant/accused in the criminal case is the same 1st Defendant in the civil case. I note that although the rest of the Applicants /accused in the criminal case are not parties to the civil matter, the above provision of the law allows either all of them to be a party or any of them. I will reproduce the provision and underline it for emphasis. **Section 209** of the Magistrate's Court Act provides as follows;

“No Magistrate court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed”.

Therefore, because one of them, the first applicant/accused (Semakula Patrick) in the criminal case, is the same first Defendant in the civil case, they are the same parties involved, save for the state, which, however, prosecutes cases on behalf of complainants in criminal cases. This application, therefore, passes the second test.

Before I take leave on this, I wish to note that it was submitted by counsel for the Respondent that much as one of the plaintiffs in HCCS No. 25 of 2023 is an accused person in Buganda Road Criminal Case No. 0424 of 2023, upon charging the Applicants, the state took over the matter and became the party to the suit. Therefore, she states it is wrong to say that the parties in both suits are the same. I respectfully disagree with this assertion because, under Criminal Law, the crime is considered an offence against society. That is why the state starts criminal prosecution and controls prosecutions generally, even where there is private prosecution.

On the third constituent, the subject matter of the suit or proceedings is directly or substantially the same. I note that from the perusal of both the High Court Family Division case vide HCCS No. 25 of 2023 and Buganda Road Criminal Case No. 0424 of 2023, the subject matter is the forgery of the will of the late Mukiibi Fred Batanudde. It is also undisputed that the same is true for all family members who are the plaintiffs in the civil case and then the complainants in the criminal matter, but in the same subject matter. The matter before the court involves civil and criminal proceedings, which are the same subject matter. The third constituent, therefore, passes the third test too.

The authority of **Kanyamunyu Mathew vs. Uganda (Criminal Miscellaneous Application No. 151 of 2020)** [2020] UGHCCRD 144, as cited by counsel for the Respondent, does not relate to instances where civil and criminal proceedings arising from the same facts are ongoing concurrently.

Also, counsel for the Respondent referred to the case of **Sebulime Baker Vs. Uganda (High Court Criminal Appeal No. 21 of 2018)** [2018] UGHCCRD 226. In the above case, Hon. Lady Justice Flavia Senoga Anglin held that;

“There is no universal principle that proceedings in a criminal case must necessarily be stayed when a similar or identical matter is pending before a civil court. However, in the present case, the criminal proceedings arise out of complaints for offences allegedly committed during the pendency of the civil suit, involving the same facts and allegations. The issue of ownership of the disputed land is pending a decision before the Land Division and also the Court of Appeal. The dispute involved in the criminal proceedings is purely of a civil nature and if allowed to continue while the civil matters are pending, it will create complications instead of facilitating the matter.”

“Any decision given by the trial Magistrate Court on the issue of criminal trespass over land where the appellant is the one in occupation and there is an injunction to maintain the status quo, issued by the High Court, would have a direct bearing on the result of the criminal trial. And if the same issue is pending before different courts, there is an inherent danger of conflicting judgments. To avoid such a situation, it is better to stay proceedings of the lower court till the decision of the Land Division and of the Court of Appeal are given.”

The above reasoning of the learned judge is persuasive and relevant to the instant facts and application. I see no reason to depart from the same in favour of the application before me.

Based on the above analysis and after carefully reviewing the application, the affidavit, annexures to it, and the submissions of both counsel for the Applicants and the Respondent, I find that the proceedings in the criminal case are substantially arising from the same subject matter in the civil case that is before the High Court Family Division.

Therefore, in line with the authorities cited by this court and the reasons above, and in total agreement with the case of **Musumba Yahaya and Another Vs. Uganda, (Criminal Revision Cause 4 of 2019)** [2021] UGHC 8 (10 March 2021) as cited by both counsel, I find no reason to deny the

prayer of the Applicants for a stay of the criminal proceedings pending the determination of the civil matter before the High Court Family Division, the subject matter between the two cases being the same. I agree with the holdings in the authorities as cited by counsel for the Applicants. The criminal case touches on issues related to the forgery of the will that is also civil, and not staying with the said proceedings, in this case, will amount to an abuse of the court process. Indeed, there is a risk of conflicting decisions by the High Court of Uganda Family Division and the Chief Magistrate Court of Buganda Road over the same subject matter.

Accordingly, I order that the criminal proceedings in Buganda Road Criminal Case No. 0424 of 2023 be stayed until the High Court Family Division case HCCS No. 25 of 2023 is determined.

Decision.

In conclusion, the application is allowed in part with the following orders:

1. The Buganda Road Chief Magistrates Court has the territorial jurisdiction to try Criminal Case No. 0424 of 2023.
2. Buganda Road Criminal Case No. 0424 of 2023 be stayed until the final determination of High Court Family Division HCCS No. 25 of 2023.
3. The file is referred back to the Trial Court at Buganda Road.

I so order.

Gadenya Paul Wolimbwa

JUDGE

21st August, 2024.

Ms. Naiga for the Applicant.

Ms Apolot Joy Christine for the Respondent.

Ruling read in open Court.

Gadenya Paul Wolimbwa

JUDGE

21st August, 2024.

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