

UGANDA / JUDGMENT

Semule v Uganda (Criminal Revision Cause No. 20 of 2020) [2022]

UGHCCRD 71 (17 August 2022)

[2022] UGHCCRD 71

COURT

HC: Criminal Division (Uganda)

BEFORE

Asiimwe, J

CASE / FILE NUMBER

Criminal Revision Cause No. 20 of 2020

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION.**

CRIMINAL REVISION CAUSE NO. 20 OF 2020

(ARISING FROM CRIMINAL CASE NO. 165 OF 2017 & 255 OF 2020)

SEMULE JOEL APPLICANT

VERSUS

UGANDA RESPONDENT

RULING

BEFORE HON; JUSTICE TADEO ASIIMWE

/x'—x

This is an application brought by way of Notice of Motion under Order 48, 50 (1) (b) and (5) of the Criminal Procedure Act and section 48 of the Judicature Act seeking the following orders: -

- A. That Judgement and criminal proceedings in Criminal Case NO. 165 of 2017 be revised and the findings be altered, conviction and sentence be set aside
- B. That criminal proceedings in case number 255 of 2020 be dismissed.
- C. That consequential orders be provided for.

The grounds of this application are contained in the motion and supporting affidavit of the applicant, Semule Joel and briefly that.

- 1. That the applicant was erroneously and or irregularly convicted of the offence of criminal trespass contrary to section of 302(a) PCA.
- 2. That the trial magistrate occasioned a Miscarriage of justice when he disregarded the applicants documentary evidence of land ownership.
- 3. That the magistrate acted unjustly, illegally and irregularly when he did not consider the applicants defence of a claim of right and convicted him of criminal trespass.
- 4. That the trial Magistrate erroneously sentenced the applicant for a different offence.
- 5. That the applicant is again charged with the same offence of criminal trespass in the same court under criminal case number 255 of 2020.
- 6. That it is fair equitable and in the interest of justice that the findings be altered/conviction and sentence be revised and set aside.

r 2 *J*

The respondent contested the application by filing an affidavit of Tumuhaise Rose, a State Attorney with the ODPP by raising a preliminary objection that the applicant is challenging the final decision of court and cites grounds of appeal in a revision application. That there are no errors on record, which require correction by the high court.

At the hearing, the applicant was represented by Nakweira Musa and the respondent by Njuki Mariam, a state attorney.

Both counsel were directed to file submissions. The applicant filed submissions while the respondent did not.

RESSOLUTION.

The high court has powers to entertain revision applications under the provisions of the criminal procedure code act and the judicature act. I shall quote the relevant sections verbatim.

Section 48 of the Criminal Procedure Code Act 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. "

^X \ * ^A * ³ M

Section 50 (l)(a) of the same Act provides for powers of the High Court on Revision. It 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.

Before I delve in the merits of this application, I shall first deal with the preliminary objection raised by the respondent.

The respondent in the affidavit in reply dated 22nd July 2022 pleaded that the application is a disguised appeal that challenges the final decision of court. That the application does not point out the errors, illegalities or irregularities to warrant a revision but instead raises grounds of appeal.

The applicant did not make a response to the preliminary objection of law but rather proceeded to argue the grounds in the application.

I have perused the pleadings of both parties and the submissions of counsel for the applicant and the *lower court* in criminal case number 165 of 2017.

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The background of this application is that the applicant was charged with the offences of criminal trespass in two different filed in the same court and was convicted of criminal trespass in criminal; case number 165 of 2017.

In this application, the applicant challenges the decision of the trial magistrate for being illegal, illegal and unjust.

However criminal revisions are premised on the incorrectness, irregularity and illegality of the proceedings in the lower court and not the final judgement of court.

In courts view, the decision of a judicial officer however wrong it might seem does not become illegal or irregular simply because a party does not agree with. Matters of irregularity and illegality must be proved on the basis of the court record. In a case before this court where irregularities cited do not relate to the proceedings of court but merely attacking the decision of a trial magistrate, the remedy does not lay in revision proceedings but rather in an appeal process.

Further, Under section 50(5) of the Criminal Procedure Code Act,

order made or V "Any person aggrieved by any finding, sentence 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, 'f*

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The applicant had a right to appeal the decision of the trial magistrate but choose not to yet the grounds he raises in the revision application address the merits of the case in the lower court and not the correctness, illegality or irregularity of the proceedings.

I accordingly uphold the preliminary objection raised by the respondents. I therefore find no reason to discuss the merits of this application, and is

TADEO ASIIMWE here by dismissed. *^r-fK*

JUDGE

17/08/2022

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