

UGANDA / JUDGMENT

Sirorurema v Uganda (Miscellaneous Application 37 of 2022) [2023]

UGHCCRD 193 (18 August 2023)

[2023] UGHCCRD 193

COURT

HC: Criminal Division (Uganda)

BEFORE

Ajiji, J

CASE / FILE NUMBER

Miscellaneous Application 37 of 2022

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

THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****MISC. APP NO.37 OF 2022**

(ARISING FROM KASANGATI CRIMINAL CASE NO.446 OF 2019)

APPLICANT SIRORUREMA SHARIF

VERSUS

..... RESPONDENT UGANDA.....

RULING**BEFORE: HONOURABLE JUSTICE ALEX MACKAY AJIJI**

This is an application brought by way of Notice of Motion under §17(1), 33 of the Judicature Act cap 13, section 48, 50(1)(b) of the criminal procedure code Act, seeking the following orders:-

- a. That the orders of the learned chief magistrate in KST-CR-CO.446/2019 CRB: \$113/2019\$ be revised and set aside.
- b. An order staying the hearing and or delivery of judgment in KST-CR-CO-446/2019 pending determination of civil suit No.925 of 2019.

- c. That KST-CR-CO 446/209 arising from CRB 113/2019 and civil suit No.925 of 2019 arise out of the same contract.
- d. That the matter vide HCCS No.925 of 2019 is pending determination and the complainant and his wife have filed a counterclaim.
- e. That the prayers sought in civil suit No.925 of 2019 substantially settle the complaints raised in KST-CR=CO \$446/2019\$.

E VAN DER ST

- f. That it is just, equitable and in the interest of justice that this application is allowed and the order of the learned trial magistrate be set aside.

Counsel Kenneth Kajeke appeared for the Applicants while M/s Njuki Mariam (State Attorney) Appeared for the respondent.

Court Tasked both parties to put in their submissions however both counsel made written submissions.

Counsel for the Applicant submitted that it is not in dispute that the complainant in criminal case relates to the property which the complainant sold to the accused. It is also not in dispute that the prayers in HCCS No.925 of 2019 and the counterclaim are similar to the prayers in the criminal case. No.446 of 2019. The respondent chose to criminalize civil matter by using trumped up charges of malicious damage against the accused person. However, the issue to determine in the civil suit is the ownership of the property and if the property is decreed to belong to the complainant then his counterclaim will be allowed. The complainant chose the criminal justice to intimidate, harass and embarrass the accused person who acquired the suit property for valuable consideration.

In reply, the respondent submitted that this Application is premature before this court and there is nowhere on the lower court record to show that this application was made before the trial court as required by law either written or orally and it was not granted. Further they interpreted section 50(1) (a) (b) as to mean that the Applicant /accused must come to this court after the trial magistrate court has made a ruling and orders onto the matter being brought to the attention of the high court. Hence it was there submissions that the Applicant has gone to court prematurely complaining against no ruling or no order made by the court. Hence he concluded that in the instant case the criminal trial is a public interest, the civil case No.925/2019 is of private interest. Further that though its best on the same facts and same subject matter criminal law is distinct from civil law (trial) and it consequently follows that the redress

$\mathbf{2}$

being sought in criminal trial are different from those sought in the civil trial whereas in criminal it's to punish, in civil trial the redress is to compensate.

In criminal trial is a public interest, the civil case No.925/2019 is of private interest.

Court Tasked both parties to put in their submissions however both counsel made written submissions.

I will therefore go ahead and cite the law on revision;

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."

Section 50 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."

Section 17(1) of the Judicature Act is to the effect that the High Court shall exercise general powers of supervision over the magistrates' courts'.

(2) With regard to its own procedures and those of the Magistrates' Court, the *High Court shall exercise its inherent powers: -*

- (a) To prevent abuse of process of the Court by curtailing delays of judgment including the power to limit and discontinue delayed prosecutions.
- b. To make orders for expeditious trial and
- c. To ensure that substantive justice shall be administered without undue regard to technicalities.

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. 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.

Uganda Vs. Ssonko Edward Criminal Revision Application No. 12/2019.

That said, the development in our jurisdiction is that land disputes especially where ownership is at stake should be left for arbitration by the civil courts. It was for example held in the case of Okello Chris Otama & Another vs. Uganda Cr. Session Case No. 639/13 that;

"Issues of land should not be confused with criminal issues. Claim of ownership is a civil right that ought to be allowed to be proved in a Civil Court and should never be criminalized as this would amount to persecution. Land matters have been criminalized and courts of law are convicting accused persons who have a constitutional right to claim what truly belongs to them".

The subject matter of the dispute in **Criminal Case NO:KST-CR-CO.446/2019** is the same as that in Civil Suit NO:925 OF 2019. The particulars of the offence, evidence of the complainant and State witnesses all relate to ownership of the suit land as court has to determine whether or not the accused person owns the land and therefore had the power to be in full

4

Scanned with CamScanner

possession and occupation of the suit land. In my view, the facts would make the dispute more or a civil than a criminal matter.

I find that the determination of ownership rights of the suit land which are best resolved through a civil will have a direct bearing on the criminal suit. For if the Applicant is found to own an interest in the suit land, then the criminal proceedings will then be rendered moot. The reverse could also support the prosecution's case. Allowing the criminal proceedings to continue when there is a pending civil suit in the High Court to determine ownership rights will amount to an abuse of court process and can result into conflicting judgments. The learned Magistrate did not exercise proper discretion and her decision to decline to stay proceedings was irregular. Allowing the High Court to give its decision on the ownership rights to the suit land, will save time and avoid multiplicity of suits.

I accordingly allow the application that hearing of the criminal trial against the Applicant in Criminal case No:KST-CR-CO.446/2019 at Kasangati Court, be stayed until the final disposal of the civil proceedings in High Court Civil Suit No:925 OF 2019.

Both parties shall bear their own costs.

Dated and delivered at Kampala this 2023

S

ALEX MACKAY AJIJI JUDGE

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/ughccrd/2023/193/eng@2023-08-18>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/sirorurema-v-uganda-miscellaneous-application-37-of-2022-2023-ughccrd-193-18-august-2023-unknown-topic-unknown-court-2023>

Prepared on 11 October 2026 · Esheria