

UGANDA / JUDGMENT

Twinomujuni v Uganda (Criminal Revision 47 of 2024) [2025] UGHCCRD 6 (25 February 2025) [2025] UGHCCRD 6

COURT

HC: Criminal Division (Uganda)

BEFORE

Gadenya, J

CASE / FILE NUMBER

Criminal Revision 47 of 2024

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

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL REVISION NO. 47 OF 2024

ARISING FROM BUGANDA ROAD CRIMINAL CASE NO. 53 OF 2024

$\$S\%$

TWINOMUJUNI ROBERT

Vs.

<table>

UGANDA

.....

RULING

BEFORE HON. JUSTICE GADENYA PAUL WOLIMBWA

1.0. Introduction

This revision application is brought under Sections 14(2)(c), 17 and 33 of the Judicature Act Cap 16; Sections 48 & 50 (1) (b) & (5) of the Criminal Procedure Code Act; and Rule 2 of the Judicature 20 (Criminal Procedure) (Applications) Rules SI 13-8. The Application seeks to revise and set aside the lower court orders delivered on 26th September 2024, where the trial magistrate declined to stay criminal proceedings in Buganda Road Criminal Case No. 242 of 2024 pending the determination of Mbarara High Court Civil Suit No. 24 of 2024.

- 25 The Applicant bases his Application majorly on three grounds;
- 1. There is a real danger of the Applicant being prejudiced if concurrent proceedings are allowed to continue.

Apr

2. If the criminal case is heard before the Civil Suit is determined, there is a high risk of conflicting decisions by the High Court of Uganda and the Chief Magistrates Court of Kampala at Buganda Road.
3. It is in the interest of justice that the Application be allowed

On the other hand, the Respondent opposed the application to stay criminal proceedings in Buganda Road Criminal Case No. 242 of 2024, arguing that the suits/proceedings are not between the same parties and the Applicant did not bring out the real danger he will suffer if the two cases are allowed to proceed concurrently. In conclusion, the Respondent prayed that the court declines to grant orders to stay proceedings in Buganda Road Criminal Case No. 242 of 2024 pending the determination of Mbarara High Court Civil Suit No. 24 of 2024.

2.0. Background to the Application

On 13th June 2022, the applicant (Iwinomujuni Robert) and another (Arinailwe Samson) were jointly charged with Ten (10) counts of Uttering a false Document contrary to Section 351 of the Penal Code Act Cap. 120 and one (1) count on conspiracy to Defraud contrary to Section 309 of the Penal Code Act Cap. 120. Arinailwe Samson was individually charged with Ten (10) counts of Forgery contrary to Sections 342, 345, and 347 of the Penal Code Act Cap. 120. Collectively, the charge Sheet contained 21 Charges. The particulars of each jointly charged count are as follows:

Count 2: Uttering A False Document C/S 351 of the Penal Code Act.

Arinaitwe Samson and 'l-winomujuni Robert, on the I 8th day of February 2021 at Ntungamo Police Station in the Ntungamo District, Knowingly and Fraudulcntly uttered a False Document to wit, a forged sales agreement dated 06th June 2020 purporting to havc been signed by Nsekanabo Simon, Musimenta Winfred, Rutaro Richard Apollo, Busingye Edith, Namara Prudence, Kisembo Beatrice Rugarama and Rugarama []etty.

Count 4: Uttering A Falsc Document C/S 351 ofthe Penal Codc Act

55 Arinaitwe Samson and 'fwinomujuni Robe(, on the lSth day of February 2021 at Ntungamo Police Station in the Ntungamo District, Knowingly and Fraudulently Uttered a False Document, to wit, a forged acknowledgement receipt of money from the sale of land purporting to havc been signed by Kisembo Beatrice Rugarama.

t\\$.

Count 6: Uttering A False Document C/S 351 ofthe Penal Code Act

Arinaitwe Samson and 'lwinomujuni Robert, on the l8th day of Irebruary 2021 at Ntungamo Police Station in the Ntungamo District, Knowingly and Fraudulently Uttered a False Document, to wit, a forged acknowledgement receipt ofmoney from the sale of land purporting to have been 65 signed by Nshekanabo Simon.

Count 8: Uttering A False Document C/S 351 ofthc Penal Code Act

Arinaitwe Samson and Twinomujuni Robert, on the lSth day of February 2021 at Ntungamo Police Station in the Ntungamo District, Knowingly and Fraudulently Uttered a False Document, to wit, a forged acknowledgement receipt of money from the sale of land purpo(ing to have been signed by Musimenta Winfred.

Count 10: Uttering A False Document C/S 351 ofthe Penal Codc Act

Arinaitwe Samson and Twinomujuni Robert, on the l8th day of February 2021 at Ntungamo Police Station in the Ntungamo District, Knowingly and Fraudulently Uttered a False Document to wit; a forged acknowledgement receipt ofmoney from the sale ofland purporting to have been signed by Namara Prudence.

Count 12: Uttering A False Document C/S 351 ofthe Penal Code Act

Arinaitwe Samson and 'l'winomujuni Robert, on the l8th day of l'ebruary 2021 at Ntungamo Police Station in the Ntungamo District, Knowingly and Fraudulently Uttered a lralse Document to wit; a forged acknowledgement receipt ofmoney from the sale of land purporting to have been signed by Rugarama Betty. 80

Gtr-'l,

Count 14: Uttering A False Document C/S 351 of the Penal Code Act 85

Arinaitwe Samson and Twinomujuni Robert, on the 1st day of February 2021 at Ntungamo Police Station in the Ntungamo District, knowingly and fraudulently uttered a False Document to wit; a forged acknowledgement receipt of money from the sale of land purporting to have been signed by Rutaro Richard Apollo.

Count 16: Uttering A False Document C/S 351 of the Penal Code Act

Arinaitwe Samson and Twinomujuni Robert, on the 1st day of February 2021, at Ntungamo Police Station in the Ntungamo District, knowingly and fraudulently uttered a false document, namely forged copies of Nshekanabo Simon's National Identity Card.

Count 18: Uttering A False Document C/S 351 of the Penal Code Act

Arinaitwe Samson and Twinomujuni Robert, on the 1st day of February 2021, at Ntungamo Police Station in the Ntungamo District, knowingly and fraudulently uttered a false document, a forged copy of Kitembo Beatrice Rugarama's National Identity Card.

Count 20: Uttering A False Document C/S 351 of the Penal Code Act

Arinaitwe Samson and Twinomujuni Robert, on the 1st day of February 2021, at Ntungamo Police Station in the Ntungamo District, knowingly and fraudulently uttered a false document, a forged copy of Kitembo Beatrice Rugarama's National Identity Card.

Count 21: Conspiracy to Defraud C/S 309 of the Penal Code Act

Arinaitwe Samson and Twinomujuni Robert conspired between June and December 2020 in Kampala and Ntungamo Districts to defraud Namara Prudence and others of their beneficial interest/ share in land comprised in Rwampara Block 42 plot 38 Leasehold Register Volume 3027 Folio 9 at Ruhama in Ntungamo District.

In the lower court, the applicant, through his advocate, made an application vide Criminal Misc. Application No. 53 of 2024, seeking to stay criminal proceedings in Iluganda Road Criminal Case 115 No. 242 of 2024 pending the determination of Mbarara High Court Civil Suit No. 24 of 2024. The court, however, declined to stay the criminal proceedings in favour of the civil suit and dismissed the application. The applicant, being dissatisfied with the outcome of the ruling, filed this application for revision.

3.0, Representation

The firm of M/s Mwesigwa Rukutana & Co. Advocates represented the applicant. Ms. Apollot Joy, a Senior State Attorney in the Office of the Director of Public Prosecutions, represented the Respondent.

4.0. Arguments of the Parties

4.0. 1. The Applicant's Submissions

The Applicants' counsel submitted that the criminal proceedings in Buganda Road Criminal Case No. 242 should be stayed pending the decision in Civil Suit No. 24 of 2021 at the High Court of Uganda at Mbarara.

130 According to Counsel for the Applicant, civil suit no. 24 of 2021 and criminal case no. 242 of 2024 are substantially between the same parties. Additionally, the Civil suit and the Criminal case have the same subject matter.

He further argues that the Applicant stands to be highly prejudiced if the criminal proceedings are not stayed pending the determination of Civil Suit No. 24 of 2021 in the High Court of Uganda at Mbarara.

12(

In his view, Counsel for the Applicant argues that allowing criminal proceedings to continue when there is a pending civil suit in Court to determine ownership rights could easily amount to an abuse of the court process and equally birth forth conflicting judgments.

(v{

140 He additionally argues that determining ownership rights of the suit land is best resolved through a civil suit, which will directly affect the criminal case.

4.0.2. The Respondent's Submissions

The respondents argue that two concurrent suits are proceeding concurrently in the different courts with jurisdiction to hear them. However, the subject matter in the two suits is different. Therefore, the outcome of Criminal Case No. 242 of 2024 at Makindye Chief Magistrates Court and Civil Suit No. 24/2021 instituted at the High Court Mbarara won't be similar.

The Respondents further argue that the parties in both suits are different because the state took over the matter upon charging the applicants and became the party to the criminal case. This privilege did not extend to the Civil Suit where the state is not a party.

Lastly, the respondent argues that the applicants did not mention 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 in terms of the applicant's ability to defend himself in court in the civil matter.

5.0. Issues for Resolution

- 1. Is this a proper application for revision?
- 2. Should the criminal proceedings in Buganda Road Criminal Case No. 242 be stayed?

6.0. Consideration of the Application

- Revision is a cost-effective measure through which the High Court corrects errors and irregularities of the lower courts, saving litigants time and expenses involved in prosecuting appeals. Revision may either be commenced by letter or application or the High Court calling for the inspection of the lower records to ensure compliance with the law or by a formal application. Revision can also be commenced by the High Court if, in exercising its supervisory powers of magistrates courts, it finds errors worth deserving its attention. Revision must aid digestion rather than constipate the legal system. This is why the power of revision must be exercised sparingly and only in deserving cases to avoid a miscarriage of justice and unnecessary interventions by the High Court in the work of the lower courts. 160-165

Issue One: Is the matter amenable to Revision?

Section 50 (5) of the Criminal Procedure Code Act 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. Still, no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed."

The above section permits any person aggrieved by a finding, sentence or order made by a Magistrates Court to petition the High Court to revise the matter complained of. However, this section excludes a petitioner who had a right to appeal but chose not to appeal from petitioning for revision.

The Applicants, by a formal application, moved the Chief Magistrate, Buganda Road Court, to stay the hearing of Criminal Case number 242 of 2024 because there was a civil case arising out of the same facts in the High Court, which had been filed much earlier. Although the Chief Magistrate found that the two cases arose from the facts and had the same parties, he declined to stay the criminal matter because the two cases were seeking different remedies. The order of the Chief Magistrate dismissing the application to stay the criminal case is a final order amenable to revision under section 50 of the Criminal Procedure Code Act.

Issue Two: Should Buganda Road Criminal Case No. 242's criminal proceedings be stayed? The Applicants contend that the Chief Magistrate erred in law when he dismissed the application. Counsel for the Applicant submitted that the Chief Magistrate should have stayed the criminal case because both cases are founded on the legality of the sales agreement for land comprised in LVR

3027 Folio 8, Rwampara Ulock 42 at Katookye, Kazungu, Ntungamo district under section 208 of the Magistrates Court Act. He relied on the following cases to support his arguments. 1.90

Mutonvi in Usanda V Ssonko Edward Criminal Revision Application No. 12 of 2019: Scmakula Patrick and thrce others vrsus Uganda Criminal Revision Number 40 of 2023l Musumba Yahava & Anor v Uganda Criminal Revision Cause No. 4 of 2019: and Scbulimc 195 Bakcr V Usanda Criminal Apocal No. 2l of 2019

These cases postulate that the court will stay the case proceedings if the following factors are met.

- 1. The cases must be based on substantially the same facts.
- 2. The parties must substantially be the same.
- 200 3. The remedies sought in the cases must be substantially the same
- 4. The case sought to be stayed must have been filed later.

Furthermore, the Applicants contended that they would be prejudiced if the criminal case was not stayed. They also submitted that keeping the criminal proceedings at Buganda Road Court would be in the interests of justice.

20s On the other hand, the Respondent contended that criminal cases, though founded on a sales agreement, which is the basis of the civil matter, have different remedies. In a criminal trial, the DPP seeks to punish the alleged criminal conduct of the accused persons. In civil trials, the parties seek damages and court orders to restore the land.

Furthermore, the Respondent contended that no law provides for staying criminal cases in favour of civil matters, that the criminal and civil cases are different, that the parties are not the same, and that, lastly, the applicants have not shown that they will be prejudiced if the criminal case is not stayed.

1. The Legality of the Application to Stay the Criminal Case under Section 208 of the Magistrates Courts Act Cap. 19

215 6{N Before I delve into the merits of the case, it is important to consider the legality of the application to stay the criminal case before the Trial Chief Magistrate. The Applicant moved the Trial Chief Magistrate to stay the criminal case under Section 209 of the Magistrates Courts Act. This section, which has since been renumbered to Section 208, provides as follows:

No magistrates' court shall proceed with the trial of any suit or proceeding in which the matter in issue is 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 proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed.

225 230 Section 208 is found in part XX of the Magistrates Courts Act, under part XX - Civil Jurisdiction of Magistrates' Courts and provisions relating to exercising that jurisdiction. Section 208 is placed under part XX of the Act to guide Magistrates Courts exercising civil jurisdiction. The

marginal note to section 208 is aptly phrased as a stay of a suit. Although marginal notes play a secondary role in interpreting a statute, they are helpful when the section is ambiguous or complex. Marginal notes are also helpful in statutory interpretation if they are similar to the wording in the section.

Here, they reinforce the meaning of the section. Additionally, while marginal notes are not part of the Act, they may, subject to the limitations noted above, be a good guide to the legislature's intention to pass a specific section.

Section 208 of the Magistrates Courts Act applies to suits and proceedings. The phrase "suit or proceeding" belongs to the civil family, not criminal law. I am emboldened in this interpretation

by the location of the section under Chapter XX of the Magistrates Courts Act on the civil jurisdiction of Magistrates and the marginal note, which aptly says that section 208 applies to stay of a suit. I am equally guided by the recent decision of the Court of Appeal in *Jagg. Udga*.

240 245 Kamoga Muhammadi. Criminal Appeal Number 646 of 2023. where the court found that "no specific law provides for a stay of criminal cases." Therefore, a purposeful interpretation of Section 208 limits it to civil proceedings, and Magistrates Courts can apply Section 208 when they are sitting and exercising civil jurisdiction. Given this, the applicant's request to the Trial Chief Magistrate to stay the criminal case under Section 208 of the Magistrates Courts Act was improper, as the magistrate was not exercising civil jurisdiction but rather criminal jurisdiction. Similarly, the Applicants cannot take advantage of section 208 of the Magistrates Courts Act to stay the criminal proceedings at Buganda Road Court.

2. Merits of the Application

Will the Applicants Be Prejudiced if the Cases are held Simultaneously or if the Criminal Trial is not Stayed?

(¶. J

250 Although there is no specific law providing for a stay of criminal cases, the Court of Appeal in the recent case of *observed* that:

> Criminal proceedings emanating from the same facts as civil proceedings cannot be stayed because of the latter unless serious grounds may affect a party's right to a fair hearing as provided in the Constitution.

Although the Court of Appeal did not define what serious grounds mean under this limb, it guided that the court may, under its inherent powers, stay proceedings if the continued hearing of the case may constrain the applicant's right to a fair trial as protected in Article 28 of the Constitution. The Applicant must show that concurrent hearing of the cases will prejudice them.

260 In *Jefferson Limited vs. Bhetcha* 1979 WLR 898, the court observed that "deciding whether to stay civil proceedings in favour of criminal proceedings is a matter of discretion to be exercised by reference to the competing considerations." The Court said, "One factor to be considered in deciding to stay or deny the stay was whether there was a real danger of causing injustice in the criminal proceedings, for example, if publicly might influence potential jurors in the criminal

265 proceedings or if disclosure of the defence might enable prosecution witnesses to prepare a fabrication of evidence or might lead to interference with witnesses."

In the English case of *1) - D r - - i r - l I) - n. rs onrl nrhar ll, r val. r.,. P - - 1, trl a lro lTt l. wrra. 28q7* (Comm). the defendant applicants succeeded in their application for the stay of civil proceedings in the Commercial Court until the parallel criminal trial brought by the Serious Fraud Office (SFO) in the Crown Court concluded.

6&-^i

The two sets of proceedings arose from the same underlying facts, namely Barclays's capital raisings during the financial crisis of 2008. Part of the hearing had to be held in private due to the highly confidential and sensitive nature of some issues that overlapped between the civil and criminal proceedings.

- 215 'the Commercial Court trial was due to commence in January 2018 and was estimated to last eight weeks. The Crown Court trial was due to begin in January 2019 and was estimated to take about 12 to 16 weeks. The Commercial Court had decided to list the civil trial first before the SI. O made ^a charging decision (which occurred in June 2017). -the Defendant submitted that the test of whether to stay proceedings should be considered in three stages as follows:
- 280 ^I. The court must be satisfied there is sufficient overlap between the issues raised in the civil and criminal proceedings (*Re DPR Futures* [1989] 1 WLR 778).
- 2. Where such overlap does exist, the court must consider whether there is a real risk of serious prejudice, which may lead to injustice in the criminal and/or civil proceedings.
- 3. Proceedings should not be stayed if safeguards can be imposed that provide sufficient protection against the risk of injustice.
- 285
- 4. The court has to balance justice between the parties.

The High Court found that there was a "very significant" overlap between the two sets of proceedings, noting that:

"Both trials will involve in detail events and statements at a time of great consequence for all institutions and individuals involved. Both trials will examine the reasons for and the purpose of statements and actions, where made or undertaken. Both trials will

examine responsibilities for what was or was not said or done and levels of information and states of mind."

As to whether there was a real risk of jury contamination or witness contamination, the court observed that these two distinct, albeit related, risks formed the basis of the applications to stay the civil 295 proceedings.

The court also acknowledged that "the Commercial Court trial (and resulting judgment) would likely attract heavy reporting, given the connection between this case and the financial crisis, the serious allegations made, and the high value of the sums claimed." Knowles J noted that, "there 300 was a "real risk" that the jury's already complex task would be made more difficult still by publicity surrounding an earlier Commercial Court trial, the outcome of that trial as contained in a judgment, and that the current application allowed consideration of how to manage that risk *before it arose.* "Knowles J also considered the possibility of witness contamination and ordered a stay.

In *Akcine Bendrove Bankas Snoras (in bankruptcy) vs Vladimir Antonov Raimondas* 305 *Baranauskas* [2013] EWHC 131 (Comm), Mrs Justice Gloster DBE summarised the relevant principles applicable to staying civil proceedings as follows:

- i) The court has a discretion to stay civil proceedings until related criminal proceedings have been determined, but it "is a power which has to be exercised with great care and only where there is a real risk of serious prejudice which may lead to injustice";

\$6h\$

- ii) The discretion has to be exercised by reference to the competing considerations between the parties; the court has to balance justice between the two parties; a claimant has a right to have its civil claim decided; the burden lies on a defendant to show why that right should be delayed; see *Panton v Financial Institutions Services Limited* [2003] UKPC 8 (PC) at [11].

- iii) A defendant must point to a real, and not merely notional, risk of injustice. As the Privy Council 315 *stated in *Panton (supra)*:*

- iv) The fact that a defendant has a right to remain silent in criminal proceedings, and would, by serving a defence in civil proceedings, be giving advance notice of his defence, carries little weight

in the context of an application for a stay of civil proceedings. There is no right to invoke the 320 privilege against self-incrimination in relation to putting in a defence, as compared with the right in civil proceedings to invoke the privilege where a defendant is being interrogated, being compelled to produce documents or cross-examined; see per Waller LJ in *\$V \vee C\$* [2002] CP Rep 8, at paragraphs 37 and 38...

v) Moreover, today, even in criminal proceedings, at least in England and Wales, a defendant is expected to adumbrate a positive defence at an early stage. Thus, the disclosure of a defence in civil proceedings is unlikely to disadvantage a defendant in criminal proceedings; see *ibid* at paragraph 38.

vii) It is not enough, as Briggs J observed in *FSA v Anderson* [2010] EWHC 308 (Ch) at [19], that both the civil and criminal proceedings arise from the same facts, or that the defence of the civil proceedings may involve the defendant taking procedural steps such as exchanging witness statements and providing disclosure of documents which might not be imposed upon them in the criminal proceedings.

viii) As Mr. Zacaroli submitted, a defendant thus has a choice between remaining silent in the civil proceedings or risk giving an indication of his defence which may be used by the prosecuting authorities. The harshness of such a choice did not provide a good ground for staying civil proceedings in *V v C* (supra) or in *Jefferson Limited v Bhetcha* [1979] 1 WLR 898.

ix) In the event that the court were to be satisfied that there would be a real risk of serious prejudice leading to injustice if the civil proceedings continue, then the proceedings should nevertheless not be stayed if safeguards can be imposed in respect of the civil proceedings which provide sufficient

protection against the risk of injustice: see, e.g. *Re DPR Futures* [1989] 1 WLR 778, per Millett J 340 at 790G; *A-G for Zambia v Meer Care & Desai & Ors* (supra) at paragraphs 30-33.

From the above English cases that are persuasive in this Country, before a court can stay whether a criminal or civil case in favour of the other, the following conditions must be satisfied:

The Applicant must prove they will be prejudiced by the simultaneous hearing of the cases. a)

b) The power to stay proceedings is discretionary. c) The court must exercise its discretion by referring to the competing considerations between the two parties. The court must balance the claimant's right to have his claim decided and the defendant's quest to delay that claim.

There must be an overlap between civil and criminal proceedings regarding issues to be

3s0

d)

- determined.
- There must be a risk of jury or witness contamination. e)
- There must be a real risk of prejudice, which may lead to injustice if the case sought to be stayed is not stopped. l)

- However, even if the court finds actual prejudice, the proceedings should not be stayed if safeguards can be imposed to protect against the risk of injustice. s)

The safeguards include-

- a) Order restricting reporting
- b) Orders that the civil or criminal trial will sit in the private.
- c) Order embarguing the civil judgment until the conclusion of the criminal judgment.

b{o]

Although the above principles were mainly concerned with civil cases, they apply to criminal cases because they all protect the right to a fair trial. 360

Applying the above principles and the exceptional clause in Knr1qgeth-g3;g to the instant case, it is my finding that:

- a) There are indeed two cases a Land case and a Criminal trial.
- b) The two cases are premised on the contested sale of land and documentation used in the sale. 365
- c) The two cases will test the validity of the sale of the land.
- d) In both cases, the courts shall rely on the same documents to determine whether the land sale was valid or fraudulent.
- e) The court will likely take the documents involving the disputed land as exhibits. 370
- f) However, the cases may or may not involve the same witnesses, thus ruling cases of witness contamination.
- s) Depending on the schedules of the respective courts, the applicant will have to attend the criminal trial and land case at the same time or at different times. However, no conflicting schedules will exist since the High Court takes precedence over magistrates Courts.
- h) The parties in both cases are different. In the criminal case, the DPP is the complainant, although she may rely on the Respondents to testify as a potential witness. In the land case, the Applicant and Respondent are the parties.
- i) The remedies sought in both cases are different. In civil, the court has been asked for damages and cancellation of title. In criminal cases, the DPP seeks penal sanctions.
- .i) The courts may reach different conclusions about whether the sale of land was valid. This is not unexpected, as the standard of proof in a civil matter is lower than in a criminal case. However, this possibility does not extend to the alleged forgery of identity cards and other documents or the utterance of false documents.

- 38s k) Lastly, the DPP has a constitutional imperative to fight crime on behalf of the public. The DPP's mandate can only be limited in deserving circumstances.

The questions that merit consideration from the above findings are

- 1. Does the simultaneous hearing of the criminal case with the land case prejudice the Applicants, or will the Applicants' right to fair trial be interfered with if the two cases are allowed to proceed?
- 2. If the criminal trial is not stopped, will the Applicants' rights to defend themselves in the civil trial be constrained?
- 3. Is there a strong possibility that the criminal and civil courts will make conflicting decisions?
- 395 4. Will the disposal of the civil matter dispose of the criminal case?
- 5. Will the simultaneous hearing of the cases lead to a miscarriage of justice?

Consideration 4: Will the Disposal of the Civil Case Dispose of the Land Case?

The Applicant argued that the civil land case will dispose of the criminal matter once the sale of the land is found to be valid. This may well be, but that is only if the court considers whether the sale was fraudulent. However, in this case, the Applicants are charged with other offences, including forgery of identity cards, forgery of acknowledgements notes and uttering false

6rd

documents. While the civil court will refer to them, it will not thoroughly investigate them since its jurisdiction is limited to examining whether the land was sold fraudulently. And even if the land is found to have been sold lawfully, this may not fully answer whether the national identity cards and acknowledgements for receipt of the money were forged. These are matters that the criminal court will be in the best position to investigate rather than a civil court.

Consideration 1, 2, & 5: Does the simultaneous hearing of the criminal case with the land case prejudice the Applicants, or will the Applicants' right to fair trial be interfered with if the two cases are allowed to proceed? Will the Applicants suffer Prejudice by concurrent adjudication of the cases, and Will the simultaneous hearing of the cases lead to a miscarriage of justice?

To be prejudiced signifies a detrimental impact on a party's position in a case. As the Court of Appeal said in the *Kangga-eefq*, a party is deemed prejudiced if concurrent proceedings severely constrain their right to a fair trial and cause injustice. Article 28(1) of the Constitution provides € *d that:

In determining civil obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

420 At the heart of the right to a fair trial is the right to present evidence in support of one's case, adequate time to prepare and present one's defence or case, be afforded adequate facilities to examine witnesses and obtain the attendance of other witnesses, and the right to be treated fairly in a court of law.

425 It is the Applicant's case that they will be prejudiced in the civil case if the criminal case is not stayed. Although the Applicants did not detail how the concurrent hearing of the cases would prejudice them, I can gather from their arguments made in the application that the prejudice is premised on the possibility of having two conflicting decisions and the inconvenience of going through a criminal trial given that the civil trial may dispose of the matters in controversy between the parties. The Respondent did not specifically respond to this point but argued that nothing can stop the two cases from going on simultaneously.

430

The applicants will find attending and preparing for two cases challenging, especially if the courts do not schedule them appropriately. Engaging counsel in both cases will require time and money. Additionally, the Applicants will need to mobilise witnesses for each case. These activities will subject the applicants to stress, inconvenience, and significant expenses.

- 435 However, these challenges can be alleviated by effective scheduling and case management by counsel and the respective courts. I am fortified in this belief because our courts are organised. They will give the parties adequate time, space, and flexibility to present their cases within reasonable time limits. In any case, prima facie inconvenience of a party to present their case does not amount to prejudice.
- 440 4iN The situation would have been different if I had found witness tampering or contamination threats. I saw no such threats. Therefore, while the applicants may experience some inconvenience in attending two courts, the concurrent hearing of the cases will not prejudice them or deny them their right to a fair trial.

Consideration 3: Possibility of Conflicting Decisions

- The Applicant submitted that if the criminal trial is not stayed, there is a real possibility of the courts coming up with conflicting decisions. This may be partly correct as far as the alleged fraudulent sale of the land is concerned. However, this is incorrect regarding whether the Applicants allegedly forged national identity cards and acknowledgement letters. This finding belongs to criminal law rather than civil law, where the applicants face charges regarding their 445

- forgery. Besides, given that the burden of proof differs in civil and criminal cases, the possibility of courts coming to different decisions is not remote. Courts should reach the same conclusions on the same facts, but because civil cases have a lower standard of proof than criminal cases, a civil court can come to a favourable decision even when a criminal court has come to an adverse decision. 450

455

7.0. Obiter on High Court Decisions Before the Kamoga Case

Before I take leave of this matter, I wish to note that the High Court, in several decisions before the Kamoga case, had stayed criminal cases in the Magistrates Court under section 209 (now 208) 460

of the Magistrates Courts Act. The courts had interpreted section 209 (now 208) of the Magistrates Courts Act as giving them powers to stay criminal proceedings provided certain conditions were met. However, as the Court of Appeal decided in the Kamoga case and having reconsidered section 209 (now 208) of the MCA, the law does not cover the stay of criminal trials.

Secondly, the Director of Public Prosecutions has a Constitutional duty to prosecute cases and fight crime on behalf of the public under Article 120 of the Constitution. Protecting public rights

465 to safety takes precedence over private rights. Under Article 120(5), the DPP can only be constrained if it is established that the DPP is not acting in the public interest or the administration of justice or is abusing the legal process, which the applicants have not discharged in this case.

8.0. Decision

470 Given the above findings, the Applicants have not made a case to merit an order staying Buganda Road Criminal Case Number 53 of 2024. The Application is accordingly dismissed. It is so ordered.

1{^ ^

Gadenya Paul Wolimbwa JUDGE 25th February 2025

Ms. Joan Lumuhikirize, SSA, holding for Ms Apolot Joy Christine, SSA Applicants absent. Mr. Kagwa Court Clerk

Ruling read in open court.

r)*.

Gadenya Paul Wolimbwa JUDGE 25th February 2025

490

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/2025/6/eng@2025-02-25>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/twinomujuni-v-uganda-criminal-revision-47-of-2024-2025-ughccrd-6-25-february-2025-unknown-topic-unknown-court-2025>

Prepared on 12 October 2026 · Esheria