

UGANDA / JUDGMENT

Uganda v Adongpiny (Criminal Revision Application No. 1 of 2023) [2023] UGHCCRD 4 (23 February 2023)

[2023] UGHCCRD 4

COURT

HC: Criminal Division (Uganda)

BEFORE

Okello, J

CASE / FILE NUMBER

Criminal Revision Application No. 1 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT GULU

CRIMINAL REVISION APPLICATION NO. 001 OF 2022

(ARISING FROM GULU MAGISTRATE GRADE 1 CRIMINAL CASE NO. 750 OF 2022)

UGANDA.....

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\$10\$

VERSUS

ADONGPINY EVELYN.....

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

\$20\$

RULING

The Respondent was charged in criminal case No.750 of 2022, with three counts, to wit, intermeddling with deceased property, contrary to section $\$(c/s)\$$ 11 of the Administrator General Act Cap 157; threatening violence $\$(c/s)\$$ 81 (a) of the Penal Code Act 25 (PCA); and theft, $\$(c/s)\$$ 285 and 261 of the PCA. The charges are in respect of an alleged conduct of the Respondent

towards the estate of a one Zulfikarali Jiwani Badrudin, which it is alleged, the Respondent intermeddled with, by allegedly forcefully demanding to collect rent out of the deceased's property. It is also alleged that the Respondent threatened to chase or forcefully evict the widow of the deceased from the house she was left *vide* a power of attorney. The threatened eviction is also

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alleged to constitute act of threatening violence against the S widow. It is further alleged that the Respondent stole cash being rent collected from the deceased's estate. The offences are alleged to have been committed on diverse dates/ during period which is not relevant for the purpose of this revision application. The trial of the Respondent is yet to commence. \$10\$

During the criminal proceedings in the trial court, learned counsel for the Respondent orally applied that the trial maintains the status quo pending hearing and final determination of the criminal proceedings. The ground of the \$15\$ Application was that the complainant was chasing away tenants from the property alleged not to form part of the deceased's estate. It was alleged that if allowed to continue, the allocation of the property to new tenants would result, thereby changing the status quo within the estate. Similarly, the State orally opposed the oral application, contending that the Counsel for the accused person (the present Respondent) should file a formal application in which counsel could apply for interlocutory orders, if any.

The Learned Magistrate Grade One, His Worship Kwizera Vian allowed the oral application, and ordered that the status quo be maintained, so as to meet the ends of justice. Court ordered that tenants in the 'said' premises should be paying rent to the person they have been paying to, before the present criminal

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prosecution was instituted, until finally determined. Court S restrained the complainant until the criminal case is concluded.

The Application for Criminal Revision

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Unhappy that the decision and orders of the trial court, the State lodged the present Application by Notice of Motion, for criminal revision. It is brought under sections 17(1) and 33 of the Judicature Act, and sections 48 and 50 (1) (b) of the Criminal Procedure Code Act, Cap. 116.

- The main ground is that the learned trial Magistrate acted illegally, irregularly, and improperly in making the impugned orders. It was also averred that the Orders have occasioned a miscarriage of justice.

- The Application is supported by the affidavit of the complainant, 20 a one Maria Goretti Lagum, which repeats what I have already summarized. The complainant deposed also that she is in management of the estate of the deceased, as an administrator. She deposed that the order by the trial court will cause wastage 25 of the estate.

In response, the Respondent deposed that the trial court had jurisdiction to make the impugned orders, and the orders were lawful and proper. The Respondent deposed that the Orders of the trial Court will not put the estate to waste, but rather it is

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the complainant who is using the letters of administration to S the deceased's estate to put to waste the estate of another deceased person, a one Badrudin Abdallah Devji (not the late Zulikarali Badrudin Jiwani.) The Respondent prayed for dismissal of the Application with costs.

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Representation

Ms. Gertrude Nyipir, a State Attorney in the ODPP appeared for the Applicant, while Learned Counsel, Mr. David Kinyera represented the Respondent. Both Officers of Court lodged written submissions which Court has considered and is \$15\$ grateful. I will not reproduce the submissions.

Analysis and determination

Revision is the action of revising or looking over again, especially critical or careful examination or perusal with a view to 20 correcting or improving (something). See **Oxford English Dictionary**. This meaning was adopted by the then East African Court of Appeal in J Hoareau Vs. R [1962] 1 EA 809.

Revision therefore entails examination by the High Court, of the 25 record of proceedings of the Magistrates Court for the purposes of the High Court satisfying itself as to the correctness, legality and the regularity of proceedings of the Magistrate Court. See: Mabalangaya Vs. Sanga [2005] 1 EA 236 (CAT).

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The purpose of examination of the record of the subordinate S Court is therefore to correct the conclusions of that Court, if necessary. Revision is therefore an exercise of discretion which must be done judiciously. Discretion here, basically, is the faculty of deciding or determining in accordance with circumstances, and what seems just, fair, right, equitable, and \$10\$ reasonable in those circumstances. It also involves latitude of individual choice according to the particular circumstances. Discretion differs from a case where the decision follows ex **debitio justitiae** where facts are known (that is, by reason of an obligation of justice/ where

court has no discretion to refuse/or \$15\$ where an applicant has a remedy as of right).

In the impugned decision and orders, the Learned trial Magistrate adverted to section 11 (2) of the Magistrates Court Act, and invoked equity, to do justice, in a criminal matter, \$20\$ where the oral Application was of a civil nature.

Section 11 \$(2)\$ provides.

" A magistrate may, in the exercise of the jurisdiction conferred on him or her by this or any other enactment, 25 grant absolutely or on such reasonable terms or conditions as seem just, any remedy or relief, whether interlocutory or final, to which any of the parties to a cause or matter may be entitled in respect of any legal or equitable claim or defence properly brought forward or which appears in such 30

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- cause or matter, so that as far as possible all matters in S dispute between the parties may be completed and finally decided and all multiplicity of legal proceedings concerning such matters avoided."
- The trial Court also cited subsection (3) of section 11 of the MCA \$10\$ which provides,

"If in any cause or matter there is a conflict or variance between the rules of equity and the rules of common law with reference to the same subject, the rules of equity shall 15 prevail."

The Applicant argued that the above provisions are not applicable to criminal matters. The Learned State Attorney quoted section 11 (1) of the MCA, which the trial Court did not \$20\$ proceed under, to support her arguments. The Respondent's Counsel did not agree. He argued that the trial Court was empowered to make an order in equity to do justice.

25 Section 11 \$(1)\$ provides,

"In every civil cause or matter before a Magistrates Court, law and equity shall be administered concurrently."

To begin with, whereas section 11 \$(1)\$ of the MCA appears to 30 apply exclusively to only civil cause or matter and guides that a Magistrates Court shall administer law and equity concurrently

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in civil matters or cause, section 11 \$(2)\$ of the MCA is concerned S with remedies which a Magistrate Court may grant, in the exercise of its jurisdiction conferred by the MCA or any other enactment. The Magistrate Court is empowered to grant any relief, either absolutely or on such terms or conditions, by considering what seems just. Such reliefs may be final or \$10\$ interlocutory. However, the party to whom the relief is to be granted must be entitled to it, in law, considering the party's claim or defence, be it legal or equitable. The claim or defence by a party

must have been properly brought forward before Court, in a cause or matter. The Court may also look at the \$15\$ nature of the claim or defence, from the matter before it, and consider which remedy to grant. The section is designed to empower a Magistrate Court to avoid multiplicity of legal proceedings. The section, from its language, is not prescriptive of the nature of the proceedings contemplated, but is widely \$20\$ enacted. I would not therefore say the section applies squarely to civil matters, as to do so would be reading words into the clear provision of the section, without a necessity. In **Registered Trustees of Kampala Institute Vs. Departed Asians Property** \$25\$ Custodian Board (DAPCB), SCCA No.21 of 1993, court held "it is a wrong thing to read into the Act of Parliament words which are not there and in the absence of a clear necessity."

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I think section 11 (2) of the MCA is a reflection of similar powers \$\mathsf{S}\$ a High Court enjoys, bestowed by section 33 of the Judicature Act., although the powers of the High Court are conferred by the Constitution, the Judicature Act, and other written laws, which are not necessarily the same laws conferring similar powers on the Magistrates Courts. \$10\$

In the present matter, the Court was moved in the middle of criminal proceedings, orally. Factual assertions were made by Counsel for the Accused person (present Respondent). There was no evidence that could be subjected to test, to support the allegations. Court easily believed the allegations and granted reliefs. I think this was an irregularity.

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Whereas the Magistrate Grade 1 has powers to hear the criminal charges preferred against the Respondent, under section 161 20 (1) (b) of the MCA, the oral application before the Court, with respect, was of a civil nature, improperly brought before Court, even if Court has powers to hear Civil matters, of limited jurisdiction, under section 207 (1) (b) of the MCA (as amended). For the purposes of the particular proceedings, the learned trial 25 Magistrate did not have a proper civil matter brought before it. There was no interlocutory matter the Court was purporting to adjudicate, where the Court could consider the prayers of the party making request for interim relief of a civil nature. There

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was no civil suit before the Court either from which the \$\mathsf{S}\$ interlocutory application could have sprung.

It was therefore irregular of the Learned Magistrate to entertain the oral application by the Respondent's/ Accused person's Advocate. The Court ended up making Orders which occasioned a Miscarriage of Justice, moreover without sufficient verifiable facts. The Court had no means of verifying what the status quo before the institution of the criminal proceedings against the Respondent was. Further, the Court could not verify the competing claims of the complainant and the Accused person. \$15\$ The Orders, as I will point out, are vague. The Court was not

possessed of full credible facts.

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Given the circumstances, I find that the trial Court's Orders are not correct and are improper. Material errors involving a 20 miscarriage of justice to the complainant in criminal case No. 750 of 2022 occurred.

Accordingly, the Orders of the Learned Magistrate Grade One, thus, "maintaining the status quo, that all tenants in 'this 25 premises' should continue paying rent to the person they have been paying before the institution of this criminal **matter**" is revised and set aside. Further, the Order of the Learned Magistrate Grade One of the Court, restraining the complainant in the criminal case no.750 of 2022 "from chasing 30

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away tenants who have been on 'this premise's before \$\mathsf{S}\$ institution of the criminal case before court, until the criminal matter is heard and finally determined on **merits**", is hereby revised, and set aside. I do so in the exercise of my revisionary powers under section 50 \$(1)\$ (b) of the Criminal Procedure Code Act. \$10\$

I further exercise my powers under section 17 of the Judicature Act and direct that the trial of Criminal Case No. 750 of 2022 be expedited by the Court and the State, to avoid any potential abuse of the Court process.

I so order.

Delivered, dated and signed in chambers this 23rd February, \$20\$ 2023.

> Hudolm. 23/02/2023 George Okello **JUDGE HIGH COURT**

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Ruling read in Court in the presence of; \$\mathsf{S}\$

09:55am

23rd February, 2023

Attendance \$10\$

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Ms. Avola Grace, Court Clerk Ms. Nyipir Gertrude for the Applicant (State Attorney). The complainant is absent. But her Representative, Omara Patrick is in Court.

The Respondent is absent. \$15\$ Counsel for the Respondent, Mr. David Kinyera is absent.

The Application is for Ruling. I am ready to receive. State:

\$20\$ Court Clerk: The Respondent was served with a notice of today's Ruling by Court.

Court: The Ruling is delivered in open court.

> George Okello 23/02/2023 **JUDGE HIGH COURT**

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Prepared on 12 October 2026 · Esheria