

UGANDA / JUDGMENT

Uganda v Senyondo and 4 Others (Constitutional Reference 4 of 2010) [2020] UGCC 2080 (21 October 2020) [2020] UGCC 2080

COURT

Constitutional Court of Uganda

BEFORE

Owiny-Dollo, DCJ, Kakuru, JCC, Egonda-Ntende,
JCC, Obura, JCC, Muhanguzi, JCC

CASE / FILE NUMBER

Constitutional Reference 4 of 2010

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THE REPUBLIC OF UGANDA IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA CORAM: OWINY - DOLLO DCJ, KAKURU, EGONDA-NTENDE, OBURA AND MUHANGUZI JJA. CONSTITUTIONAL REFERENCE NO. 04 OF 2010

| | | **BETWEEN** |

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 | | | | AND | | 10 | 1. FRANCIS SENYONDO
2. JOHN ASIIMWE
3. VINCENT MUGISA
4. MWESIGE CHARLES BANSEGU
5. KARAMAGI MATTHIAS | | 15 | |

JUDGMENT OF OWINY - DOLLO; DCJ

Introduction

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This is a Constitutional Reference brought under Article 137 (5) (b) of the Constitution of the Republic of Uganda, 1995, the Constitutional Court

- (Petitions and References) Rules S. I. 91 of 2005 and all enabling laws. 20 **Background**

- The Respondents were charged with Embezzlement s/s 268 (a) & (g); Causing financial loss s/s 269 (1), Conspiracy to commit a felony s/s 390. The particulars were that the Respondents being employees of Bundibugyo District Local Government, receptively, between 17th and 25th August 2006 at Bundibugyo District Headquarters, in the performance of their duties did authorize payment of Shs. 30, 000, 000/- from the District Development Programme account knowing or

having reason to believe that such payment was not justified and such an act would cause financial loss to the District.

The charges were dismissed for want of prosecution. When they were re-instated, counsel for the Respondents raised a question for constitutional interpretation and the same was referred here by His Worship Boniface Wamala, Chief Magistrate of the Chief Magistrate's Court sitting at Fort Portal.

Issues

1. Whether the re-instatement of a case by the State almost a year $\frac{1}{2}$ after such a case has been dismissed by the Court for want of prosecution does not amount to an infringement of the accused persons' constitutional right to a fair treatment as guaranteed under Articles 28 and 45 of the Constitution.

15 Article 28 (9) provides:

"A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or *review proceedings relating to the conviction or acquittal.*"

Article 45 provides:

"The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned."

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The Respondents contend that re-instating charges almost a year after they were dismissed, amounts to an infringement of their rights which is guaranteed by the Constitution.

Representation

Both Counsel for the Petitioner and Respondent were the absent in S Court.

Court's Consideration

Article 28 (1) of the Constitution provides as follows:

- (1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing 10 before an independent and impartial court or tribunal established by law.

Article 44 (c) of the Constitution, lists "fair hearing" as one of the non - derogable rights enshrined in the Constitution; which any person is entitled to enjoy. This provision of the Constitution operates notwithstanding any other provision in the Constitution. Therefore while Article 120 (3) (d) of the Constitution grants the DPP power to discontinue criminal proceedings instituted by himself or herself at any stage of the trial before judgment is delivered, it is subject to Article 28 (1) and 44 of the Constitution.

I hold the view that this provision on the right to be accorded a fair and speedy trial extends to the need to hold a trial or hearing within from the time it was first commenced. Any reasonable time reinstatement of a charge for a trial after it was discontinued either by withdrawal of the charge or entry of a nolle prosequere by the DPP or dismissal for want of prosecution, all of which would not have

amounted to an acquittal or discharge of an accused person, has to be done within reasonable time; or any delay in doing so justified. It would offend a person's right to a fair and speedy trial if he or she is subjected to a trial long after it was discontinued under any of the circumstances stated above.

Accordingly then where, as is the case before us, an accused person feels he or she has reason to challenge a reinstatement of a charge for trial, on the ground that it is done long after it was discontinued, and this offends his or her right to a fair and speedy trial, it is not a matter for the Constitutional Court to determine. It is the trial Court before 10 which such an objection or challenge must be raised; and after hearing the parties on the objection, it shall pronounce itself thereon by either sustaining the objection, or allowing the reinstatement of the charges. A person who is aggrieved by the decision of the trial Court in that regard may appeal there from for determination of the grievance. 15

In light of the above, I would direct that this matter is referred to the trial Court before which the challenge may be raised and upon hearing the parties, it shall pronounce itself on the issue of whether the continuation of the trial is justified or not. Since Kakuru, Egonda -Ntende, Obura, and Muhanguzi JJA are in agreement, orders are hereby issued in the terms proposed by me.

Dated at Kampala this \$\mathbb{R}\$ day of \$\mathbb{Q}\$ 2020

Alfonse C. Owiny - Dollo **Deputy Chief Justice**

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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL REFERENCE NO. 04 of 2010

(Arising from the Chief Magistrate's Court of Fort Portal FPT-CR-CO-429 *Of 2009 CRB 116/2007*)

<table>

UGANDA PETITIONER

VERSUS

- 1. FRANCIS SENYONDO
- 2. JOHN ASIIMWE
- 3. VICENT MUGISA
- 4. MWESIGE CHARLES BANSEGU
- 5. KARAMAGI MATTHIAS
- CORAM: Hon. Mr. Alfonse Owiny-Dollo, DCJ Hon. Mr. Justice Kenneth Kakuru, JA/JCC Hon. Mr. Justice F. M. S Egonda-Ntende, JA/JCC Hon. Lady Justice Hellen. A. Obura, JA/JCC Hon. Mr. Justice Ezekiel Muhanguzi, JA/JCC

JUDGMENT OF JUSTICE KENNETH KAKURU, JA/ JCC

I have had the benefit of reading in draft the judgment of my learned brother the \$25\$ Hon. Mr. Justice F. M. S Egonda-Ntende, JA/JCC.

I agree with him that the decision of this Court in *Kasande Sylvia & Another vs Uganda* (Constitutional Reference No. 52 of 2010) ought to be followed as it is on all fours with the instant petition.

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⁵ Article L20(5) requires the Director of Public Prosecutions to exercise the powers of the office with due regard to public interest, the interest of aclministration of justice and the need to prevent an abuse of Court process.

I am rrnable to find that, the decision of the Director of Public Prosecutions reinstating criminal charges against the accused persons in the case from which this reference arises the same having been dismissed fbr what of prosecution alnrost one 15 year earlier was done in the public interest. I am also unable to find that, that very decision was in the interest of administration of justice. On the contrary I Find that, the decision by the Dirccctor of Public Prosecutions was an

abuse of legal process. The Director of Public Prosecutions had sanctioned charges against the accused person without sufficient evidence to sustain a prosecution or due to laxity neglect of duty or negligence had failed to prosecute the case resulting into its dismissal for want of prosecution. 10

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Accused persons are entitled to a speedy trial. This was denied. It is difficult for me to imagine how the accused persons would be able to put together their respective defences after such a long period of time between the dismissal of the case and its reinstatement. The resultant trial would not be fair.

A right to a fair trial is under Article 28 (1) of the Constitution is a non derogable right under Article 44(c). I find that reinstating charges and trying the accused persons one year after the case against them had been dismissed for want of prosecution would contravene Articles 2B(1) 44 (C) and 120(5) of the Constitution.

For the above reasons I too would answer the reference question in the same words as those set out in the Judgment of F. M. S Egonda-Ntende, JA/JCC.

Before I leave this matter I would like to clarify that, the Hon. Justice Owiny-Dollo, the DCJ (as he then was) prepared and signed his judgment before he was elevated

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to the office of the Chief Justice. Hon. Justice Muhanguzi, JA/JCC (as he then was) agreed with the draft Judgment of the DCJ, but was unable to avail his own decision by the time he was elevated to the Supreme Court.

Dated at Kampala this 2020\$.

Kenneth Kakuru JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

[Coram: Owiny-Dollo, DCJ; Kakuru, [Egonda-Ntende, Obura and Muhanguzi, JJCC]

Constitutional Reference No. 0.1 of 2010

(Ari.singfrom FPT-CR-429 of 2009 (Chief tuIagistrates Court of Fort Portal))

**BETWEEN Uganda Petitioner ANI) Francis Senvond Respondent No. I John Asiimw
Respondent No.2 Vincent Mugisha::: :Respondent No.3 Mwesige Charels Bansegr-r
Respondent No. 4 Karamagi Mathias:-=: Respondent No. ⁵**

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. Iudement of Fredrick Egonda-Ntende. JCC

- tll I have had the opportunity to read the Judgment of the Deputy Chief Justice in this reference. I agree that the trial court is competent to order a stay of prosecution where circumstances warrant it doing so. I would only wish to add a few remarks for guidance of the trial courts in matters of this nature.
- l2l This court has previously considered the question ofthe powers ofthe DPP to reinstate charges against accused persons where they were previously dismissed in the absence of a trial in circumstances that left it open to the DPP to consider reinstating the charges. This was in Kasande Sytvia and Anor v Usanda [2019] UCCC 6.
- t3l In that decision this court laid out some of the considerations that a court rmay take into account in determining whether or not the question of reinstatement is not in breach of the accused's right to a fair and speedy trial as provided for in articles 28 (l) and 44 olthe Constitution. The trial court must consider, among other reasons, the length of delay, the reasons for the delay, waiver of any period, actions of the accused, actions of the state, limits on institutional resources and prejudice to an accused person.
- 14) After carrying out such an analysis if the trial court detcrmines that an accused is sufficiently prejudiced in the enjoyment ofhis or her right to a fair and speedy trial the trial court is obliged to protect the accused's fundamental rights and issue an order staying prosecution and discharge an accused from further criminal proceedings in relation to the charges against the accused pursuant to articles 28 (I), 44, 50 (I) and 126 (2) (b) ol the Constitution.
- t5] ^Iwould therefore anslver the reference in the following words, 'On reinstatement of the charges previously dismissed, the DPP is under an obligation to justify why the charges are being reinstated. Where the DPP fails to justify the reinstatement accused persons would be entitled to an order for stay of prosecution on those charges and discharge from further criminal proceedings.'

Signed, dated and delivered at Kampala this)\f, ", ^s ²⁰²⁰

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For ckE da-Ntende Justice()f the Constitutional Court

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Owiny-Dollo, DCJ, Kakuru, Egonda-Ntende, Obura & Muhanguzi, JJCC)

CONSTITUTIONAL REFERENCE NO. 04 OF 2010

JUDGMENT OF HELLEN OBURA, JA

I have had the opportunity to read in draft the judgment of the Deputy Chief Justice in this Constitutional Reference. I agree with his conclusion that the jurisdiction to hear and determine an objection to reinstatement of a charge lies with the trial court and it is upon the Director Public Prosecutions (DPP) to satisfy the court that the reinstatement sought is justifiable.

Dated at Kampata \(*n.t.))r, 2020. s

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Hellen Obura

JUSTICE OF CONSTITUTIONAL COURT/COA

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