

UGANDA / JUDGMENT

Uganda v Wamukuyu (Miscellaneous
Application 83 of 2024) [2024]
UGHCACD 10 (27 November 2024)
[2024] UGHACD 10

COURT

HC: Anti corruption Division (Uganda)

BEFORE

Okuo-Kajuga, J

CASE / FILE NUMBER

Miscellaneous Application 83 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

ANTI-CORRUPTION DIVISION AT NAKASERO

CRIMINAL MISCELLANEOUS APPLICATION NO 0083 OF 2024

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UGANDA (DPP) APPLICANT

VERSUS

WAMUKUYU IGNATIUS MUDINI ::::::::::::::::::::::::::::::

BEFORE: Okuo Jane Kajuga, J

RULING

Introduction:

This Ruling is in respect of an application for a Restraining Order brought by the applicant under Sections 34 (1), 53, 54, 55 and 57 of the Anti-Corruption Act Cap 116. The application is by a Notice of Motion supported by the affidavit of D/IP Mfitundinda **Didas**, a financial and asset tracing detective from the Directorate of Criminal Investigations of the Uganda Police Force.

The applicant seeks orders prohibiting the respondent and any other person from disposing of or otherwise dealing with properties comprised in:

- 1. Volume 4690 Folio 22 Block 15 Plot 2783 land at Kibuga, Nsambya
- 2. Volume 3201 Folio 21 Plot 12 Land at Wanale Road Mbale
- 3. Volume MBA 226 Folio 3 Block 3 Plot 4149 land at Mulindwa Cell, Central Mbale
- 4. Volume MBA 169 Folio 6 Plot 5771 Block 3, Land at Mangho Lower, Central Mbale
- 5. Kvagwe Block 103 Plot 2132, Land at Mukono, Mutuba IV
- 6. 0.1030 hectares of unsurveyed land at Busamaga Division, Mbale Municipal Council
- 7. 2.4900 hectares of unsurveyed land at Kireka, Fiika Division, Nakaloke Town **Council Mbale District**

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- 8. 2.3380 hectares of private property at Bulengeni Trading Centre D, Kisenyi, Kamu, Bulambuli with a Coffee Plantation

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- 9. 3.8850 hectares at Nakaloke III, Afya Ward, Nakaloke Town Council Bungokho, Mbale used for Crop Production.
- 10.5 hectares of land at Nalwadda Village, Bunasufwa Parish, Bulaago Sub-county, Bulambuli
- 11.1.6180 hectares at Lukonje village, Simu Bulambuli
- 12.0.0505 hectares of unsurveyed land at Buyaga Cell, Buyaga Town Council, Bulambuli District having Commercial shops
- 13.5.6650 hectares at Buwashebwa, Nabbongo, Bulambuli
- 14. Residential Building on 0.0890 hectares in Leasehold Block 15 1936, Folio 22 Volume 3607 at Ssenyonga Road, Gogonya II Zone

(I noted that item 1 appeared twice on the list and I have excluded the repetition here)

THE [AW:

The issuance of Restraint Orders under the Anti-Corruption Court Act Cap 116 is for the purpose of preventing the dissipation of any money or property derived from or related to an offense, or property belonging to or under the control of an accused person for:

- a) ensuring payment of compensation to the victims of a criminal offense in the event of a conviction;

- b) satisfying confiscation orders or pecuniary orders issued by the court in respect of that property, upon conviction.

The purpose of the Anti-Corruption Act would be defeated if the benefits or rewards from the crime are dissipated or beyond recall at the point of conclusion of the case. It would also be pointless for the court to issue a compensation order to victims of crime, when there's no property from which the same can or may be realised, in case the accused fails to pay up.

The power of this court to issue the orders sought is contained in Sections 34 and 55 of the Anti-Corruption Act Cap 1 16.

Section 34 of the Act provides:

"A court may, upon application by the Director of Public Prosecutions or the Inspector General of Government, issue a restraining Order placing restrictions on the disposal of any property of the accused person, the suspected person or a person associated with the offense or suspected person for ensuring the payment of compensation to any victim of the offense or otherwise

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for the purpose of preventing the dissipation of any money or property derived from or related to an offense under the Act."

Section 55 of the Act provides as follows:

"Where the court is satisfied that there are reasonable grounds to **believe** that there exists property in respect of which a restraining order may be made under this Act, the court may make an order—

- (a) prohibiting any person from disposing of, or otherwise dealing with property specified in the order other than in a manner specified in the order; and
- (b) at the request of the authorised officer, and where the court is of the opinion that the circumstances so require, appoint a person to take control of or to manage or otherwise deal with the property.

The application may be made under **Section 53** which provides:

"Where a person has been charged or is about to be charged with an offence under this Act, an authorised officer may make an application to the court for an order, in this Act referred to as a restraining order, *restraining the disposal of the property of, or in possession or under the control of that person, wherever that property is situated.*

Such an application is to be supported by an affidavit which sets out the following:

- (a) the offence under investigation;
- (b) a description of the property in respect of the restraining order sought;

- (c) the name and address of the person believed to be in the possession of the property;
- (d) the grounds for the belief that the property is tainted in relation to the offence or that the person being investigated derived a benefit directly or indirectly from the commission of the offence under *investigation;*
- (e) where the application is for a restraining order against property of a person other than the person being investigated, the grounds for the belief that the property is tainted property in relation to the offence under investigation and is subject to the effective control of the accused; and

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- (f) the grounds for the belief that a confiscation order or a pecuniary order may be or is likely to be made under this Act in respect of the *property. SEE Section 54 of the Act in full*

Burden of proof:

I wish to emphasise that the legal burden at the restraint stage is far lower than the balance of probabilities. As set out in Section 55 of the Act, the court may issue the order upon finding "reasonable grounds to believe" that there exists property in respect of which a restraining order may be made.

In the persuasive Botswana Case of DPP versus Khato Civils (Pty) Ltd and others; CLCGB 040-16, their Court of Appeal discussed the test of "reasonable belief" as follows;

"The test of reasonableness is an objective one. The court must look at the evidence which was in the possession of the investigating officer at the time when he reached his value judgement. That evidence and the circumstances must be looked at holistically by the court in determining whether there was material or evidence upon which a reasonable investigator having regard to this and exercising his mind accordingly would have entertained a belief that some crime has been committed of which the funds were proceeds therefrom"

I agree with the finding and find it relevant to our legal system. At the restraint stage the court must only be satisfied that there might be a prosecution that may lead to conviction or compensation and confiscation order issued. It is for this reason that the order may be granted both at the investigative stage and when charges are finally brought in courts of law. The court is not at this stage required to delve into the merits of the case or analyse the evidence and determine its strength or otherwise.

Under Section 34 however, the conditions set out in Section 55 do not apply. As long as there's evidence of a crime under investigation or in court and property belonging to the accused has been identified, the court may restrain its disposal to avoid dissipation. I note from submissions of the applicant that this application mostly falls under section 34.

No notice was issued to the respondent of this application, and I proceeded Exparte being convinced that giving the notice before making the order would result in the disappearance, disposal, dissipation or reduction in the value of the property. I am granted this discretion by **Section 57 of the Anti-Corruption Act** and I have opted to exercise it in the interest of justice.

The Issues for Resolution:

1. Whether the application is brought by an authorised person within the meaning of the Act

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- 2. Whether a person is charged or is about to be charged with an offense under the Act
- 3. Whether the property in respect of which the orders are sought is properly described, and is in possession or under the control of that person
- 4. Whether the name and address of the person believed to be in possession of the properties) is well described
- 5. Whether the applicant has established grounds for the belief that the property is tainted or derived a benefit from the offense committed

Issue 1:

Under Section 53 of the Act, an application for restraining orders can only be brought by an officer authorised to do so. An "authorized officer" is defined under the same Act, **Section 2** thereof as

"A police officer not below the rank of Assistant Inspector of Police authorised in writing by the Inspector General of Police or an inspectorate officer authorised in writing by the Inspector General of Government or a State Attorney authorised in writing by the Director of Public Prosecutions; (emphasis mine)

This application is brought by **Annette Namatovu Ddunga**, a Chief State Attorney from the Office of the Director of Public Prosecutions, designated as the officer in charge of Asset Recovery. A copy of this designation was provided to the court. It's dated 1st September 2021 Ref DPP/P/N/487, signed by the Director of Public Prosecutions and titled "clarification of duties and responsibilities".

By virtue of this designation, it follows that she has the written authority of the DPP to bring an application related to asset recovery including restraints, the seizure and recovery of proceeds of crime.

She therefore satisfies the definition of an authorised officer within the meaning of **Section 2 of the Anti-Corruption Act**.

I find that the application is brought by a competent person.

Issue 2:

In the supporting affidavit, it is averred that the respondent who is a member of Parliament representing Elgon County in Bulambuli District, and Deputy Chairperson of the Budget Committee for the Financial Years 2021/2022 and 2022/2023 was investigated under CID HQTS CASE REF E/103/2024, and the deponent conducted the financial and asset tracing component of the investigation.

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The respondent was subsequently charged and later committed to the High Court for trial on charges of Diversion of Public Resources, with an alternative of Receiving Stolen Property and Conspiracy to defraud, Vide Anti-Corruption Session Case No 82/2024. The Indictment, Annexure A indicates the value of the allegedly diverted funds to be Ushs 2,398,714,611/= (See Count 2), the value of the conspiracy to defraud is Ushs 3,448,714,611/= while the value for the alternative charge of receiving stolen property is Ushs 85,000,000/=. The trial however was halted by the trial court pending the determination of a human rights violation allegation brought by one of the co-accused.

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There is overwhelming evidence to confirm that the respondent is facing charges under the Anti-Corruption Act and other related offenses, over funds for war loss compensation to Buyaka Growers Cooperative Society.

There is also additional evidence that there are new areas of investigation being undertaken by the police that further implicate the respondent in the commission of other crimes under the Anti-Corruption Act. Under Paragraphs 22 to 35 of the supporting affidavit, Funds for Bumwambu Growers Cooperative Society were alleged to have been received by SIMU OIL CO LTD which is linked to the respondent. There are also enquiries into suspicious payments to Rajnish Jain Bank Account, then subsequently over ¹⁵ suspicious transactions to the respondent's bank account from the latter company.

I am satisfied that the applicant has fully met the requirements of Section 53 of the Anti-Corruption Act as regards the existence or pendency of charges against the person against whom the orders are sought.

Issue 3:

In order for the application to succeed, the applicant has the obligation to properly describe the properties sought to be restrained from disposal, and satisfy the court that they are in possession of or under the control of that person.

Black's Law Dictionary 8th Edition defines "possession" to mean the fact of having or holding property in one's power; the exercise of dominion over property. It is the right under which one may exercise control over something to the exclusion of all others, the continuing exercise of a claim to the exclusive use of a material object"

The applicant has tendered evidence to confirm that the following properties are registered in the name of the respondent. With the exception of (c), he had declared them to the Inspectorate of Government as part of his assets in the Declarations that he filed in 2009, 2021 and 2023;

- a) Vol. 4690 Folio 22 Block 15 Plot 2783, land at Nsambya Central, Gogonya 11, Makindye Division. This title was deposited with the Court as security for his release on Bail.

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- b) Volume 3201 Folio 21 Plot 12 Land at Wanale Road Mbale
- c) Volume MBA 226 Folio 3 Block 3 Plot 4149 land at Mulindwa Cell, Central Mbale.
- d) Volume MBA 169 Folio 6 Plot 5771 Block 3, Land at Mangho Lower, Central Mbale
- e) Kyagwe Block 103 Plot 2132, Land at Mukono, Mutuba IV

Copies of the land titles have been attached as Annexures W to W5 respectively. All are registered in the respondent's name. The property in (c) was acquired in December 2023. Though it was not declared, registration is conclusive evidence of ownership.

Am satisfied that the applicant is in possession of the said properties by virtue of being the registered owner.

Furthermore, there is proof that the properties reflected in (c) and (d) were acquired during the period that the fraudulent transactions are alleged to have occurred, hence a basis for the suspicion that they were acquired with illicit funds, and the belief that a confiscation order may be sought from and awarded by the court. I find that belief reasonable.

There is no evidence tendered to prove that the respondent is the registered owner of the Residential Building on 0.0890 hectares in Leasehold Block 15 1936, Folio 22 Volume 3607 at Ssenyonga Road, Gogonya II Zone, although he declared it as his property in 2019, 2021 and 2023. Being registered land, there ought to be a verified title. There is no explanation as to why the formal ownership has not been confirmed.

Most of the properties that are unregistered were declared by the Respondent to the Inspector General of Government as his properties. These are the following:

- 0.1030 hectares of unsurveyed land at Busamaga Division, Mbale Municipal i. Council (declared in 2019, 2021 and 2023)
- ii. 2.4900 hectares of unsurveyed land at Kireka, Fiika Division, Nakaloke Town Council Mbale District (declared in 2019, 2021 and 2023)

- Coffee Plantation on 2.3380 hectares of private property at Bulengeni Trading iii. Centre D, Kisenyi, Kamu, Bulambuli (Declared in 2019, 2021 and 2023)
- Crop Production on 3.8850 hectares at Nakaloke III, Afya Ward, Nakaloke Town iv. Council Bungokho, Mbale (Declared in 2019, 2021 and 2023)
- 5 hectares of land at Nalwadda Village, Bunasufwa Parish, Bulaago Sub-county, \$V\$. Bulambuli (Declared in 2019, 2021 and 2023)
- 1.6180 hectares at Lukonje village, Simu Bulambuli (Declared in 2019, 2021 and vi. \$2023)\$
- Commercial shops on 0.0505 hectares of unsurveyed land at Buyaga Cell, Buyaga vii. Town Council, Bulambuli District (Declared in 2019, 2021 and 2023)

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viii. 5.6650 hectares at Buwashebwa, Nabbongo, Bulambuli (Declared in 2019, 2021 and 2023)

On the basis of the respondent's own consistent declarations of ownership which I have carefully scrutinised, I find that the applicant has established his possession of the above properties.

Issue Four:

The name and address of the person believed to be in possession of the properties is well described as the Hon. Wamukuyu Mudimi, a member of Parliament for Elgon County in Bulambuli.

A copy of his affidavit in support of his bail application is Annexure B to the applicant's affidavit in support of the application and in paragraph 10 thereof, his fixed place of abode is at Good will village, Nsambya Central at Plot 2783, Kibuga Block 15.

Issue 5:

The applicant has established grounds for the belief that some of the properties are tainted as proceeds of crime. I have already cited the two properties acquired during the period that the crimes charged occurred.

However, this application is also brought under Section 34 of the Anti-Corruption Act to prevent the dissipation of the properties cited for the satisfaction of compensation orders that may be issued by the court in the case of a conviction. For that matter it is sufficient if the link between the properties and the respondent have been established, regardless of whether the properties are proceeds of crime or not.

CONCLUSION

In conclusion therefore, the application succeeds.

I hereby issue an Order Restraining the Respondent and any other persons connected to him from disposing of the properties listed hereunder:

- 1. Vol. 4690 Folio 22 Block 15 Plot 2783, land at Nsambya Central, Gogonya 11, Makindye Division.
- 2. Volume 3201 Folio 21 Plot 12 Land at Wanale Road Mbale
- 3. Volume MBA 226 Folio 3 Block 3 Plot 4149 land at Mulindwa Cell, Central Mbale.
- 4. Volume MBA 169 Folio 6 Plot 5771 Block 3, Land at Mangho Lower, Central Mbale
- 5. Kyagwe Block 103 Plot 2132, Land at Mukono, Mutuba IV
- 6. 0.1030 hectares of unsurveyed land at Busamaga Division, Mbale Municipal Council
- 7. 2.4900 hectares of unsurveyed land at Kireka, Fiika Division, Nakaloke Town Council
Mbale District

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- 8. 2.3380 hectares of private property at Bulengeni Trading Centre D, Kisenyi, Kamu, Bulambuli
- 9. 3.8850 hectares at Nakaloke III, Afya Ward, Nakaloke Town Council Bungokho, Mbale
- 10.5 hectares of land at Nalwadda Village, Bunasufwa Parish, Bulaago Sub-county, Bulambuli
- 11.1.6180 hectares at Lukonje village, Simu Bulambuli
- 12.0.0505 hectares of unsurveyed land at Buyaga Cell, Buyaga Town Council, Bulambuli District, and;
- 13.5.6650 hectares at Buwashebwa, Nabbongo, Bulambuli

No order is made in respect of Property comprised in Leasehold Block 15 1936, Folio 22 Volume 3607 at Ssenyonga Road, Gogonya II Zone.

This Order is to be served on the respondent, registered with the authorities where relevant and shall stay in force until it is discharged, reviewed, revoked or varied by this Court.

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Okuo Jane Kajuga Judge of the High Court Delivered at Kampala this 27th day of November 2024

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