



2. A declaratory order that the respondents' on-going criminal investigation and intended criminal prosecution of the 2<sup>nd</sup> applicant vide CID HQ 075/2020 Isaiah Kalanzi and Anor for allegedly acting without instructions as an Advocate in HCCS No. 440 of 2013; Apollo Wasswa Basudde and 2 Ors vs Uganda Railways Corporation and 5 Ors and Civil Appeal No. 288 of 2016; Apollo Wasswa Basudde and 2 Ors vs Nsabwa Ham is ultra vires to their mandate, contrary of orders of court in Misc. Applic. No. 1520 of 2018, offends the sub judice rule as the same issue is before the Law Council and the Court of Appeal in Civil Review Applic. No. 43 of 2020 and is an abuse of court process.
3. An injunction be granted restraining the Respondents from carrying out any further criminal investigation and intended criminal prosecution of the application of the applicants vide CID HQ 075/2020 Isaiah Kalanzi and Another for the alleged forgery of the letters of administration to the estate of the late Sepiriya Rosiko Kadumukasa vide Admin Cause No. 434 of 2001 and the alleged absence of instructions to the 2<sup>nd</sup> Applicant to institute HCCS No. 440 of 2013 and Civil Appeal No. 288 of 2016.
4. General damages
5. Costs of the Application be borne by the Respondents.

The grounds in support of this application were stated very briefly in the Notice of Motion and in the affidavits of the applicants; Isaiah Kalanzi and Richard Nsubuga which are detailed but briefly are;

On the 8<sup>th</sup> May, 2002, the 1<sup>st</sup> applicant together with Apollo Wasswa Basudde and Rosemary Wanyama were granted letters of administration to the estate of the late Sepiriya Rosiko Kadumukasa under Admin. Cause No. 434 of 2001 by the late Justice V.F Musoke Kibuuka. The said letters were decreed as validly issued in HCCS No. 198 of 2013; Apollo Wasswa Basudde and 2 Ors vs Nsabwa Ham and by the Court of Appeal in Civil Appeal No. 288 of 2016; Apollo

Wasswa Basudde and 2 Ors vs Nsabwa Ham with the 2<sup>nd</sup> Applicant representing the plaintiffs/ appellants therein as their counsel.

However, sometime in 2017; Apollo Wasswa Basudde and Rosemary Wanyama denied ever giving instructions to the 2<sup>nd</sup> Applicant to file Civil Appeal No. 288 of 2016 and HCCS No. 440 of 2013; Apollo Wasswa Basudde and 2 Ors vs Uganda Railways Corporation and 5 Ors which is still pending in the High Court, Land Division. They also claimed to be in possession of the letters of administration granted to them by Justice Caroline Atim Okello on the 11<sup>th</sup> May, 2001 vide the same Admin. Cause No. 434 of 2001 and denied ever obtaining Letters of Administration with the 1<sup>st</sup> Applicant.

As a result of the aforementioned incident, there two pending complaints in the Law Council as filed by the 2<sup>nd</sup> Applicant against Rosemary Wanyama, Apollo Wasswa Basudde and 2 Ors filed by Apollo Wasswa Basudde and Rosemary Wanyama against the 2<sup>nd</sup> Applicant and several applications and suits arising from the following incidences that were filed before court and also complaints made before the police station against the applicants herein. The applicants further alleged that the 1<sup>st</sup> Respondent is vicariously liable for the actions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents hence this application.

The respondents opposed this application and filed an affidavit in reply through Tawu Bumali, the 2<sup>nd</sup> Respondent and the investigating officer in respect of the complaint on the alleged forgery and uttering false documents vide case file No. CID HQTRS GEF: 075/2020 where he stated that Rose Mary Wanyama reported a case that her signature was used on different documents and uttered in the Court of Appeal was intended to defraud her of her father's estate. He further stated that there is no on-going investigation into the 2<sup>nd</sup> applicant's case on acting without instructions and that the investigations are in respect to forgery and uttering false documents.

The respondents therefore stated that the said application is misconceived in law and orders sought herein untenable.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and considered in the determination of this application.

Two issues were framed by the applicants for court's determination;

1. *Whether the respondents criminal investigations against the applicants is an abuse of the legal system, offends the sub judice rule as the same matters are currently for determination before the Court of Appeal which is causing an injustice to the applicants*
2. *What remedies are available to the applicants?*

The applicants were represented by *Ms Nambi Patricia* whereas the respondents were represented by *Asst Commissioner Ms. Mutesi Patricia (now Judge of the High Court)*.

### **Determination**

The applicants stated that section 33 of the Judicature Act gives the High court wide powers to grant all such remedies as any of the parties entitled to so that matters are completed and multiplicities of legal proceedings are avoided.

The Applicants are stated under par. 19 and 20 of their affidavit that the respondents opened up criminal investigations against the applicants attributed to allegations of forgery of Letters of Administration of the estate of the Late Sepiriya Kadumukasa and Rosemary Wanyama's signature. It was submitted that the said Wanyama has over the year used several signatures interchangeably.

Counsel relied on the case of *Nkalubo Augustine vs Uganda Criminal Misc. Applic No. 27 of 2020* wherein criminal proceedings for forgery and uttering false documents to Letters of Administration had been instituted against the applicant during the pendency of a civil suit in the family court. The court therein noted the common law principle that criminal matters should take precedence over

civil matters but held that court is not bound to follow it mandatorily especially where strict adherence to such principle could occasion a miscarriage of justice.

The applicants further submitted that it is trite law that where a civil court has taken cognizance and is deciding the same issue, the criminal proceedings before the trial court amount to abuse of process of law. Counsel further noted that proceedings pending before the trial court in such circumstance ought to be stayed till the disposal of the civil suit.

Counsel also stated that the suit on the validity and alleged forgery of letters of Administration to the estate of the Late Sepiriya is pending determination by the Court of Appeal in Civil Review Application No. 43 of 2020 and it will competently determine the issue of the competing letters and decide which are valid. Counsel therefore submitted that it is an abuse of legal process for the respondents to investigate the same matters currently before the court of appeal.

Counsel for the applicant further submitted that it is trite law that letters of administration are valid until set aside by a competent court of jurisdiction. She further stated that the letters of administration claimed to have been forged have been tested and declared as having been validly issued in HCCS No. 198 of 2014 and confirmed by the Court of Appeal in Civil Appeal No. 288 of 2016. She relied on the case of *Sebulime Baker vs Uganda Criminal Civil Appeal No. 21 of 2018* where in staying criminal proceedings court held that any decision where the same issue is pending before different courts would result in toto inherent damage of conflicting judgements.

Counsel therefore submitted that the respondents' investigation are an abuse of the legal system before determination, illegal and it cannot know which of the said letters of administration are forged.

Counsel for the respondents submitted that the suit is misconceived in law and the orders sought herein are untenable. Counsel further submitted that as stated in the affidavit of D/ASP Tawu Bumali, the police in investigating the criminal offence of forgery and uttering false documents are acting in exercise of its

constitutional mandate under Article 212 of the Constitution i.e. to prevent and deter crime. That furthermore, under Article 120 (3) of the Constitution the DPP has power to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial.

Counsel for the Respondents further submitted that the application is misconceived because the mandate of the Uganda Police and the DPP is distinct from the jurisdiction of civil courts in hearing civil suits. It was stated that in determining Civil Review Application No. 43 of 2020, the Court of Appeal has no jurisdiction to determine allegations of criminality which are the subject of criminal investigations. She further stated that there is a distinction between the police criminal investigations and proceedings in civil suits as was noted by court in *Zagyenda vs Uganda HCT-00-CR-CM 003 of 2011*.

The respondents submitted that there is no legal bar stopping the police from investigation or prosecuting any suspected criminal offences on the basis of the existence of related civil proceedings in a related manner. In support of this, counsel relied on *ACP Bakaleke Siraj vs Attorney General* where court noted that the constitutional court has warned against challenging criminal proceedings in a civil court as this will likely cause confusion in the criminal justice system.

The respondent therefore prayed that the suit is misconceived in seeking to bar the police from exercising its constitutional mandate simply because the court of appeal is exercising its jurisdiction to determine allegations of forgery in a civil suit.

Counsel for the respondents also submitted that the applicants ought to have filed an application seeking to stay criminal investigations upon showing that they would prejudice the ongoing proceedings in the court of appeal which would be best placed to grant such orders pending the determination of the civil suit.

## Analysis

The applicants' application is premised on section 33 and 38 of the Judicature Act which revolve around the inherent powers of this court. I will restate the following provisions for purposes of this suit. Section 33 of the Judicature Act provides that;

*"The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided."*

Section 38 provides that the High Court shall have power to grant an injunction to restrain any person from doing any act as may be specified by the High Court.

In the instant case the Applicants are seeking a stay of the criminal investigations pending the disposal of several matters filed in the Court of Appeal and before this court on grounds that this an abuse of court process and *sub judice*.

It is important to note that there is a clear distinction between civil and criminal actions. In civil proceedings, the court determines the civil litigants' claims or liabilities and the standard of proof is on the balance of probabilities while there is a public interest in the criminal proceedings and the required standard of proof is beyond reasonable doubt. The civil proceedings are individualistic in nature while the criminal proceedings are public in nature.

It is very well known that the function in the civil proceedings law is to compensate, while the function of the criminal law is to inflict deterrent and punitive penalties. Administrative policy gives priority to the public interest in law enforcement and if there is a criminal charge pending in court, the civil suit

which is based on the same facts may be stayed. Where a crime is alleged to have been committed, the police have a duty to thoroughly and intelligently investigate it with a view to bringing the perpetrators of the crime to justice. *Ayo v State (2015) 16 NWLR (pt 1486) p. 531.*

It is the duty of the police to investigate criminal allegations against any person. The courts cannot stop the police from performing its statutory functions. If there is evidence of an infringement of any of the fundamental rights of a party, the situation can be remedied but not by stopping police investigations. Furthermore, criminal matters have different standards of proof and hence one cannot rely on a criminal case to prove a civil matter although it may be persuasive if there is a conviction or a plea of guilty. (See: **Esso Standard vs. Mike Nabudere Civil Suit No. 594/1992 KALR**)

From the evidence on record, the applicants stated that the respondents are carrying out criminal investigations in respect of forgery and uttering false documents for which they seek to stay pending the several suits between the parties in the High court and the court of appeal. It is very clear upon perusal of the record that there is no criminal case filed as against the applicants in respect of the said investigations. Common sense dictates that it is out of place for the applicants to come to court to seek to stop police investigations of criminal offence on grounds that there is a civil suit or that the complainants are biased and that they influenced the police to proceed on the basis that the applicants are guilty.

The applicants have not adduced any evidence whatsoever in respect of any alleged criminal suits that have been instituted. The applicants' claim is against investigations being made by the respondents. I am inclined to agree with the counsel for the respondents that there is no legal bar stopping the police from investigation any suspected criminal offences on the basis of the existence of related civil proceedings in a related manner. Secondly, there is no right to fair hearing in criminal investigations because the right to fair hearing lies with court and not the police.

No court has the power to stop the police from investigating a crime and whether to or how it is done is a matter within the discretion of the police. For a person to go to court to be shielded against criminal investigation and prosecution is an interference with powers given by the Constitution to law enforcers. The court lacks the power to issue declaratory and injunctive reliefs with a view to impeding the result of police investigation made pursuant to their constitutional mandate or statutory duty under the Police Act. See *I.G.P v Ubah (2015) 11 NWLR (pt 1471) p 405*

Furthermore, the investigations being carried out are in respect of forgery and uttering false documents are not binding on the court as the same are not claims for determination against it nor do they have any effect on the decision to be made by either courts. As rightly stated by counsel for the applicants, a grant / letters of administration remains valid until revoked. (See: **Anecho v Twalib & 2 Ors Civil Suit No. 0009 of 2008**) Thus, only the court can revoke the said grants and not the respondents since they do not have any powers to effect the same.

There is no law which stipulates the order in which investigations are to be carried out by the police. Criminal investigations are carried out by the police based on information at the disposal of the police force and the investigator uses his/her own discretion to determine how to go about the work. The perpetrator of a crime may be the first to report the commission of the crime in the hope that he /she could divert the attention of the police away from himself or herself. A person who is the first to report a case to police could well turn out to be the prime suspect in the case and it will perfectly be within the powers of the police to investigate and arraign him/her for prosecution.

From the above discussion, it can therefore be deduced from the evidence that the respondents' criminal investigations against the applicants do not offend the *sub judice* rule as the matters before it for investigations of forgery and uttering false documents are different from those before the courts of law and thus not an abuse of court process.

A criminal investigation remains what it is, just an investigation. If a police investigator concludes that a suspect is guilty of an alleged crime even before conclusion of his/her investigation, and takes the case to court without sufficient evidence/proof, all the accused needs to do after the prosecution has presented its case is to make a no case to answer submission and if upheld by the court that would be the end of the prosecution.

This application is hereby dismissed with costs to the respondents.

I so Order.

***SSEKAANA MUSA***  
***JUDGE***  
***14<sup>th</sup> October 2022***