THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

MISCELLANEOUS CAUSE NO. 65 OF 2020

PAUL MUGOYA WANYOTO :: APPLICANT

VERSUS

THE ATTORNEY GENERAL :: RESPONDENT

Before: Hon Justice Ssekaana Musa

RULING

This application was brought by Motion on Notice under Article 24,28,42 & 44 of the Constitution , Section 33,36 (1)(b),(c)&(e) and section 38 of the Judicature Act Cap 13(as amended) , rules 3,5,6 and 8 of the Judicature (Judicial Review) Rules S.I No.11 of 2009 & Civil procedure Rules for Orders that;

1. A declaration is made that the process leading to the Uganda Police and Director Public Prosecutions initiation and charging the applicant for money laundering was irrational and an abuse of legal process.

2. An order of certiorari quashing the decision of the Director Public Prosecutions to Charge and prosecute the applicant for money Laundering vide criminal Case No. 0075 of 2019.

3. An order of prohibition prohibiting the Director Public Prosecutions, his servants or anyone acting for him from charging and prosecuting the applicant for money Laundering.

4. An injunction doth issue restraining the Director Public Prosecutions, its servants or agents from charging and prosecuting the applicant with alleged Money Laundering.
5. General damages and Costs of the Application.

The application was supported by the Affidavit deponed by the applicant-Mr Paul Mugoya Wanyoto with grounds in support of the application and briefly they are;

1. The Applicant is accused Number Seven in Criminal Case No.007 of 2019 being charged /indicted for Money Laundering Contrary to Section 3(c) & 13(1)a of the Anti-money laundering Act 2013 (as amended)

2. That the process leading to Uganda Police Forces initiation of criminal proceedings against the applicant was actuated by pettiness and chicanery.

3. That the process leading to Uganda Police's decision to charge the Applicant for money laundering vide Criminal case No.0075 was marred with illegality, irrationality, lacked procedural fairness.

4. That the process leading to the Director of Public Prosecution's (DPP) decision to prosecute the Applicant for money laundering was Ultra vires the mandate meant to be exercised by the same.

5. In the Supplementary Affidavit in Support with the recording attached as ''Annex B'' was to that the Applicant never recorded any police statement and the charge and caution statement which violated the rules of a fair hearing.

6. That the Office of the DPP acted ultra vires of the powers not enshrined to it in the constitution so as to a miscarriage of justice against the applicant.

The respondent vehemently opposed the application by way of an affidavit deponed by a one Sgt Oumo Joshua ,a police officer attached to flying squad

department under CID of Uganda Police Force that stated that the application was tainted by falsehoods against the deponent.

That the Applicant's allegations of torture were intended to evade, delay and frustrate the prosecution of the Applicant who was charged with others vide Anti-Corruption Court Criminal Case No.75 of 2019.

That the decision to charge and prosecute criminal offenders is the sole constitutional mandate of the DPP which directs Uganda Police officers in carrying out criminal investigations and no vice-versa.

That the Application was brought *malafide* and intended to intimidate the deponent as the Investigating Officer in the case vide Anti-Corruption Court Case No.75 of 2019.

The Second deponent who was a Principal State Attorney and head of Asset Forfeiture Unit in DPP established that upon arrest of the Applicant on 20th August 2018 , his charge and caution statement were taken.

That the process leading to the DPP's prosecution of the applicant was arrived at legally, rationally and with procedural fairness,

The applicant was represented by *Counsel Jude Byamukama & Phillip Nyesiga* while the respondent was represented by *Asst Commissioner Patricia Mutesi* now Judge of the High Court.

The following issues where framed for determination of court.

1. ***Whether the decision to charge the applicant with the offence of Money Laundering was illegal, unlawful and lacked procedural fairness?***
2. ***Whether the applicant is entitled to the remedies sought?***

PRELIMINARY CONSIDERATIONS

When this matter came up for mention and scheduling the court noted and took judicial notice of the fact that a similar matter had already been filed as an enforcement of rights issue in the High Court of Uganda-Anti Corruption Division.

The applicant's counsel insisted that this court should proceed to determine this matter and contended that there are different issues to be determined under this application.

The applicant was challenging propriety of the criminal proceedings instituted against him by police and ODPP's office which the court found in his favour although the court declined to nullify the prosecution in High Court Miscellaneous Application No. 26 & 31 of 2020 Paul Wanyoto Mugoya & Mugisha Patrick alias Kantu v Sgt Oumo Joshua & AG.

The applicant and another person appealed against the decision of High Court vide ***Court of Appeal Civil Appeal No. 91 of 2021 Paul Wanyoto Mugoya v Sgt Oumo Joshua & AG*** in the lead Judgment of Hon. Justice Egonda Ntende made the following observations and analysis;

"The impugned criminal prosecutions of the appellant and Mr. Mugisha for Money Laundering and other charges was clearly engineered by respondent no. 1 for improper purposes.

The right to a fair hearing is always violated when commenced for improper purposes as it is clearly the case in this matter."

The Court made the following decisions:

I would grant the following declarations and orders:

1. *The conduct and actions of the respondent no.l as an investigating officer of torturing a one Patrick Mugisha alias Kantu Allan, A4 in Criminal Case NO. 75 of 2019 by inserting sticks tied with rubber band between his fingers commonly known as "baibbuli" and coercing him to hand over his certificate of title and land comprised in* ***Busiro Block 312 Plot 841*** *land at* ***Kalambi*** *that was eventually sold to the Applicant, violated, contravened and infringed upon the said Kantu Allan's non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment guaranteed under* ***Article 24*** *and* ***44(a)*** *of the Constitution.*

2. *The process leading to the initiation of criminal proceedings against the Applicant under s. 3(3) of the Anti-Money Laundering Act, having acquired property from the said Patrick Mugisha alias Kantu Allan, who, unknown to the Applicant had been tortured by the Respondent no.l before reaching a decision to dispose of the subject property, violates and contravenes the Applicant's fundamental rights and freedoms to liberty, to just and fair treatment guaranteed under* ***Articles 23,42*** *and* ***45*** *of the Constitution.*

3. *The non derogable rights and freedoms, and other fundamental rights of the appellant and Patrick Mugisha alias Kantu in Criminal Case No. 75 of 2019 have been violated and infringed upon through use of torture by the respondent no. 1.*

4. *The trial of the appellant and Patrick Mugisha alias Kantu in criminal case No.75 of 2019 is a nullity for the blatant violations and infringement of the accused persons' non derogable rights and freedoms from torture, cruel, inhuman and degrading treatment, and other human rights and freedoms guaranteed under* ***Articles 23,24,42*** *and* ***44(a)*** *of the Constitution by the Respondent nol.*

5. *I would direct the Registrar of this court to transmit to the Director of Public Prosecutions, a copy of this judgment, in light of the functions of the Director of Public Prosecutions under article 120 (1) & (2) of the Constitution.*

6. *The appellant also sought compensatory orders for the gross and blatant abuse of the fundamental rights of the appellant. Unfortunately, Mr Mugisha Patrick alias Kantu is not a party to this appeal and I am not in a position to make an award of damages to a person who is not a party to this appeal. However, Mr Mugisha Patrick was a party in the court below. In the interests of justice, I would refer this portion of the appellant's claim back to the High Court of Uganda, to the learned trial judge, to cause a hearing to be done in respect of the original applicants, including the*

appellant and determine the appropriate compensation for the appellant and Mr Mugisha Patrick alias Kantu Allan.

7. *The charges against the appellant and Patrick Mugisha alias Kantu Allan in High Court Anti-Corruption Division Criminal Case No. 75 of 2019 are nullified. A stay of prosecution against the appellant and Patrick Mugisha in respect of the charges in High Court Anti-Corruption Division Criminal Case No. 75 of 2019 is ordered.*

The court of appeal has substantially dealt with the entire issue of prosecution of the applicant in this matter and any purported determination of the application would be academic or moot. This court is bound by the above decision and any attempt to make a contrary decision would be a violation of the doctrine of precedent based on the principle of *stare decisis* which is a backbone of our judicial system. A point of law that has been decided and settled by a superior court must be followed by inferior courts where the facts and circumstances are the same.

This application was overtaken by events since it was decided on the main principles by the appellate court which nullified the prosecution proceedings against the applicant and the same stands dismissed with no order as to costs.

I so Order

SSEKAANA MUSA
JUDGE
14th December 2022