

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 277 OF 2018

PAUL WANYOTO MUGOYA :::APPLICANT

VERSUS

- 1. ATTORNEY GENERAL**
- 2. DIRECTOR OF PUBLIC PROSECUTIONS::::::::::::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

- 1. The Applicant brought this application supported by the affidavits of the Applicant including in rejoinder and Masari Aim Smith under Article 50(1) and (4) of the Constitution and Rules 1, 2, 3(1) and 7 of the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, SI 13-14 seeking declarations and/orders that:
 - i. The Uganda Police and the Director of Public Prosecutions (herein after referred to as the DPP) do not consent to or sanction charges in HCT-00-AC-CO-095of 2018; Uganda v. ACP Haj. Bakaleke Siraji & 8 others. In this criminal case, the Applicant and 8 others are being charged with embezzlement of company funds and obtaining money by false pretenses. In support of his application, the Applicant contends that they cannot sanction or investigate the said charges when there is no formal complaint, company resolution to institute or commence

criminal charges against the Applicant nor sufficient evidence to support the charges. Therefore, if the Applicant is charged, it will be an infringement on his fundamental rights and freedoms such as liberty, fair trial, practice and/or carry out lawful occupation, profession, trade and do business, just and fair treatment guaranteed under Articles 23(1), 28, 40(2), 42 and 45 of the Constitution. He argues that these charges in these circumstances amount to abuse of court process, are malicious, in bad faith and are a witch hunt of the Applicant. The Applicant therefore seeks this court to permanently stay and/or halt the trial of the Applicant at the Anti-corruption court.

ii. That a permanent injunction be issued to restrain the DPP and the police from bringing, instigating, carrying out any further criminal proceedings, charges or prosecution against the Applicant and barring any further investigations into or in connection with the alleged charges of embezzlement and obtaining money by false pretenses as well as the charges of kidnap with the intent to confine his co-directors/ shareholders in Mckinely Resource Company Ltd and conspiracy to defraud or commit a felony on the same. The Applicant also seeks any other reliefs that this court deems fit and just and that costs be provided for.

2. The Applicant is represented jointly by Mr. Mugabi Silas and Mr. Andrew Wambi of M/s. Web Advocates & Solicitors and the Respondents are represented by Mr. Jeffrey Atwine a senior State Attorney from the Attorney General's Chambers.

3. The Respondents affidavit in reply was sworn by Vincent Wagona a Senior Assistant Director of public prosecutions in the office of the DPP. In it the Respondents contend that the application is devoid of merit, speculative and/or premature as far as the police investigations in the entire matter are concerned. Further that the application is only intended to curtail the progress of the criminal trial of the Applicant and others and confer immunity on the Applicant from being tried for the criminal offences of embezzlement and obtaining money by false pretenses yet the evidence on the police file is sufficient to prosecute the Applicant.

4. The Respondents also aver that under Article 120 of the Constitution of Uganda, the DPP is constitutionally mandated to direct the police to investigate any information or matter of a criminal nature and to institute criminal proceedings against any person or authority in a court of competent jurisdiction and does not require a formal complaint or instructions from any person or a company resolution in this mandate. The DPP ends vehemently opposing the application saying that this is not a proper case in which the court can grant the orders sought.
5. Article 120 of the Constitution establishes the office of the DPP and its functions. Under Article 120(3), (a) and (b), the functions of the DPP include; (a) to direct the police to investigate any information of a criminal nature and to report to him or her expeditiously; (b) to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial. Clause 5 provides that in exercising his or her powers under this article, the DPP shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process. Clause 6 provides that in the exercise of the functions conferred on him or her by this article, the DPP shall not be subject to the direction or control of any person or authority.
6. Having considered all the pleadings on record and submissions of the parties, it is clear that the Applicant seeks this court to stop the DPP from carrying out his constitutional mandate of investigation and institution of criminal proceedings under Article 120(3) of the Constitution. In my discernment, this court does not have wide discretionary powers to interfere with such constitutional mandate of the DPP. Whatever the Applicant has presented as part of this application, he can present as part of his defence in the Anti-corruption court where he has been charged with others of embezzlement contrary to section 19 (b) (iii) of the Anti- Corruption Act; obtaining money by false pretenses contrary to section 305 of the Penal Code Act; Kidnapping or abducting with intent to confine a person contrary to section 244 of the Penal Code Act; conspiracy to defraud contrary to section 309 of the Penal Code Act and conspiracy to commit a felony contrary

to section 390 of the Penal Code Act as demonstrated in the charge sheet attached as annexure A to the affidavit in reply.

7. Apart from making the claim, the Applicant falls short of demonstrating to my satisfaction that in executing his constitutional mandate and charging him as above, the DPP acted unfairly, in disregard of public interest, against the interest of administration of justice or in abuse of legal process within the meaning of Clause 5 of Article 120 of the Constitution.
8. Moreover, in circumstances where the Applicant is charged with eight others by the DPP, it would be unfair and unnecessarily premature to halt investigations and such charges against him while they remain against the other accused and before trial/hearing in the Anti-corruption court; a court with competent jurisdiction and at the same level as this court.
9. In these circumstances, it is extremely difficult to interfere with the DPP in the exercise of his constitutional mandate. This is not a proper case for judicial review. Accordingly, this application has no merit and is dismissed with costs for the second Respondent.

I so order

L YDIA MUGAMBE

JUDGE

15th NOVEMBER 2018.