

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**(CRIMINAL DIVISION)**

**REVISION CAUSE NO. 005 OF 2018**

**(ARISING IN MAKINDYE CHIEF MAGISTRATE'S COURT CASE NO. MAK-00-  
CR-049 OF 2016)**

- 1. KIGGWA HANNINGTON**
- 2. MAYIGA RICHARD**
- 3. NAMAKULA HELLEN**
- 4. NASUUNA HASIFAH**
- 5. MAGALA GODFREY**
- 6. NABANJALA GORRETI**

..... **APPLICANTS**

**VERSUS**

**PROSECUTOR ..... RESPONDENT**

**BEFORE: HON. MR. JUSTICE J. W. KWESIGA**

**REVISION ORDER:**

This is an application by Notice of Motion that this honourable court should revise the pima facie case findings made by his worship [ Gakyaro Allan Mpiirwe Court case file No. MAK-00-CR-049 OF 2016 delivered on the 23<sup>rd</sup> February 2018. The Application is supported by Applicant's affidavits and sufficient to have the matter disposed of without further hearing.

The grounds for the application are that;

1. The learned trial magistrate erred in law and fact in declaring a prima facie case and hence putting the applicants to their defence on basis of the so manifestly unreliable evidence on record, on bias of which no reasonable tribunal or court can safely convict the accused persons, even if they offered no explanation at all.
2. The learned trial magistrate erred in law and fact in that he did not properly evaluate the evidence on record.
3. The learned trial magistrate erred in law and fact when he failed to ascertain that there are major contradictions in the prosecution's evidence on matters that go deep to the very root the case.
4. The learned trial magistrate erred in law and fact when he failed to appreciate the fact that there was mainly no corroboration, not only between the police accounts of the prosecution witnesses vis-à-vis their examination in chief accounts under oath, but also amongst themselves generally.
5. The learned trail magistrate erred in law and fact by relying upon the statements of the would be principal witnesses to wit:- Pw1 Ssemaje Charles the complainant and PW-5 the investigating officer, both of whom occasionally told undisputable lies at examination in chief and cross examination by the accused persons subsequent to which examination effort was put up by the prosecution to rectify those lies (perjury, had it not been their

intended assertions, as such in relying on the said accounts, he condoned illegality which courts should not ever participate in.

6. The learned trial magistrate erred in law and fact when he considered the evidence of PW-2, PW3 and PW4, given the fact that PW-2 was simply reciting account that he admitted to have got from a third party and both PW-3 and PW-4 were just called sometime after the occasion of the alleged offence, simply to arrest the suspects who were already not within the vicinity of the crime scene, as such their evidence is not anywhere close to the root of the case. In fact, their accounts are unnecessary and hence a nullity subject to the law in relation to admissible oral evidence.

7. It's just and equitable that an order for revision of the prima facie case findings and hence orders of His Worship Gakyaro Allan Mpiirwe, Makindye Chief Magistrate's court case file No. Mak-00-CR-049 of 2016, as delivered on the 23<sup>rd</sup> February, 2018 be given so as to avert the impending miscarriage of justice.

Under section 48 of *The Criminal Procedure Code Act* the High Court has the power to call for and examine the record of any criminal proceedings before any magistrate's court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the magistrate's court. The powers of revision conferred upon this court are very wide but are purely discretionary in nature. The power is to be exercised only in exceptional cases where there has been a miscarriage

of justice owing to: - a defect in the procedure or a manifest error on a point of law, excess of jurisdiction or abuse of power.

In exercising its revisional jurisdiction, the High Court may cure any irregularity or impropriety. The court though should always bear in mind the limitation that it cannot in effect exercise the power of appeal by invoking powers of revision. (See:- **UGANDA VS. OKUMU & 5 ORS - CRIMINAL REVISION NO. 0003 OF 2018.**)

Revisional powers are generally not exercisable in interlocutory orders but to final orders. The High Court will therefore not interfere in an on-going trial by way of revision unless there is a glaring defect in the procedure or a manifest error in law, which has resulted in or threatens to result in a miscarriage of justice.

It is worth noting therefore that, merely because a Magistrate's Court has taken a wrong view of law or misapprehended the evidence on the record cannot by itself justify the interference or revision unless it has also resulted in grave injustice. The exercise of revisional power is justified only to set right grave injustice not merely to rectify every error however inconsequential. however according to the grounds in the Notice of Motion the applicant has not demonstrated any grave injustice or threat of injustice against the applicant. It is rather evident that the applicant is inviting court to evaluate evidence which is a disguised appeal and an abuse of court process. Evaluation of evidence goes to the quality and/or sufficiency of evidence which is the business in Appeal and not Revision proceedings.

In **Charles Harry Twagira vs. Uganda Court of Appeal No 3 of 2003** justice Tsekooko, held that *"if any party is dissatisfied with the courts' ruling that there is a prima facie case, such a party has a right to appeal at the conclusion of the trial and include as many grounds as possible including the dissatisfaction against the finding of the prima facie case"*.

In view of the above, this application is misconceived and serves a bad purpose of delaying the trial. This is a typical bad practice of frustrating speedy trial which offends Article 28 of the Constitution of the Republic of Uganda that prescribes speedy and fair trial.

This application is hereby dismissed and it is ordered that the trial resumes before the trial Magistrate at Makindye Chief Magistrate's Court.

Dated at Kampala this **7<sup>th</sup>** day of **August 2019**.

  
J. W. Kwesiga

**Judge**

7/8/2019

To be served on:-

1. The Director  
Public Prosecutions  
Kampala.