**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO**

**HCT-14-CR-CV-0002-2019**

**RTD MAJOR GENERAL MATAYO KYALIGONZA::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**UGANDA:::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::RESPONDENT**

**BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**

**RULING**

1. This Ruling as in respect of the Application brought under sections 48 and 50 of the Criminal Procedure Code Act CAP 1216 and section 17 (1) and 33 of the Judicature Act Laws of Uganda.

2. RTD Major General Matayo B. Kyaligonza herein after referred to as A1,

No.221607 Lance Corporal Bushenbich referred to as A2 and No.230924 PTE Okurut Robert A3 are seeking for the following Orders:-

1. That the Ruling of the Chief Magistrates Court of Mukono in Criminal

Case No.0312 of 2019 be revised.

1. That upon revision, this court varies the orders in the said Ruling by setting aside the Orders that the Applicants appear before the Chief Magistrates Court of Mukono.
2. That the Respondent pays the costs of this Application.

The grounds of the Application that are contained in an Affidavit of Mukama Sanyu Jamil an Advocate of the Courts of Judicature are:-

(i) That the Applicants are aggrieved by the said Ruling.

1. That the Chief Magistrate’s Court of Mukono acted with incurableprocedural irregularity and as well exercised its jurisdiction illegally or with material irregularity or injustice and also exercised jurisdiction not vested in it in law to wit
2. By finding that the Applicants who are already appearing before the Unit Disciplinary Committee of the Military Police should as well appear before the Chief Magistrates Court of Mukono and be tried on the same facts they are being tried for in the Unit Disciplinary Committee.
3. By finding that the double jeopardy could not be raised not until the Applicants had taken plea in the Chief Magistrates Court of Mukono yet Applicants are already being tried in the Unit Disciplinary committee of the Military Police over the same facts like the ones in the Chief Magistrates Court in Mukono.

© By ordering for the arrest of the Applicants yet the 2nd and 3rd Applicants are already in custody of the Military Police over the same facts in issue.

1. That the Applicants are persons subject to Military Law and are being tried in the Unit Disciplinary Committee of the Military Police, therefore the Chief Magistrate’s Court exercised jurisdiction not vested in law by issuing arrest warrants against them.
2. That the said Orders are likely to cause a miscarriage of Justice.

3. The Applicants were represented by Mr. Mpata Kalid, David Balondemu and Evans Ochieng while the State was represented by Senior State Attorney Mr. Jonathan Muwaganya.

4. **Brief Background of the Case**

The brief background of this case is that the 3 Applicants were charged before the Chief Magistrates Court vide a charge sheet dated 18th March 2019. The file was cause listed for plea taking on 10th April 2019.

The Accused did not appear before Court in person but were represented by Mr. Alaka who informed court that A2 and A3 were under custody while A1 was a serving Ambassador in Burundi who gave him instructions that morning. He promised that his client would appear in court. The case was then adjourned to 29th April 2019. On that date, the Accused did not appear.

The Advocates appeared and challenged the proceedings pleading double jeopardy. The Chief Magistrate did not agree with them and issued a warrant of arrest. The Accused through their Defence Counsel wanted the file to be closed on the ground of double jeopardy.

They filed for Revision hence this Application.

4. The submissions were orally made and I will refer to them as and when necessary.

5. The main issue for resolution is whether the Chief Magistrate acted with incurable procedural irregularity and exercised jurisdiction illegally with material irregularity.

**Resolution of issues:**

***Section 48 of the Criminal Procedure Code*** empowers High Court to call 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.

The key constituents of section 48 are: correctness, legality, propriety and regularity.

When the High Court is considering the element of **correctness of the** **proceedings**, it looks at the quality of the proceedings being free from error and whether the evidence support the elements of the charge or not to determine whether the decision of conviction or acquittal was correct.

As regards **legality**, the High Court looks at whether the proceedings, were conducted and decision made in accordance with the statutory or the established principles of the law.

When dealing with the **complaint on propriety**, the High Court examines the proceedings with a view of satisfying itself whether the Magistrate’s court acted in conformity with the conventional accepted standards of criminal procedure from the time the accused appeared before it.

And when probing into the allegations of **irregular conduct**, the High Court looks at how the entire process ought to have been done according to the established rules of procedure in respect of the act complained about.

The issue before me is basically founded on 3 main grounds;

1. Whether the finding that the Applicants who are already appearing before the Unit Disciplinary Committee of the Military Police should as well appear before the Chief Magistrates Court of Mukono and be tried of the same facts they are being tried in the Unit Disciplinary committee was made with material illegality, irregularity and impropriety and is not correct. (in other words, Whether the Plea/Principle of double jeopardy is available to them).
2. Whether they should appear before the Chief Magistrates Court for Plea Taking.
3. Whether the warrant of arrest issued by the Chief Magistrate should be vacated.

**Let me start with the issue on double jeopardy;**

Counsel for the Applicants submitted on page 6 of the typed proceedings that “it is not in contention that the Applicants have been charged in the Unit Disciplinary Committee of the UPDF.

I am referring to Annexture A on the Affidavit of Mukama Sanyu Jamil, which clearly sets out the names of the Accused persons.

By ordering the Applicants to appear in the Chief Magistrates Court of Mukono on similar facts and charges as these under the Unit Disciplinary Committee of the Military Police, it would amount to double jeopardy”.

Counsel for the Applicants was making reference to the Military tribunal.

He went on to submit on page 6 paragraph 4 that

“it is worth noting that when criminal case No.312 of 2019 first came up on the 29th day of April 2019, in the Chief Magistrates Court of Mukono, the 2nd and 3rd Applicants were already in the lawful detention on the orders of the court martial.

Therefore court ought to have been cognizant of the fact that the Applicants were already undergoing Trial and issuing orders to compel them to appear in another court would amount to double jeopardy.

He relied on the Authority of ***Uganda Law Society Vs The Attorney General,***

***Constitutional Appeal No.1/2006*** (I will reproduce the holding later). The learned Senior State Attorney Mr. Jonathan Muwaganya, on page 9 paragraph 4 submitted that “the position of the law is that double jeopardy applies in respect of subsequent proceedings, in the 2nd Court. In other words this form of plea can only be raised in the 2nd court and not in the court of first instance”……

Annexture B to the Application which is the charge sheet by which the Applicants were charged in the Chief Magistrate’s Court as well as the record is clear that the Accused persons were first charged before the Chief Magistrate on April the 3rd 2019……….

Under ***Section 42 (1) (b)*** ***of the MCA,*** Criminal proceedings can be properly instituted by a Public Prosecutor or a Police Officer laying a charge against any person before a Magistrate and requesting for issuance of warrants or summons to compel the attendance of the person so charged.

So by registering the charge sheet on the 3rd of April 2019, Criminal Proceedings in respect of the three Applicants commenced.

The record is also clear that on the same day criminal summons for the 10th of April 2019 were issued, the record is clear that none of the Applicants answered to the summons but instead instructed three Counsel namely Caleb Alaka, Evans Ochieng and David Balondemu who asked for the extension of the criminal summons to 29th of April 2019.”

He went on to submit that on 29th of April 2019, none of the Applicants turned up but all their Counsel served court with Annexture A to the effect that the 2nd and 3rd Applicants had been arraigned in the Unit Disciplinary Committee on the 16th April 2019. There was nothing on record to show that Applicant no.1 i.e. Rtd major General Matayo B. Kyaligonza has been arraigned in any court in respect of the charges in issue. So it is not true that all Applicants have appeared in the Military Disciplinary Committee.

What is on record is that the 2nd and 3rd Applicants were arraigned before the Disciplinary Committee on the 16th of April 2019.

Counsel for the State posed a question which was “which of the two courts, the Military Disciplinary Committee and the Chief Magistrates Court is bound by the rule of double jeopardy so to say?”

He submitted that it was subsequent that and the Defence of double jeopardy ought to have been raised in the Disciplinary Committee because by the 16th of April 2019, the 2nd and 3rd Applicants were already aware that there were subsisting charges in the Magistrate’s Court and they duly instructed Counsel to appear on their behalf and this fact was well within their knowledge by 16th April 2019.

He submitted that the rule was not intended to act in retrospect because that would amount to giving an Accused person liberty to choose which court to be tried.

Where two Courts have concurrent jurisdiction to try the same subject, the order of preference depends on which Court had the charges before and in this case it was the Chief Magistrate’s Court.

He ended up by submitting that even with respect to the 2nd and 3rd Applicants double jeopardy does not apply in respect of the charges before the Chief Magistrate.

In Rejoinder learned Counsel Mpata Kalid for the Applicants submitted that section ***124 (5) of the MCA*** which gives the various types of pleas that can be taken by an Accused person was cited by his learned colleague in error because section ***124 (5) of the MCA*** in law deals with what we call in Latin the **plea of autrefois acquit or autrefois convict.**

What we are dealing with is an objection of double jeopardy which specifically deals with concurrent proceedings in separate courts on charges arising out of the same facts.

He submitted the case of ***Uganda Law Society Vs The Attorney General*** earlier cited makes it clear that double jeopardy is not a plea to a charge per say but it is an objection which can be raised to prevent concurrent trials on the same facts.

Therefore it is not true that the objection can only be raised when an Accused person is in court. He submitted that it is an illegality that can be raised any time”.

In response to raising an objection in the court of 2nd instance, he submitted that the basis was that the Applicants were first charged by the Chief Magistrates Court and therefore when they appeared before the Court Martial they ought to have raised that objection.

He submitted that “charging is a process and not an event”, therefore when the Accused persons were first arrested by the Military Police; this Honorable Court should be pleased to find that the charging process had begun at that point. It is not about which court the charge sheet was first filed. He submitted,

“In the instant case it is the Court Martial that is having custody of the Accused persons. It is the Court Martial that took the first steps to have the Applicants arraigned and remanded to Military Custody where they are up to this point specifically the 2nd and 3rd Applicants.

He submitted that Counsel for the state has not denied that indeed the Accused persons are undergoing Trial in the Court Martial.

This in itself is enough evidence for this court to uphold the objection of double jeopardy being used by the Applicants.

On the issue of no proof that the 1st Applicant had not been charged in any court, he submitted that “whereas Applicant No.1 does not appear on the charge sheet in the court Martial, it is trite law that a charge sheet can be amended at any time and since he is a Military person, he will also be included on that charge sheet”.

With the above submissions, put into consideration, let me consider the issue of double jeopardy.

**Double jeopardy** is an English common law maxim that states that **“no man is to be brought in jeopardy of life or limb more than once for the same offence”.**

This principle was considered in the case cited by both Counsel ***Constitutional Appeal No.1/2006.*** ***Attorney General Vs. Uganda Law Society supra*** where the court considered the issue of having concurrent proceedings in the two courts. The High Court and the Court Martial.

Justice Mulenga JSC at page 10-11 held that;

**“I also agree with the majority holding of the Constitutional Court that the concurrent proceedings in the two courts were inconsistent with the Principle underlying the provisions of Article 28 (9) of the Constitution which prohibits the trial of a person for an offence of which he or she has been convicted or acquitted. In effect that provision is an aspect of the protection of the right to fair hearing, namely the right not to be tried more than once on the same facts or for the same actus reus”. All this is in recognition of the Principle that an Accused person should be subjected to trial on the same facts only once. Needless to say concurrent criminal proceedings in respect of the same facts entail trial more than once”. From the above decision of the Supreme Court, it is clear that the principle of double jeopardy does not only apply to previous convictions or acquittals but to concurrent criminal proceedings arising from same facts or actus reus.**

The Applicants were charged on 18th March 2019 with 4 counts.

The first Applicant RTD Major General Matayo B. Kyaligonza was charged with ***Assault causing actual bodily harm contrary to section 236 of the Penal Code Act***, where it was alleged that on the 24th February 2019 at Seeta Trading Centre in Mukono District, he unlawfully assaulted No.20914 SGT Namaganda Esther thereby causing her actual bodily harm.

The 2nd and 3rd Applicants were charged under the 2nd 3rd and 4th counts.

The 2nd count was ***Common Assault contrary to section 235 of the Penal Code Act.*** The 3rd count was ***obstructing a Police officer in the due execution of duty contrary to section 238 (b) of the Penal code Act*** and the 4th count was ***Assault causing bodily harm contrary to section 236 of the Penal Code Act.***

The 2nd victim of the assault was Otai Deogratious and all these happened on 24th February 2019 at Seeta Trading Centre.

The file was first mentioned in court on 10th April 2019 where in the Applicants were absent but represented by Kaleb Alaka, Evans Ochieng and David Balondemu appearing jointly while Mr. Micheal Aboneka was on watching brief.

On 10th April 2019, Mr. Alaka informed Court that”A2 and A3 were in the hands of the State at the General Court Martial in Makindye.

It was the obligation of the State to ensure that they appear before you. A1 is an Ambassador in Burundi. He read it in the press and informed us in the evening that the matter was coming up today. He applied for adjournment and the Criminal summons were extended to 29th April 2019.

On 29th April 2019, the Accused/Applicants did not appear in court but their Advocates did appear.

Mr. Alaka raised points of Law to the effect that his clients belong to the UPDF who have jurisdictional powers under the UPDF Act to discipline the Accused persons and that indeed on the 16th April 2019 the State UPDF instituted proceedings against the Accused persons on the same facts similar to the matter before court.

He submitted that ***Section 17 (2) of the Judicature Act*** prohibits and mandates Courts to curtail abuse of court process. It is the same State that instigated proceedings in the court martial and in this court.

He prayed that court terminates these proceedings.

The case was adjourned to 20th May 2019 with the extension of the criminal summons.

On 20th May 2019 all the 3 Accused persons/Applicants were absent. The 3 Advocates were present in court. Mr. Alaka Caleb, prayed to court to be allowed to tender in documents that court had earlier on asked them to produce. The deadline had passed.

The Court rejected the charge sheets from the Military Court Martial and the learned State Attorney went ahead to respond to the Preliminary points of law that were raised.

In his response, the learned Senior State Attorney put his emphasis on the process of Plea Taking as provided for under ***Section 124 of the Magistrate’s*** ***Courts Act.*** He submitted the preliminary points raised were premature and improperly raised because first, Counsel was attempting to answer the charges on behalf of the Accused person contrary to the law specifically ***Section 124 of the MCA.***

He submitted that before a Plea is taken the Accused has to be arraigned in court and plea must be in the Accused’s presence.

In subsection ***124 (1) of the MCA*** it is required that the substance of the charge be stated to the Accused person, he is then asked whether he understands the charge and whether he admits or not.

Under Section ***124 (5) of the MCA***, if the Accused pleads that he or she has been acquitted or convicted of the same offence, the Court shall try to investigate whether it is a true fact or not.

He went on to submit that in effect, double jeopardy should be raised as a form of plea once the charge is read out to the Accused.

The law is specific if he is called upon, then the Accused has to raise it. Mere raising the charge is not a guarantee for stay of proceedings and insisted that this cannot be done in the absence of the Accused persons but can be in the presence of his Advocate. Since all criminal proceedings are personal.

He submitted that all inquiries must be done in the presence of the Accused person with the only exception under S***ection 123 of the MCA.***

On the 2nd point of law raised, that the Accused persons have been charged on the Court Martial on the same facts, he submitted that the position of the law is that double jeopardy applied in respect of the proceedings in the second Court and not the first Court.

In other words, by the time the Accused is charged in the second Court, and then he or she can raise the objection.

The question is which of the two courts is bound by the rules of double jeopardy?

He went on to submit about the procedure of institution of criminal proceedings as provided under ***Section 42 of the MCA*** it provides; **“Criminal proceedings may be instituted in one of the following ways:**

1. **By a Police Officer bringing a person arrested with or without a warrant before a Magistrate upon a charge.**
2. **By a Public Prosecutor or Police officer laying a charge against a person before a Magistrate and requesting the issue of a warrant or a summons or**
3. **By any person other than a Public Prosecutor or Police Office, making a complaint as provided in sub section (3) and applying for the issue of a warrant or a summons in the manner hereafter mentioned”.**

He submitted that charges were registered in Court on 3rd April 2019, and Criminal Summons were issued to that effect.

On 10th April 2019 all the three Accused persons duly instructed Counsel to appear on their behalf.

The documents from the Military Disciplinary Unit particularly the charge sheet is dated 16th April 2019 which shows that they brought charges after charges before the Chief Magistrates Court.

He concluded by submitting, it is the Military Court that is bound by the double jeopardy rule.

And the charge sheet did not include A1 who has no justification for not appearing at all and prayed that Court be pleased to find that the Plea of double jeopardy is being erroneously and prematurely raised in the court as it is not applicable to the charges before the court. He further prayed for a Warrant of Arrest against the Accused.

In a quick rejoinder Counsel Caleb Alaka, stated what was raised were pre-taking issues and therefor section 124 of plea taking does not apply.

He submitted that the State has mistaken the basis of our preliminary objection to be plea taking yet it is on double jeopardy which is the concurrent institution of criminal proceedings against the same people in two different courts based on the same facts.

He submitted Court was guided by citing the Case of the ***Attorney General Vs******Uganda Law Society***supra where court held that concurrent proceedings exposed the Accused persons to the risk of double jeopardy which is a question of law that must be raised at the earliest opportunity and that once they take plea in both counts, an illegality would have arisen.

On the issue of charge sheet not including A1, he submitted the state is aware that charge sheets can be amended at any time to include or remove any person and that is the law. Since the UPDF Act governs both the active and retired Officers.

With regard to which court was the matter first instituted, he submitted and informed Court that A2 and A3 were being held by the Military and as he (State Attorney) stated correctly under ***Section 42 (1) (b) of the MCA,*** that instituting proceedings once any charge is laid against any person before a Court and it is registered, then criminal proceedings are duly instituted.

He submitted that criminal proceedings are instituted once you are arrested.

The Trial Chief Magistrate basing on the submissions I have reproduced resolved two issues:

1. Whether charging the Accused in the Magistrate’s Court subjects the Accused to double jeopardy.
2. Whether the Counsel for the Accused can raise the question of double jeopardy in the absence of the Accused.

I will only quote the relevant part of her ruling. On the first issue, she ruled in part as follows:

**“A Plea of double jeopardy only applies to criminal cases. It is a procedural defense that prevents an Accused person from being tried again on the same (or similar) charges and on the same facts following a valid acquittal or conviction. Double jeopardy attaches when the court reads the charges to the Accused and he or she is called on to take his plea”.**

She further held that the issue before court in ***Uganda Law Society Vs Attorney General Constitutional Petition No.18/2005*** was concurrent jurisdiction not whether plea taking before the Military Court amounted to double jeopardy and that they continued to appear before both courts. So she resolved the 1st issue in the negative.

On the second issue, she ruled that **“for purposes of criminal proceedings, it is a requirement that the accused must appear in person. The only exception arises under Article 28 (5) which provides that except with his or her consent, the trial of any person shall not take place in the absence of that person unless the person so conducts himself or herself as to render the continuance of the proceedings in the presence of that person impracticable and the Court makes an order for the person to be removed and the trial to proceed in the absence of that person. The same is provided under section 123 of the MCA.**

**This is not the case with respect to the three Accused”.**

In view of the foregoing, I am not persuaded by the argument by Counsel for the Accused that this is a pre plea process and in absence of any authority cited, to support their point of view, the Advocates do not have the capacity to raise the issue of double jeopardy in the absence of the Accused.

She concluded by holding that, **“having said the Accused have at all times been aware that their presence is required in this Court but they have opted not to appear but rather sent their Legal Representative, I hereby issue a Warrant of Arrest against all the three Accused person”.**

The above is the basis of this proceedings in revision where the Applicants are seeking to have the above decision revised, proceedings, before the Chief Magistrate declared illegal and warrant of arrests issued cancelled, since they are temporally stayed by this court.

**Decision of Court**

I have gone at length to reproduce proceedings especially the submissions in the lower court and this court to enable the parties involved especially the Accused appreciate the facts of the case and their legal responsibilities.

A2 and A3 were charged under the UPDF unit Disciplinary Committee of Military Police held at Makindye Kampala on 16th April 2019 with **Common Assault contrary to section 235 of the Penal Code Act** which is a misdemeanor.

***The UPDF Act 2005 defines Military Court as a summary trial Authority, a Unit Disciplinary committee or a Court Martial.***

Part VI of the Act provides for offences under that Act and section 195 of the Act provides for the Unit Disciplinary Committee. ***Section 195 (3) provides:***

**“A Unit Disciplinary Committee shall have powers to try any person for any non-capital offence under this Act and A Unit Disciplinary Committee shall have powers to impose any sentence authorized by law.**

Perusal of the UPDF Act part VI did not reveal any offence of Common Assault However, section 179 (1) (a) of the UPDF Act provides that “**A person subject to Military law, who does or omits to do an act in Uganda which constitutes an offence under the Penal Code Act or any other enactment commits a service offence and is on conviction liable to a punishment as prescribed in sub section (2).**

(2) where a Military Court convicts a person under sub-section (1), the Military Court shall impose a penalty in accordance with the relevant enactment and may in addition to that penalty impose the penalty of dismissal with disgrace from the Defence Forces or any less punishment prescribed by this Act.

The 2nd and 3rd Applicants have therefore been lawfully charged before the Military Disciplinary Committee.

Can they therefore raise the issue of double jeopardy in the Chief Magistrate’s Court?

It is now settled that concurrent criminal proceedings amount to double jeopardy. What remains to be resolved is when should the Principle be raised by the Accused person and before which court.

Double jeopardy is not one of the Defenses available to the Accused as submitted by the learned State Attorney.

Neither is it a procedural defence that prevents an Accused person from being tried again on the same or similar charges and on the same facts following a valid acquittal or conviction,

It is a Principle of the Law that is available to the Accused to avoid being tried twice for the same or similar charges arising out of similar facts following an acquittal or conviction and or having concurrent proceedings for the same or similar charges arising out of similar facts.

It is also trite law that an Accused person can only raise any principle of the law before the court that is trying him or has preferred charges against him. The Accused must therefore avail himself and submit to court’s jurisdiction.

Legal principles can be raised by an Accused himself if he is conversant with the law or through his Advocate since it is his/her constitutional Right to be represented by Counsel ***Article 28 (3) (d) refers.***

The Accused persons were therefore legally represented by their Counsel before the Chief Magistrates Court.

Could Counsel raise the preliminary point of law on the Principle or rule of double jeopardy in the absence of their clients in court?

The three Applicants are raising the principle of double jeopardy claiming they are appearing before the Military Court on same charges arising out of similar facts.

Perusal of the charge sheet from the Military Disciplinary Unit clearly shows that the 1st Applicant has not been charged.

Submission of Counsel that the charge sheet might be amended and include him is with due respect out of speculation. It is trite law that courts base their decisions on the law and facts and not on speculation that would amount to abuse of court process.

The trial Chief Magistrate could not therefore base her decision on speculation.

In respect of the 1st applicant RTD Major General Matayo Kyaligonza, he had not yet been charged. He cannot therefore plead double jeopardy even in the remotest sense.

As regards A2 and A3, of course together with A1, The charges against them were sanctioned on 18th March 2019 and criminal summons issued for court appearance and plea taking on 10th April 2019.

All the three instructed their Advocates who appeared on their behalf on 10th April 2019.

The Advocates informed court that A2 and A3 were in the hands of the State at the General Court Martial in Makindye. The charge sheet in Makindye shows they were charged on 16th April 2019. This was after 18th March 2019. The applicants were very much aware of the proceedings in the Chief Magistrate’s Court because they instructed their Advocates to appear in court on all the 3 occasions before the warrant of arrest was issued; That is on 10th April 2019, 29th April 2019, 20th May 2019 and 27th May 2019.

**Double jeopardy rule applies where there is an earlier court that has either tried and convicted or acquitted the accused or that has pending proceedings against the accused.**

In the instant case, the Applicants have pending criminal proceedings before the Chief Magistrate’s Court, Mukono.

The 1st Applicant Rtd Major General Matayo B. Kyaligonza for reasons best known to him decided to act in contempt by refusing to appear before the Chief Magistrate’s Court to take plea.

His Advocate did not attempt to take plea on his behalf as submitted by the State. The Advocates attempted to manipulate the criminal justice system by applying a legal principle that is not available to him instead of advising him to appear and make a formal statement stating whether he is guilty or innocent, to the charges against him, as the main function of arraignment is for the Accused to enter a plea after reading the charge for him.

Counsel Alaka submitted that in criminal matters, summons are not given to Lawyers even if they are in court. This court does not agree with that submission and the Trial Chief Magistrate was correct to hold that Accused persons were at all times aware that their presence was required in court, but opted not to appear, but rather send their legal representatives.

Unfortunately, in criminal proceedings, plea taking is personal and cannot be delegated to a legal representative.

The learned Chief Magistrate was therefore correct to apply ***Section 124 (i) of*** ***the MCA*** on the issue of Plea Taking.

The 2nd and 3rd Applicants can raise the Principle of double jeopardy but this principle is available to them in the Military Unit of UPDF.

It does not matter whether UPDF arrested them first. UDPF as a security Agency is obliged and mandated to produce people under its custody to courts of law if required.

I must state that Courts under UPDF having concurrent jurisdiction with Civil Courts, does not offer choices to their Officers to choose which court they want to be tried in. It would more or less amount to choosing a Judge in one’s Trial.

The Applicants in this case want to choose which court they are to appear to inspite of having been first charged before the Chief Magistrate’s Court of Mukono.

Of course I do appreciate that the learned Chief Magistrate understood double jeopardy as a form of plea which was to be raised at plea taking of which I have stated, it is not a form of plea. But she was right to agree with the State Attorney that it was raised prematurely by the Defence Counsel.

The Applicants ought to appear before the court, take plea and raise the principle of double jeopardy which ideally if proved, would lead to stay of proceedings in the 2nd court and or withdrawal.

The Trial Chief Magistrate issued criminal summons and warrant of Arrest after the Applicant particularly the 1st Applicant acted in contempt.

I therefore find no legal error on the part of the Chief Magistrate in the decision she took on the 1st Applicant of issuing a warrant of Arrest to compel his attendance in court.

It was lawful, regular and proper in the circumstances where he acted in contempt.

As regards A2 and A3, I hold the view that issuance of warrant of Arrest was not proper.

Since they are under the custody of UPDF, prison in Makindye. She ought to have issued a production warrant to have them produced before the Chief Magistrate’s Court.

She would only issue a warrant of arrest after she is satisfied that they are not in custody but at large and have refused to attend court.

**In conclusion,**

1. I hold the view that the Rule or Principle of Double Jeopardy applies to the 2nd Court not Court of first instance and in this case, the Applicants should appear before the Chief Magistrate’s Court of Mukono to answer charges against them.
2. Proceedings in the Military Court of Makindye in respect of A2 and A3 should be stayed and or withdrawn pending determination of MKN – 00-CR-C0-0312/2019 which is in Court.
3. The Chief Magistrate should issue a Production Warrant for A2 and A3 to Makindye Military Prison. The Warrant of Arrest against them is therefore cancelled.
4. The Warrant of Arrest against RTD major General Matayo B. Kyaligonza is reinstated as it was not issued in error to compel him to appear for plea before the Chief Magistrate’s Court.

In the Result, the Application is dismissed with modifications in respect of A2 and A3.

I so direct.

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Margaret Mutonyi

**RESIDENT JUDGE**

**MUKONO HIGH COURT CIRCUIT**

20th August 2019