

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

*[CORAM KATUREEBE; TUMWESIGYE; KISAAKYE; TSEKOOKO; KITUMBA;
JJ.SC].*

CONSTITUTIONAL APPLICATION NO. 01 OF 2014

B E T W E E N

DAVIS WESLEY TUSINGWIRE..... **APPLICANT**

VERSUS

THE ATTORNEY GENERAL **RESPONDENT**

(An application arising from pending Constitutional Application No. 9 of 2013).

RULING OF THE COURT

BACKGROUND:

The applicant instituted Constitutional Petition No. 2 of 2013 in the Constitutional Court challenging the validity of the High Court (Anti Corruption Division) Practice Directions, 2009, Legal Notice No. 9 of 2009, which constituted the Anti Corruption Division of the High Court . He contended that the inclusion of Magistrates in that Division was unconstitutional as Magistrates could not exercise the jurisdiction of the High Court. He sought, and obtained, a stay of all the proceedings of the Anti-Corruption Division Courts leading to a halt of all the trials pending before that Court.

When the Petition came up for final disposal, the Constitutional Court, by a majority of 4 to 1, dismissed the Petition and ordered the trials at the Anti Corruption Court to proceed.

The applicant has filed a Notice of Appeal in this Court against the decision of the Constitutional Court. He has also filed in this Court Constitutional Application No.9 of 2013 seeking a stay of execution of the Judgment of the Constitutional court, and a further order staying all the criminal cases proceedings before and arising from Chief Magistrates and Grade I Magistrates in the High Court Anti-Corruption Division.

This application seeks interim **injunctive** orders to stay the execution of the said Judgment/decisions of the Constitutional Court; and to stay the criminal cases until the final disposal of Constitutional Application No. 9 of 2013. The applicant also prays that costs be provided for.

The application is supported by the affidavit sworn by Mr. **DAVIS WESLEY TUSINGWIRE**, the applicant.

At the hearing of this application, the applicant was represented by Mr. Fred Muwema together with Mr. Friday Kagoro. Mr. Philip Mwaka, PSA, represented the Respondent.

SUBMISSIONS:

Mr. Muwema, relying on the affidavit of Mr. Tusingwire, argued that the Magistrates courts in the Anti Corruption Division of the High Court were not competent Courts as they had not been set up by law as demanded by the Constitution. Therefore, he submitted, there could not be fair trial in those Courts as fair hearing could only be in a competent court. He cited Article 28 and 126 of the Constitution and the case of **CHARLES ONYANGO OBBO & ANOTHER -Vs- THE ATTORNEY GENERAL, S.C.C.A NO. 2 OF 2002**. He further contended that Article 138, of the Constitution which provides for the structure of the High Court does not include Magistrates. Therefore, the inclusion of Magistrates in the Division is unconstitutional.

Counsel contended that the appeal had a high chance of success and that the applicant as a defender of the Constitution would suffer irreparable damage if the reliefs sought were not granted. In that regard he cited again the **Obbo** case (supra) and **GLADYS NAKIBUULE KISEKKA-Vs- ATTORNEY GENERAL, CONSTITUTIONAL APPLICATION NO. 90 OF 2013**. Counsel further contended that it was in the interests of the accused persons not to appear before incompetent courts, and that government would have wasted resources on those trials. He cited the decision of this Court in Constitutional Application No. **04 of 2014, HON. THEODORE SSEKIKUBO & OTHERS -Vs- THE ATTORNEY GENERAL & 4 OTHERS** as to the conditions necessary

before interim injunctive orders are granted. He submitted that the Applicant had satisfied all of them.

In response, Mr. Mwaka, relying on the affidavit of Mr. Waminda, the Registrar of the Anti-Corruption Court Division, disagreed with the submissions of the applicant's counsel. He contended that the designated Magistrates in the Anti Corruption Division of the High Court were properly established by the Chief Justice in accordance with Article 133 of the Constitution and section 148 of the Magistrates' Courts Act. He submitted that Practice Direction No.5 of the High Court (Anti-Corruption Division) Practice Directions, 2009 established the composition of the High Court Division, and Magistrates were only attached to that Division.

There was no evidence, he further submitted, that any magistrate had exceeded jurisdiction conferred by law.

In Counsel's view, the application was frivolous as the orders sought could not be granted and there was nothing to stay arising out of the decision of the Constitutional court.

Counsel submitted that the appeal had no chance of success, and that there was no irreparable harm that would be suffered by the applicant who was not an accused person. He contended that the cases cited by counsel for the applicant were distinguishable from the instant case because in all those cases, the applicants were

directly affected by the actions complained of. In this case, the applicant would only suffer remote, and not irreparable damage.

Counsel submitted that the halting of the trials had created a lot of uncertainty and confusion for the accused persons and complaints had been lodged to that effect as evidenced by annexures to the affidavit of Mr. Waninda. The balance of convenience was therefore in favour of continuing the trials since any person affected by a Magistrate exercising jurisdiction in excess of that conferred by law could seek appropriate remedies through other proceedings. He prayed that the application be dismissed with costs.

We have carefully considered the arguments and submissions of both counsel. We reiterate what we have decided in numerous cases before that in this type of application, it has to be shown that there is a likelihood of success in the appeal, there must be danger of irreparable harm being suffered by the applicant if the order sought is not granted, and the balance of convenience must favour the applicant.

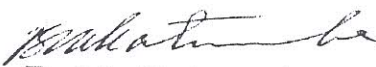
We are also of the view that at this stage we cannot go into the constitutionality of the Directions issued by the Chief Justice. Those arguments will be considered at the appeal stage.


Bearing the above in mind, we are of the considered view that the applicant would not suffer irreparable damage if the order sought is not granted. We are also of the considered view that the balance of

convenience is more in favour of the Anti-Corruption Court Division of the High Court proceeding with its work so that accused persons are afforded speedy trials. Any person adversely affected by the exercise of jurisdiction by any Magistrate is free to seek appropriate judicial remedy.


Accordingly we decline to grant the interim injunctive orders sought. This application is dismissed. This being a matter of public interest, each party will bear its own costs.

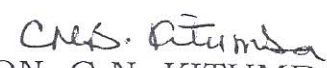
Delivered at Kampala this^{25th}.....day of March 2014.


Hon B. M. Katureebe
JUSTICE OF THE SUPREME COURT


HON. J. TUMWESIGYE
JUSTICE OF THE SUPREME COUR

HON. E.M. KISAAKYE
JUSTICE OF THE SUPREME COURT


HON. J.W.N. TSEKOOKO
AG. JUSTICE OF THE SUPREME COURT


HON. C.N. KITUMBA
AG. JUSTICE OF THE SUPREME COURT