

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI-CORRUPTION DIVISION
CRIMINAL APPEAL 003 OF 2024**

**(Arising from misc. cause No 004 of 2024)
(Arising from criminal case No 89 of 2023)**

UGANDA

**PRIVATE PROSECUTION BY MALE H MABIRIZI K KIWANUKA
.....APPELLANT**

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VRS

AMONG ANITA ANNET..... RESPONDENT

BEFORE: GIDUDU, J

JUDGMENT

This appeal is against the decision of the Chief Magistrate dated 7th March 2024 wherein she dismissed the appellants case. The appellant had instituted a private prosecution of Hon. Among Anita Annet, the Speaker of Parliament, on charges of **Money Laundering C/S 3(c), 116 and 136 of the Anti-Money Laundering Act Cap118.**

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The Chief Magistrate dismissed the complaint for two reasons. Firstly, that she did not have jurisdiction and secondly that there was not sufficient evidence to establish a prima facie case.

The brief background is that the appellant filed a letter dated 15th August 2023 addressed to the Chief Magistrate Anti-Corruption Court. In that letter, the appellant framed charges of money laundering against the intended accused, Hon Among and stated the particulars as follows:



30 **“Among Anita Annet, a female adult Ugandan Member of Parliament, a politically exposed person, between 2016-2023 in Kampala Central and Nakawa Divisions of Kampala City and Aereere village, Kamutur Sub County Bukedea district, intentionally acquired, possessed, used or administered property comprised in a palatial residential house at Mackinnon road, Nakasero, Kampala Central Division, Kampala city, a residential house in Ministers’ village Ntinda, Nakawa Division, Kampala City, Sky Hotel International, a 3 star hotel at Kyaddondo plot 1423, Ntinda, off Naalya road,**
40 **Mugisha road, Nakawa Division, Kampala City, a palatial upcountry residential house at Aereere village Kamutur Sub County Bukedea district, Toyota Land Cruiser V8 motor vehicle Registration Number UBJ 005U, Mercedes Benz Motor vehicle personalized Registration number AAA 1 and AAA 2 and a Range Rover motor vehicle personalized registration number AAA 3 knowing, at the time of receipt, that the property is the proceeds of crime, to wit corruption”.**

When the appellant filed his letter of 15th August, 2023 through the **ECCMIS** which is an electronic platform for filing matters in
50 Court, the complaint was assigned a case number **vide 89 of 2023**. This is a computer generated number.

The appellant filed the following grounds to challenge the decision of the Chief Magistrate. He represented himself and argued the appeal in person.

1. That the learned Chief Magistrate erred in law and fact in changing the case registration number from criminal case No 89 of 2023 to Misc. Cause No 004 of 2024.
2. That the learned Chief Magistrate erred in law and fact when in holding that she had no jurisdiction to entertain the case.

60 In the alternative and without prejudice to the above

3. That learned Chief Magistrate erred in law and fact in not committing the case to High Court in case she had no jurisdiction.

4. That the learned Chief Magistrate erred in law and fact in holding that the complaint or affidavit in support thereof does not disclose prima facie the commission of Money Laundering against the accused.

70 My duty as a first appellate court is to subject the evidence to fresh and exhaustive scrutiny to draw my own conclusions without ignoring the judgment appealed from.

Ground 1.

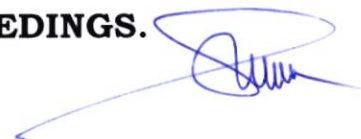
The Appellant complained that the Chief Magistrate changed the registration number from **criminal case No 89 of 2023 to Misc. Cause No 004 of 2024**. This made it appear like the case was filed in 2024 instead of 2023. The appellant submitted that **section 42 of the MCA** provides for criminal proceedings and not applications and that the Chief Magistrate's action of turning his case into an application was unlawful.

80 The Chief magistrate in her ruling stated that the change does not wipe away the fact that this matter was earlier registered in the system on the date it was and there is no impact on the merit of the matter now before this court. She stated that the change in the registration of a case is merely administrative and has no impact on how the matter will be heard and it does not take away the rights of the prosecutor whether private or state.

90 It is important to note that case numbers are computer generated by through the Electronic Court Case Management Information System (**ECCMIS**) which assigns numbers electronically. This is in compliance with **The Constitution (Integration of ICT into the adjudication processes for courts of judicature) (practice) directions, 2019**.

The issue is whether the change of the case from a criminal case to a miscellaneous application was unlawful. **Section 42 of the MCA** provides for three forms of institution of criminal cases. It provides as follows: -

PART V—INSTITUTION OF CRIMINAL PROCEEDINGS.



42. Institution of proceedings.

100 (1) Criminal proceedings may be instituted in one of the following ways— (a) by a police officer bringing a person arrested with or without a warrant before a magistrate upon a charge;

(b) by a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant or a summons; or (c) by any person, other than a public prosecutor or a police officer, making a complaint as provided in subsection (3) and applying for the issue of a warrant or a summons in the manner hereafter mentioned.

110 (2) The validity of any proceedings instituted or purported to be instituted under subsection (1) shall not be affected by any defect in the charge or complaint or by the fact that a summons or warrant was issued without any complaint or charge or, in the case of a warrant, without a complaint on oath.

120 (3) Any person, other than a public prosecutor or a police officer, who has reasonable and probable cause to believe that an offence has been committed by any person may make a complaint of the alleged offence to a magistrate who has jurisdiction to try or inquire into the alleged offence, or within the local limits of whose jurisdiction the accused person is alleged to reside or be. Every such complaint may be made orally or in writing signed by the complainant, but if made orally shall be reduced into writing by the magistrate and when so reduced shall be signed by the complainant.

(4) Upon receiving a complaint under subsection (3), the magistrate shall consult the local chief of the area in which the complaint arose and put on record the gist of that consultation; but where the complaint is supported by a letter from the local chief, the magistrate may dispense with the consultation and thereafter put that letter on record.

130 (5) After satisfying himself or herself that prima facie the commission of an offence has been disclosed and that the complaint is not frivolous or vexatious, the magistrate shall draw up and shall sign a formal charge containing a statement of the offence or offences alleged to have been committed by the accused.

140 (6) Where a charge has been— (a) laid under the provisions of subsection (1)(b); or (b) drawn up under the provisions of subsection (5), the magistrate shall issue either a summons or a warrant, as he or she shall deem fit, to compel the attendance of the accused person before the court over which he or she presides, or if the offence alleged appears to be one which the magistrate is not empowered to try or inquire into, before a competent court having jurisdiction; except that a warrant shall not be issued in the first instance unless the charge is supported by evidence on oath, either oral or by affidavit.

150 (7) Notwithstanding subsection (6), a magistrate receiving any charge or complaint may, if he or she thinks fit for reasons to be recorded in writing, postpone the issuing of a summons or warrant and may direct an investigation, or further investigation, to be made by the police into that charge or complaint; and a police officer receiving such a direction shall investigate or further investigate the charge or complaint and report to the court issuing the direction.

I have reproduced the section extensively because it is going to be a point of reference in other grounds of appeal. It is clear from **section 42(1)(a) to (c)** above, that a criminal case may be instituted by the police officer, public prosecutor or a private person.

160 In practice, police officers and public prosecutors prefer criminal cases by filing charge sheets in court whilst private people file complaints either on Oath or orally. If the complaint discloses an offence, the magistrate drafts a charge sheet after satisfying

himself or herself that, **prima facie, the commission of an offence has been disclosed and are not frivolous or vexatious.**

It follows that once the appellant filed his complaint which was assigned a case number by **ECCMIS**, it was indeed a criminal case filed within the meaning of **section 42(1)(c) of the MCA, Cap 19**. It was not, with respect, proper for the learned Chief Magistrate to
170 cause its conversion into an application as if a preliminary step is required before the case can be registered.

The Chief Magistrate was under a mistaken impression that the case number can only be assigned after, a prima facie case had been established. The complaint, which is one way of instituting a criminal case retains its number and proceeds as such. No preliminary applications are contemplated in **section 42 of the MCA, Cap 19**.

The case filed by a private prosecutor has the same status like a criminal case filed by a police officer or public prosecutor. There
180 was no justification in law to change the case from **criminal case 89 of 2023 to miscellaneous application 4 of 2024**. Ground one succeeds.

Ground 2.

The appellant criticized the learned Chief Magistrate for holding that she had no jurisdiction to entertain the case. It was his submission that any court in Uganda can try offences committed within Uganda but only the High Court has Jurisdiction to try offences committed outside Uganda or partly within Uganda. He submitted further that if the legislature wanted all offences to be
190 tried by the High Court, it would have said so.

The offences that the appellant seeks to prosecute fall under **sections 3(c), 116 and 136 of the Anti-Money Laundering Act Cap 118**.

It is trite that Jurisdiction, which is the authority of the court to try a dispute, is a creature of statute. It cannot be inferred or assumed or granted by parties to the dispute. Any decision made without jurisdiction is a nullity.

200 The **Anti Money Laundering Act, Cap 118** provides for the court with jurisdiction to try or inquire into the offences created in the Act. **Section 1 of the Act defines "Court" to mean the High Court.** It follows that any offence under the Act can only be tried by the High Court. This is plain and clear. The complaint in ground two is misconceived. Magistrates of all grades do not have jurisdiction to try offences under the Money laundering Act, Cap118 whether committed in Uganda or outside. Ground two fails.

Ground Three.

210 The argument here was that if the Chief Magistrate had no jurisdiction, then she should have committed the file to the High Court for trial.

I have already stated in ground two above, that the Chief magistrate has no Jurisdiction under the **Anti-Money Laundering Act, Cap 118. Sub-section 6 of section 42 of the Magistrates' Court Act, Cap 19** provides that where the magistrate has no jurisdiction to try the offence, he/she summons the accused to appear before a court with jurisdiction to try the charges he/she has drawn up after finding that there is a prima facie case.

220 The magistrate can only commit the charges to the High Court after he/she is satisfied that prima facie, an offence has been disclosed and that the complaint is not frivolous and vexatious. This is a requirement is **sub-section 5 of section 42 of the Magistrates' Court Act, cap 19.** In other words, the committal to High Court is upon satisfaction by the committing magistrate "**that prima facie the commission of an offence has been disclosed and that the complaint is not frivolous or vexatious**". The committing magistrate is not just a conduit to the High Court but must take a judicial decision that prima facie an offence has been disclosed and the complaint is not frivolous and vexatious.

230 Did the Chief Magistrate find that prima facie the commission of an offence had been disclosed and the complaint was not frivolous

and vexatious? At page 11 of her Ruling, the Chief Magistrate wrote thus

“So in conclusion of the matter now before this court, this court finds that first and foremost it lacks criminal jurisdiction to try or inquire into the alleged offence. Secondly, even if it had such jurisdiction, the complaint or affidavit does not disclose or satisfactorily disclose prima facie the commission of the alleged offence. In the premises, therefore, this matter is dismissed.”

240 The decision of the court was that prima facie, there was no offence disclosed. So the provisions of **sub section 6 of section 42 of the Magistrates’ Court Act, Cap 19**, to transfer or commit the matter to the High Court could not apply. The committal is conditional upon a finding that prima facie, the commission of an offence has been disclosed, the complaint is not frivolous and vexatious.

The transfer to the High court is not automatic as the appellant seems to suggest. It is not the High Court to inquire and find a triable offence. That is the jurisdiction of the magistrate before whom a complaint has been made under **section 42 of the**
250 **Magistrates’ Court Act Cap 19**. The matter is committed to the High Court for trial and not to find if prima facie, the commission of an offence is disclosed.

The complaint that the Chief Magistrate should have committed the case to the High Court is not valid because the court had not found a disclosed offence to transfer. Ground three framed in the alternative to ground also two fails.

Ground 4.

340 That the learned Chief Magistrate erred in law and fact in holding that the complaint or affidavit in support thereof does not, prima facie, disclose the offence of Money Laundering against the accused.

The appellant criticized the chief magistrate for the finding that the affidavit of the appellant did not have attachments to validate his allegations against the intended accused.

He submitted that the prima facie offence required under **section 42(5) of the Magistrates' Court Act, Cap 19** requires no evidence.

Alternatively, he submitted that the court could try the accused and discharge her under **section 127 of the Magistrates' Court Act, Cap 19** if there was no case to answer.

350 It must be emphasized that unlike a police officer or public prosecutor, filing charges under **section 42(1)(b) of the MCA, Cap 19**, a private prosecutor under **paragraph (c)** of the same section only makes a complaint to the magistrate if he/she has a **belief that an offence has been committed**.

The police officer or public prosecutor only come to court with a charge sheet after a matter has been reported to the police and investigations done. In practice the police or public prosecutor will present an accused to court for plea or apply for criminal summons or warrant of arrest as the case may be.

360 In a private prosecution under **section 42 of the MCA, Cap 19**, the magistrate to whom a complaint has been made is the one to inquire into the complaint and satisfy himself/herself "**that prima facie the commission of an offence has been disclosed and that the complaint is not frivolous or vexatious**". This is different from a finding of a prima facie case or lack of it under **section 127 of the MCA, Cap 19**.

The tools of inquiry available to a magistrate after receiving a complaint are provided in **section 42(4) and (7) of the MCA, Cap 19** as follows: -

370 "**The magistrate shall consult the local chief of the area in which the complaint arose and put on record the gist of that consultation**" see s42(4) MCA or;

"may direct an investigation, or further investigation, to be made by the police into that charge or complaint; and a police officer receiving such a direction shall investigate or further investigate the charge or complaint and report to the court issuing the direction" see s42(7) MCA.

It is clear from the provisions of the law cited above that a complaint to a magistrate does not need to be accompanied by



380 sufficient evidence to support the complaint. It is the duty of the
magistrate to obtain evidence by way of reports from either the
local chief of the area where the complaint arose or the police to
determine, judicially, if **prima facie the commission of an
offence is disclosed and the charges are not frivolous or
vexatious**. If satisfied, formal charges are drawn up by the
magistrate and the case proceeds with a plea taking following
summons or a warrant. Or the case is transferred to the court with
jurisdiction by way of committal.

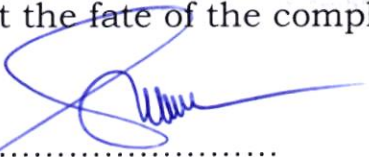
390 It is clear that in her ruling of 7th, March 2024, the Chief Magistrate
placed a duty upon the appellant to support his complaint with
evidence yet it is the duty of court to inquire into the complaint
from either a local chief or the police before determining if prima
facie the commission of an offence has been disclosed or not.

The court does not determine at that stage if there is a **prima facie
case**. Instead, it determines if prima facie, **the commission of an
offence is disclosed**. The two scenarios are different. A prima facie
case is considered after the prosecution has adduced evidence.
But in this case, the court is concerned with only if, prima facie,
the commission of an **offence** is disclosed to warrant **sanctioning**
400 charges. Ground four succeeds.

In conclusion, although most grounds of appeal failed, the fact that
the complaint of the appellant was not processed as required by
law so as to determine if, prima facie, the commission of an offence
that is not frivolous and vexatious existed, the matter is referred
back to the Chief Magistrate to process the appellant's complaint
pursuant to **sub-sections 4 or 7, of section 42 of the MCA, Cap
19** as guided in this judgment.

410 The appellant's complaint which was assigned case number is **89
of 2023** was dismissed prematurely. It should be processed as
guided above. The prayer in the appeal to sanction the charges
against the accused cannot be granted because it is the
jurisdiction of the magistrate receiving the complaint to do so after
being satisfied that prima facie, the commission of an offence is
disclosed and the complaint is not frivolous or vexatious. A report
from a local chief or the police is required to inform such a
decision.

Since this is a complaint that was filed in August 2023, the Chief Magistrate should expedite its process and determine its substance in the next three months from the date of this judgment so that the fate of the complaint is decided one way or the other.



.....
Gidudu Lawrence

JUDGE

15th October, 2024