

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

MISCELLANEOUS APPLICATION NO. 29 OF 2024

5 (Arising from Criminal Case No. 0487 of 2023)

1. SAFINA KIGAMBO
2. ROBERT KABUGO -----APPLICANTS

VERSUS

UGANDA (DPP) -----RESPONDENT

10 **RULING**

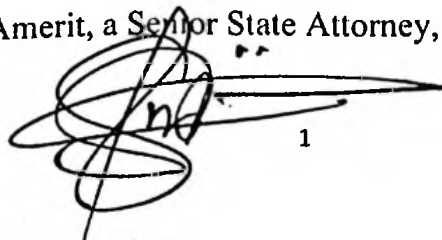
BEFORE: HON. JUSTICE ISAAC MUWATA

The applicants filed this application for revision under the provisions of Section 48 of the Criminal Procedure Code Act, Cap. 116, Section 33 of the Judicature Act, Cap. 13, Section 17(1) of the Judicature Act, and all other enabling laws.

15 The applicants, Safina Kigambo and Robert Kabugo, seek the following orders : first, that this Court revise the criminal charges instituted against them in the Entebbe Chief Magistrate's Court under Criminal Case No. 0487 of 2023; second, that the criminal proceedings in that court be stayed pending the final determination of Civil Suit No. 90 of 2022 filed by the applicants against the
20 complainant; third, that the said criminal proceedings be declared a nullity; and fourth, that costs of the application be awarded to them.

The application is anchored on the affidavit of the first applicant and supported by written submissions filed by their counsel from Wanda, Sakwa & Co. Advocates

25 The respondent, represented by the Director of Public Prosecutions (DPP) through Timothy Amerit, a Senior State Attorney, opposes the application with a


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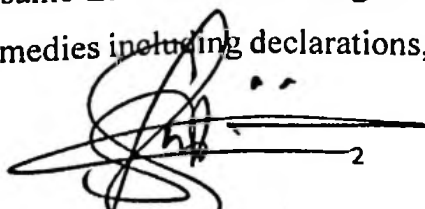
reply affidavit and written submissions that challenge the legal and factual basis of the applicants' claims. In adjudicating this matter, I have meticulously considered the notice of motion, the affidavits, the written submissions, and the authorities cited by both parties.

5 **Background**

The applicants, Safina Kigambo and Robert Kabugo, are the proprietors of A New Covenant Church, situated at Kitale Cell, Nalugala Ward, Katabi Town Council, Wakiso District. The church commenced operations in May 2022 following the issuance of a license by Katabi Town Council, which permitted activities on designated days, not exceeding 7:00 pm, and mandated adherence to optimum sound levels. The applicants assert that the church operates in a noisy environment, surrounded by manufacturing plants, welding machines, and a busy road frequented by heavy and light vehicles, all of which contribute to a noisy environment.

15 This backdrop led to the institution of Criminal Case No. 0487 of 2023 in the Entebbe Chief Magistrate's Court, where the applicants face two charges: the first count alleges the emission of noise in excess of permissible levels contrary to Sections 107 and 181 of the National Environment Act, 2019 (as amended), and the second count charges them with common nuisance under Section 160 of the Penal Code Act, Cap. 120. These charges stem from complaints that the church's activities exacerbate noise pollution, prompting public concern. The criminal case has advanced to a stage where some witnesses have testified, and it awaits further hearing and determination.

25 Parallel to these criminal proceedings, the applicants initiated Civil Suit No. 90 of 2022 in the same Entebbe Chief Magistrate's Court against the complainant, seeking civil remedies including declarations, injunctions, damages, and costs for



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the nuisance caused by the surrounding environment. This civil matter remains pending final resolution and is presided over by the same judicial officer handling the criminal case, a fact the applicants highlight as a source of potential bias.

5 The applicants' case rests on the assertion that the criminal charges are defective, lacking legal foundation due to amendments in the National Environment Act, and that the proceedings are irregular and unconstitutional. They argue that the overlap with the civil suit, combined with the shared judicial officer, prejudices their right to a fair trial and constitutes an abuse of process.

10 Conversely, the respondent maintains that the charges are validly framed, the proceedings are regular, and there is no justification for this Court to interfere with the Magistrate's jurisdiction, particularly given the public interest in enforcing environmental laws.

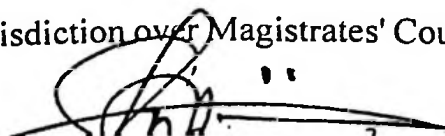
The following issues emerge from the pleadings and submissions for resolution by this Court:

- 15 a) **Whether the criminal charges in Criminal Case No. 0487 of 2023 are defective and warrant revision by this Court pursuant to Sections 48 and 50 of the Criminal Procedure Code Act.**
- b) **Whether the criminal proceedings should be stayed pending the determination of Civil Suit No. 90 of 2022, invoking the supervisory powers of this Court under Section 17 of the Judicature Act.**
- 20 c) **Whether the Criminal Proceedings Should Be Declared a Nullity**

Consideration.

The legal framework governing this application is anchored in several statutory provisions. Section 17(1) and (2) of the Judicature Act vests this Court with supervisory jurisdiction over Magistrates' Courts, empowering it to prevent abuse

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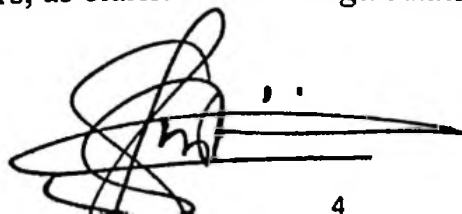
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of process, curtail delays, order expeditious trials, and ensure substantive justice without undue regard to technicalities. As elucidated in **Kamoga Muhamedi v Uganda, Supreme Court Criminal Application No. 3 of 2025**, this supervisory role is not intended to facilitate permanent stays or halt prosecutions but to
5 enhance judicial efficiency and fairness.

Section 33 of the same Act confers jurisdiction to grant remedies for legal or equitable claims, subject to constitutional limits, while Sections 48 and 50(1) of the Criminal Procedure Code Act allow the High Court to review Magistrates' proceedings for correctness, legality, or propriety, with power to alter or reverse
10 orders where material errors or miscarriages of justice are evident, though typically reserved for final orders unless exceptional circumstances arise.

Article 120 of the Constitution underscores the DPP's independent prosecutorial authority, a principle that courts must respect absent evidence of bad faith or injustice, as reinforced by **Kamoga Muhamedi v Uganda with reference to**
15 **Connelly v DPP [1964] AC 1254**.

The substantive charges are grounded in Section 107 of the National Environment Act, 2019, which prohibits noise exceeding permissible levels, and Section 160 of the Penal Code Act, which defines common nuisance—both valid despite the 2019 amendments that strengthen environmental protections rather than nullify
20 them. Section 28(1) (D) of the National Environment Act, cited by the applicants, pertains to administrative functions of district committees and does not negate criminal liability under other provisions. Additionally, Section 132 of the Magistrates Courts Act permits charge amendments at the court's discretion, while Section 208 (formerly 209) applies solely to civil stays and is inapplicable
25 to criminal matters, as clarified in *Kamoga Muhamedi v Uganda*.

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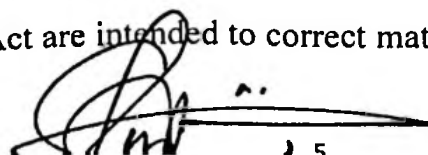
In *Kamoga Muhamedi v Uganda*, the Supreme Court held that a civil suit does not bar criminal proceedings, citing *Sarah Kulata Basangwa v Uganda* [2018] UGSC 55, and emphasized that stays require proof of prejudice to a fair trial, not mere speculation. These authorities collectively guide the Court's discretion in
5 balancing supervisory intervention with the public interest.

Whether the Criminal Charges in Criminal Case No. 0487 of 2023 are Defective and Warrant Revision

The applicants contend that the charges against them are defective, arguing that amendments to the National Environment Act, 2019, have rendered the offenses
10 under Section 107 non-existent, and that Section 28(1)(D) of the same Act, which they misinterpret as relevant, does not establish criminal liability. They further allege irregularity in the amendment of the charge sheet following a preliminary objection overruled by the trial magistrate.

This Court finds these arguments unpersuasive. The charges are clearly framed
15 under Section 107, which prohibits excessive noise, and Section 160 of the Penal Code Act, which addresses common nuisance—provisions that remain valid and enforceable post-amendment, as the 2019 changes enhance rather than eliminate environmental protections. Section 28(1) (D), concerning district committee reporting, is administrative and irrelevant to the criminal framework, thus the
20 applicants' reliance on it is misplaced.

The amendment of the charge sheet, conducted pursuant to Section 132 of the Magistrates Courts Act, fell within the trial magistrate's discretion, and no evidence has been adduced to suggest procedural impropriety or a miscarriage of justice. The Supreme Court's decision in *Kamoga Muhamedi v Uganda*
25 underscores that revisional powers under Sections 48 and 50 of the Criminal Procedure Code Act are intended to correct material errors in final orders, not to



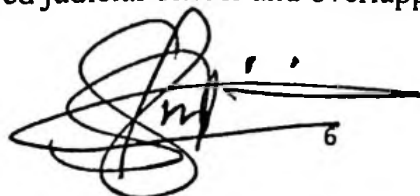
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intervene in interlocutory matters absent substantial prejudice, a principle echoed in *Kaketo Farouq v Uganda*, Criminal Revision No. 18 of 2023. Here, no such error or prejudice is demonstrated, and the application for revision at this stage is premature. Accordingly, this issue is resolved in the negative, and the prayer for revision is denied.

b) Whether the Criminal Proceedings Should Be Stayed Pending the Determination of Civil Suit No. 90 of 2022

The applicants assert that the criminal and civil proceedings, sharing identical facts and the same judicial officer, give rise to bias, irregularity, and unconstitutionality under Article 120(3) of the Constitution, which governs the DPP's powers. They argue that continuing the criminal case prejudices their fair trial rights and constitutes an abuse of process, necessitating a stay until the civil suit concludes. The respondent counters that civil and criminal proceedings serve distinct purposes—civil for private remedies and criminal for public interest—and that no real prejudice has been shown.

This Court aligns with the respondent's position, guided by the authoritative ruling in *Kamoga Muhamedi v Uganda*. That decision, drawing on *Sarah Kulata Basangwa v Uganda* [2018] UGSC 55, establishes that a pending civil suit does not bar criminal proceedings, as the two forums address different legal objectives. The applicants' civil suit seeks injunctions and damages for environmental nuisance, while the criminal case enforces public compliance with noise regulations—a distinction that precludes an automatic stay. The Supreme Court in *Kamoga Muhamedi* further clarified that stays are exceptional, requiring concrete evidence of an unfair trial or a threat to the justice system's integrity, as derived from *Connelly v DPP* [1964] AC 1254. Here, the applicants' claim of bias rests on the shared judicial officer and overlapping facts, but no specific instance



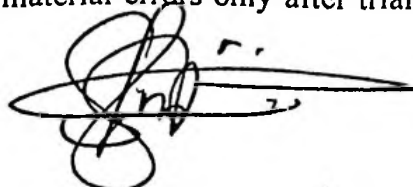
of partiality or procedural unfairness has been proven, rendering their assertion speculative.

Moreover, Section 17 of the Judicature Act, intended to promote expeditious trials and substantive justice, cautions against using supervisory powers to indefinitely halt proceedings, as such action could foster delay and abuse of process—a point reinforced in *Kamoga Muhamedi*. Staying the criminal case would contravene this mandate and the public interest in environmental enforcement. Authorities like *Akankwasa Damian v Uganda* [2012] UGSC 4 and *Joseph Zagyenda v Uganda*, HCT Criminal Application No. 003 of 2011, further support that stays should not be granted to delay justice absent compelling grounds.

c) Whether the Criminal Proceedings Should Be Declared a Nullity

The applicants seek to have the criminal proceedings declared a nullity, basing their claim on the alleged defectiveness of the charges, the irregularity of amendments, and the unconstitutionality of proceeding with parallel matters. This Court finds no basis for such a declaration. As established, the charges are validly framed, and the amendment process was regular under the Magistrates Courts Act. The contention of unconstitutionality under Article 120(3) lacks foundation, as the DPP's decision to prosecute falls within its constitutional mandate, and no evidence suggests bad faith or abuse warranting this courts intervention.

The Supreme Court in *Kamoga Muhamedi v Uganda* emphasized that supervisory powers should not be exercised to nullify ongoing proceedings absent exceptional circumstances, such as a clear threat to a fair trial, a standard not met here. Declaring the proceedings a nullity mid-trial would be premature and contrary to the principles in *Hitila v Uganda* (1969) E.A. 219, where revisional authority addresses material errors only after trial completion. No such error is

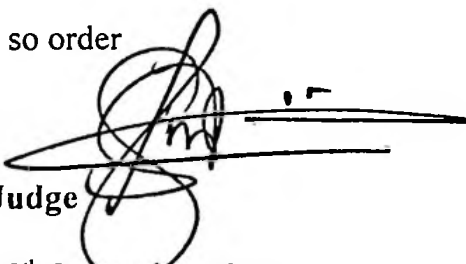
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evident, and the applicants' arguments do not justify this drastic remedy. Accordingly, this issue is resolved in the negative, and the prayer for a declaration of nullity is rejected.

For the foregoing reasons, this Court declines the application in its entirety. The
5 prayer for revision of the criminal charges in Criminal Case No. 0487 of 2023 is denied, as the charges are valid and no material error warrants intervention at this stage. The request for a stay of the criminal proceedings pending the determination of Civil Suit No. 90 of 2022 is refused, given the distinct purposes of the proceedings and the absence of exceptional prejudice. The plea to declare
10 the criminal proceedings a nullity is rejected, as no irregularity or unconstitutionality justifies such a measure. Conquently, the application is dismissed.

The Entebbe Chief Magistrate's Court is directed to proceed with Criminal Case
15 No. 0487 of 2023 expeditiously, ensuring that the trial advances in a manner consistent with the principles of justice and fairness

I so order



Judge

18th September 2025.