THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF MBALE HOLDEN AT MBALE

CRIMINAL CASE NO. 30/2022

UGANDA::PROSECUTOR

VERSUS

PHILIP MONK ::::::::::::::::::::::::::::::::::::ACCUSED

RULING

Upon the closure of the prosecution's case, both the prosecution and defence filed submissions on a case to answer.

Defence counsel in his submissions raised a preliminary point of law to the effect that the procedure of instituting private prosecution was not strictly adhered to.

He submitted inter alia that court did not consult the local chief of the area in which the alleged complaint arose yet the complaint was not supported by a letter from the local chief contrary to S.42(4) of the MCA. Further that the charge sheet was drawn prior to complying with the requirements under the law thus contravening S.42(5) of the MCA. Defence counsel relied on the case of Hassan Bassajabalaba Vs Kakande Benard (Criminal Revision No. 2/2013) where Justice Lamech Mukasa found the above to be mandatory steps and must exist before the hearing and determination of any private prosecution.

According to defence counsel, the instant prosecution cannot stand because it is unlawful, irregular and an abuse of court process.

In reply to the P.O counsel for the private prosecutor submitted that the facts in this case are different from those in the case of Hassan Basajjabalaba cited by the defence counsel. According to counsel for the private prosecutor, the offences in

this matter were committed in cyber space which makes it difficult to identify the local chief from which the complainant or magistrate is to extract the said letter.

Further that even if a local chief were to be consulted, he is not a forensic expert and would not be able to tell whether a cyber crime occurred in his area or not because the commission of cyber crime requires a forensic expert. He further submitted that under S.42(4) & (5) of the MCA, court has discretion to dispense with a letter from a local chief, after consultations and after court satisfies itself that there has been a prema facie commission of an offence and the complaint is not frivolous and vexatious.

I have considered submissions of both counsel. It is not in doubt that the complaint was not supported by a letter of the local chief. Further there was an oversight on behalf of this court and a local chief was not consulted before instituting these proceedings.

The private prosecutor ought to have attached a letter from the local chief on the complaint which was not the case herein.

It is true that the accused is charged with cyber offences and as submitted by counsel for the private prosecutor, it presents difficulties in determining where exactly the offences were committed. Further the local chief like the LCI Chairperson may not be versed with knowledge to guide on whether the accused committed the cyber crime or not.

Perhaps this is an area that calls for amendment of the law to guide courts.

As it stands, this court is bound by the decision of the High Court which makes it mandatory to consult the local chief of the area where the complaint arose or to have a letter of the local chief on court record before drawing up the charge sheet.

I am therefore in agreement with the defence counsel that the instant private prosecution contravenes S.42 (4) of the MCA and is therefore irregular.

I accordingly terminate these proceedings and discharge the accused.

The private prosecutor may if they so desire institute fresh prosecution in compliance with S.42 of the MCA.

I so order.



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KATURUBUKI ANDREW

MAGISTRATE GRADE ONE

17/03/2023