

The permanent stay of criminal proceedings cannot, by any stretch, fall within the ambit of **section 17(2)** of the Judicature Act (*which deals with instances where the High Court shall exercise its inherent powers in supervision over magistrates' courts*), nor could it have been contemplated as a mode of entrenching judicial efficiency, as it clearly runs counter to its provisions, the emphasis of which are on the expeditious disposal of cases and the engendering of substantive justice.

Section 208 of the Magistrates Courts Act, which prohibits magistrates' courts from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, is confined to civil jurisdiction and cannot be relied upon to stay a criminal trial.

The decision to prosecute lies exclusively with the Directorate of Public Prosecutions or the relevant prosecutorial body, not the courts. However, courts have an overriding duty to promote justice and prevent injustice. In exceptional circumstances, the High Court may stay an indictment or prosecution in a magistrate's court where continuing the proceedings would amount to an abuse of court process. However, courts must not invoke their inherent powers merely to discipline the prosecution or where a fair trial is still possible.



Ruling in Kamoga Muhamadi v Uganda (Criminal Application No. 3 of 2025) delivered by Single Justice, Monica K Mugenyi, JSC on 08 July 2025.

The applicant was arraigned in the Entebbe Chief Magistrates Court in Criminal Case Nos. 835 & 836 of 2023 and obtained a stay of those proceedings through Criminal Revision Application No. 36 of 2023. However, the COA, in Criminal Appeal No. 646 of 2023, overturned that decision, holding that the High Court had misconstrued **s. 209** (MCA) and improperly exercised its supervisory powers under **s. 17(2)** (Judicature Act).

The applicant, having filed a pending appeal and stay application, now seeks an interim stay pending the determination of the substantive application. He argued that the criminal trial sought to be stayed arises from the alleged forgery by the applicant of transfer forms, and since a complainant admitted signing the disputed forms in Civil

Suit No. 526 of 2021, the criminal trial would undermine the pending appeal and prejudice their right to be heard in the civil case. **Mugenyi JSC** found that the High Court had wrongly **invoked s. 17(2)** and wrongly relied on **s. 208 (formerly s. 209)** of the MCA, noting that the provision applies to civil, not criminal, proceedings.

She emphasized that the High Court may only stay a prosecution in a magistrate's court in exceptional circumstances where continuation would amount to an abuse of court process. In dismissing the application, she noted that no travesty of justice would be prevented by an interim stay; she held that the ends of justice are better served by expeditious prosecution of the criminal case, which would support rather than negate the pending civil suit.

Legal Representation

At the hearing of the application *inter partes*, the applicant was represented by Mr. Brian Kusingura Tindyebwa, while the respondent was represented by Ms. Happiness Arnebyoona, a Chief State Attorney.



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