

## THE REPUBLIC OF UGANDA

In the chief magistrate of Masaka at Masaka Court  
Case No. MSK -00-CR-CO-0377-2025

### UGANDA VS LUJUMWA NATHAN (PRIVATE PROSECUTION)

This complaint was filed by complaint on oath intended for private prosecution against the accused person.

State Caroline appeared in court on behalf of DPP and submitted to take over the conduct of the prosecution of the case, she cited article 120 of the constitution that mandates the office of the director of public prosecution to initiate criminal proceedings and taking over from a private person.

She further asked court to give them time to instruct police to conduct investigation.

Counsel Tugume Joram argued for the complainant and conceded with the state.

However, wants the case to be handled expeditiously due to number of delays from the side of state prosecution. According to him, it has been the reason why people opted for private prosecution.

Counsel Davies Kiconco added to the submission of counsel Tugume and stated that it is unique in nature to allow the access to information and in light of article 41 of the constitution.

Counsel Lule appeared for the accused person. He agreed with the state taking over the case until the DPP is well assured as to the guide line setting private prosecution. Cited *Criminal C A No. 8 of 2023 Uganda vs Private prosecution) Male Mabirizi Appellant vs Mao Nobert and two others* where justice Gadenya laid down the guidelines to be followed in private prosecution.

In Uganda, private prosecution is permitted but subject to specific legal provisions and the oversight of the Director of Public prosecution. DPP.

A private person can initiate and continue a prosecution until a judgment is made, but the DPP can intervene at any stage before judgment to take over the proceedings. This intervention requires no consent from the private prosecutor or the court. The DPP can also discontinue a prosecution at any stage before judgement.

The legal hint is that there is a right to initiate leave of court required, DPP's oversight and strictly in the name of the state. Article 120 (3) c of the Ugandan constitution, grants the DPP, power to take over proceedings initiated by other person's section 84 of the criminal procedure Code Act, allows a magistrate to permit a prosecution to be conducted by any person.

Ideally the office of private prosecution was established with that of DPP in the earlier days of the 18<sup>th</sup> century as a safe guard against the reluctance or partiality on the part of the state when it comes to pursuing justice against the affluent and prominent people in society

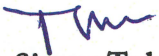


Cited the case of Gouriet vs Union of post office workers [1978] AC 435, Lord Diplock clearly stated as in the above statement. Mr. Gouriet, as a private citizen, was entitled to come to court and ask for an injunction against the post office union from soliciting interference. Finally, three of the law lords even had reservations about the Attorney-General's own undoubted power of resorting to the civil courts for enforcement of the criminal law.

In the case of Gamalieli Nubito vs R [1961] 1 EA 2444, Court of appeal at Kampala, noted that in Uganda under section 84 of the criminal procedure Code, a magistrate may permit a prosecution to be conducted by any person

The provision however, empowers the DPP to, at any stage of the proceeding to take over and continue the proceedings, Section 42 of the MCA Cap 16 provided the modes and guidelines of imitating both private and public criminal proceedings.

Having heard from all the parties, the state, counsel for the complainant and accused, the court finds it proper for the DPP under article 120 of the constitution to take over the conduct of this case until its logical conclusion.



Simon Toloko

Chief Magistrate.

Dated 24.4.2025

Criminal Cases