

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

CRIMINAL REVISION APPLICATION NO. 048 OF 2024

5 **[ARISING FROM CRIMINAL MISCELLANEOUS CAUSE NO. 0003 OF
2024]**

1. DENNIS DANIEL SSEMUGENYI

**2. DANIEL DENNIS INVESTMENT GROUP LTD-----APPLICANTS
VERSUS**

10 **UGANDA-----RESPONDENT**

BEFORE: HON. JUSTICE ISAAC MUWATA

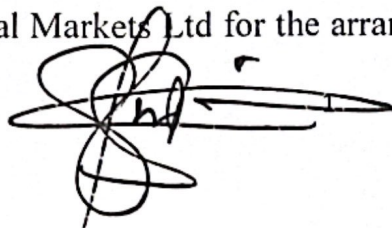
RULING

This is an application for criminal revision is brought under Sections 48, 50(1)(b), and 50(5) of the Criminal Procedure Code Act (Cap. 116) and Rules 2 and 4 of the Criminal Procedure (Application) Rules. The applicants, Dennis Daniel Ssemugenyi and Daniel Dennis Investment Group Ltd, seek an order to set aside a freezing order issued by the Chief Magistrate's Court of Buganda Road on September 5, 2024, in Criminal Miscellaneous Cause No. 0003 of 2024. The order froze Account Number USD 02660014859731, held at DFCU Bank in the name of the 2nd Applicant.

The application is supported by an affidavit sworn by the 1st Applicant and opposed by the Respondent, the State, represented by the Director of Public Prosecutions (DPP). The central issue for determination is whether the continued freezing of the account, in place for over ten months, remains correct, legal, or proper, balancing the State's investigative needs against the applicants' constitutional rights and the hardship caused by the freeze.

Background

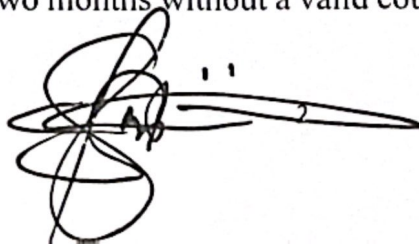
The material facts are largely undisputed. On September 12, 2023, the 2nd Applicant entered into a Memorandum of Understanding (MOU) with Thorington Capital Markets Ltd for the arrangement of a USD 35,000,000 non-



recourse loan. Pursuant to the MOU, the 2nd Applicant paid USD 120,000 in processing fees, deposited into a fiduciary account held by Spirit to Wealth Limited on September 21, 2023. On September 5, 2024, the Chief Magistrate's Court issued an order freezing the 2nd Applicant's DFCU Bank account following an application by the State. The order was premised on a complaint by Thorington Capital Markets Ltd, alleging that the applicants obtained the USD 120,000 through false pretenses as part of a scheme involving fraud and money laundering. The applicants assert that Thorington reneged on the MOU, refunded the fees, and that the funds in the account are from legitimate sources. They argue that the prolonged freeze, without charges, constitutes a miscarriage of justice. The State maintains that the freeze is necessary to preserve assets during ongoing, complex investigations involving the Financial Intelligence Authority (FIA) and DFCU Bank staff, pursuant to the Computer Misuse Act.

Applicants' Submissions

Counsel for the applicants submitted that the complaint by Thorington Capital Markets Ltd is frivolous, as due diligence revealed the company lacks a physical presence in Saudi Arabia, undermining its legitimacy and the credibility of its allegations. They contended that bank records show no incoming wire transfers from Thorington to the frozen account, contradicting the claim of fraudulent acquisition. The applicants further asserted that the processing fees were refunded, and the funds in the account are from legitimate business activities, rendering the fraud allegations baseless. The applicants argued that the freezing order, in effect since September 2024, has persisted for over ten months without charges or a clear timeline for concluding the investigation. They submitted that this indefinite freeze exceeds the lawful scope of preservation orders under the Computer Misuse Act, amounting to a de facto punishment without due process. They further alleged that DFCU Bank engaged in unlawful conduct by freezing their accounts for two months without a valid court order, closing other accounts,

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and confiscating property titles, compounding the injustice. The applicants also
60 contended that the State's reliance on the 1st Applicant's absence from Uganda
since 2020 is irrelevant, as it does not substantiate the fraud allegations or justify
the continued restriction of their property. Finally, they highlighted the significant
hardship caused by the freeze, particularly the disruption of a scholarship
program supporting over 1,000 children under 15, arguing that this renders the
65 order disproportionate and unjust.

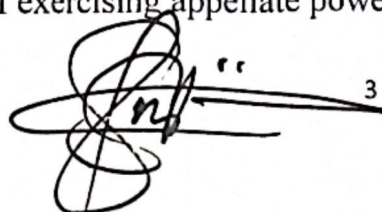
Respondent's Submissions

The State, through the DPP, opposed the application, submitting that the freezing
order was lawfully issued under the Computer Misuse Act to preserve assets
during an active investigation into allegations of fraud and money laundering.

70 They asserted that the investigation is at an advanced stage and involves complex
issues, including the participation of the FIA and DFCU Bank staff, necessitating
the continued freeze. The State argued that lifting the freeze risks dissipation of
the funds, which would undermine the investigation and threaten national security
and the integrity of the financial system. They further contended that the 1st
75 Applicant's absence from Uganda since 2020 and failure to respond to
investigative summons indicate non-cooperation, providing additional
justification for maintaining the freeze. The State maintained that the Magistrate
acted within her powers, and the order remains essential to ensure a thorough
investigation.

Consideration

This Court's revisional jurisdiction is anchored in Section 48 of the Criminal
Procedure Code Act, which empowers the High Court to examine the record of
any criminal proceeding before a Magistrate's Court to ensure the correctness,
legality, or propriety of any finding, order, or sentence. Section 50 authorizes the
85 Court to issue appropriate orders, including reversing or varying lower court
decisions, as if exercising appellate powers under Sections 34 and 35.



Article 26 of the Constitution of Uganda also guarantees the right to property, prohibiting deprivation except through due process and proportionate measures. The Supreme Court in *Charles Onyango Obbo v. Attorney General* [2004] UGSC
90 1 held that any limitation on constitutional rights must be necessary, proportionate, and in pursuit of a legitimate aim. This principle is critical in evaluating preservation orders, which must balance the public interest in combating crime with the individual's right to property.

Section 8 of the Computer Misuse Act (Cap. 96) provides for the expeditious
95 preservation of data, including bank account funds, where an investigative officer demonstrates reasonable grounds to believe that such data is vulnerable to loss or modification. It provides that:

*An investigative officer may apply to court for an order for the expeditious preservation of data that has been stored or processed by means of a computer
100 system or any other information and communication technologies, where there are reasonable grounds to believe that such data is vulnerable to loss or modification. For the purpose of this subsection, data includes traffic data and subscriber information. An order made under this subsection shall remain in force until such time as may reasonably be required for the investigation of an
105 offence; or where prosecution is instituted, until the final determination of the case or until such time as the court deems fit.*

This provision authorizes freezing orders to preserve assets during investigations but imposes clear temporal limits, requiring that such orders remain in force only for a reasonable period necessary for the investigation or until prosecution is
110 concluded.

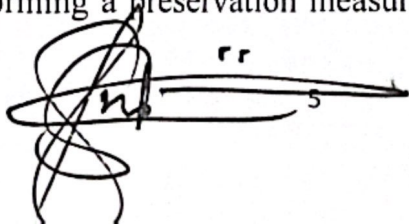
The issue for determination is whether the continued freezing order, issued on September 5, 2024, remains correct, legal, or proper, given the duration of the freeze.

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115 Section 8 of Computer Misuse Act authorizes courts to issue preservation orders to secure data, including financial assets, where there are reasonable grounds to believe that such data is vulnerable to loss or modification. The provision explicitly limits the duration of such orders to the time *“reasonably required for the investigation of an offence”* or, if prosecution is instituted, until the case is determined. This temporal restriction underscores that preservation orders are
120 temporary measures designed to facilitate active investigations, not to indefinitely deprive individuals of their property.

The freezing order issued on September 5, 2024, was within the Magistrate’s powers at the outset, given the allegations of fraud and money laundering. However, its continuation for over ten months requires scrutiny to ensure
125 compliance with the Act. The duration of the freeze should be considered. The order has been in effect since September 5, 2024, a period exceeding ten months as of this ruling. The applicants contend that no charges have been filed, and the State has not provided a clear timeline for concluding the investigation.

The Respondent asserts that the investigation is complex, involving the FIA and
130 potential DFCU Bank staff, and is at an advanced stage. The Computer Misuse Act stipulates that a preservation order remains in force only for a “reasonable” period necessary for the investigation. After ten months, the State bears the burden of demonstrating tangible progress to justify the continued restriction. The affidavit of the Investigating Officer offers only general assertions of complexity
135 and advancement, without specifics such as evidence gathered, witnesses interviewed, or charges prepared. The absence of such details suggests that the investigation has not progressed sufficiently to warrant continued deprivation of the applicants’ property. The Act’s requirement of a “reasonable” duration implies a duty on the State to act diligently and expeditiously. An indefinite
140 freeze, without charges or a defined timeline, exceeds the lawful scope of the provision, transforming a preservation measure into a punitive act. This Court

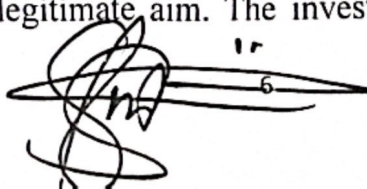
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finds that the prolonged duration, absent demonstrable progress, violates the temporal limits of the Computer Misuse Act and undermines the legality of the order under Section 48 of the Criminal Procedure Code Act.

145 The Computer Misuse Act under section 8 requires “reasonable grounds” to believe that the data (in this case, the funds) is vulnerable to loss or modification. The State relies on Thorington’s complaint, alleging that the applicants obtained USD 120,000 through false pretenses. However, the applicants’ bank records, which are unchallenged, show no incoming wire transfers from Thorington to the
150 frozen account. The applicants further assert that the processing fees were refunded, a claim the State has not disputed with contrary evidence.

These facts undermine the allegation of fraudulent acquisition, as there is no direct link between the funds and the alleged crime. The broader claim of money laundering lacks specificity. The State has not provided evidence demonstrating
155 that the funds are proceeds of crime or part of an illicit scheme. For example, there are no transaction records, forensic analyses, or other indicators showing illicit activity. The allegation of vulnerability to loss or modification is similarly unsubstantiated. The State has not adduced evidence of any intent or action by the applicants to transfer or conceal the funds, such as suspicious transactions or
160 attempts to move assets. The Computer Misuse Act’s requirement of “reasonable grounds” demands more than speculative assertions. Without a prima facie case or a substantiated risk of dissipation, the freeze lacks the evidentiary foundation mandated by the Act, rendering it improper under Section 48.

I have also considered the constitutional protections under Article 26 of the
165 Constitution are paramount. The right to property may be limited only through due process and proportionate measures. In *Charles Onyango Obbo v. Attorney General Constitutional Appeal 2 of 2002* [2004] UGSC 1, the Supreme Court held that any restriction on constitutional rights must be necessary, proportionate, and in pursuit of a legitimate aim. The investigation of financial crimes is a

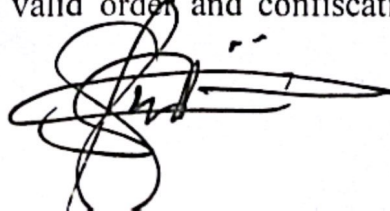
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legitimate aim, but the Computer Misuse Act's temporal limits ensure that preservation orders do not disproportionately infringe on property rights. The prolonged freeze, without charges or evidence, restricts the applicants' access to their funds, violating Article 26.

175 The applicants have demonstrated significant hardship, particularly the disruption of a scholarship program supporting over 1,000 children under the age of 15 years. This program, funded by the frozen account, addresses critical educational needs, and its interruption has profound social consequences. The State has not countered this hardship with evidence of comparable public harm if the account is unfrozen. For instance, there is no indication that lifting the freeze would
180 irreparably compromise the investigation or enable immediate dissipation. The speculative nature of the State's concerns, contrasted with the tangible harm to the applicants, renders the freeze disproportionate. The Computer Misuse Act's provision, by limiting the duration to what is "reasonably required," implicitly requires courts to weigh such hardship, and this Court finds that the balance
185 favors the applicants.

The State's reliance on the 1st Applicant's absence from Uganda since 2020 and failure to respond to summons is unpersuasive. Non-cooperation may justify investigative measures, such as summons or warrants, but it does not constitute "reasonable grounds" under the Computer Misuse Act to believe that the funds
190 are vulnerable to loss or modification. The absence of the 1st Applicant does not substantiate the allegations of fraud or money laundering, nor does it justify an indefinite freeze, particularly when the evidence is lacking. The State's claim that the freeze protects national security and the financial system is similarly unconvincing, as it relies on broad assertions without specific evidence tying the
195 funds to such risks.

The applicants' allegations of misconduct by DFCU Bank, including freezing accounts without a valid order and confiscating property titles, raise serious

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concerns about due process. While this Court's revisional jurisdiction focuses on the Magistrate's order, these allegations highlight the broader impact of the freeze on the applicants' rights. The alleged actions, if true, exacerbate the hardship and underscore the need for a proportionate approach. The Computer Misuse Act does not authorize banks to act unilaterally, and any preservation order must be strictly tied to judicial oversight, further supporting the applicants' argument that the freeze has been misapplied.

Section 50 of the Criminal Procedure Code Act empowers this Court to vary or rescind orders that cause undue hardship, provided the hardship outweighs the risk to the investigation. The applicants' evidence of hardship, particularly the impact on the scholarship program, is compelling and unchallenged. The State's speculative concerns about dissipation and national security do not meet the evidentiary threshold required by the Computer Misuse Act. The balance of interests clearly favors the applicants, as the continued freeze serves no demonstrable purpose in the absence of charges, progress, or a substantiated risk.

This Court is mindful of the public interest in combating financial crimes. The Computer Misuse Act provides a framework for preserving assets during investigations, but its temporal and evidentiary limits ensure that such measures do not become oppressive. The State has had over ten months to gather evidence, and the absence of charges or specific progress indicates that the freeze has exceeded its lawful purpose under the Act. To uphold the order would sanction an administrative detention of property, violating both section 8 of the Computer Misuse Act and Article 26 of the Constitution. The applicants' right to property, coupled with the significant hardship caused, demands that the freeze be lifted.

This Court finds that the continued freezing order is neither correct, legal, nor proper under Section 48 of the Criminal Procedure Code Act. The absence of charges or significant investigative progress after ten months violates the temporal limits of the Computer Misuse Act, which requires preservation orders

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to remain in force only for a period reasonably required for the investigation. The State has failed to establish reasonable grounds under the Act to believe that the funds are vulnerable to loss or modification, as there is no prima facie case or substantiated risk of dissipation. The freeze infringes on the applicants' right to property under Article 26 of the Constitution, causing undue hardship that outweighs the speculative risks cited by the State. The order has exceeded its purpose as a temporary preservation measure, and its continuation constitutes a miscarriage of justice.

Accordingly, the freezing order issued by the Chief Magistrate's Court of Buganda Road on September 5, 2024, in Criminal Miscellaneous Cause No. 0003 of 2024 is set aside.

Secondly, DFCU Bank is directed to unfreeze Account Number USD 02660014859731 in the name of Daniel Dennis Investment Group Ltd with immediate effect and any other account affected by the preservation order.

I so order.

Judge

21/08/2025