**D P P v Sezi and others**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 18 March 1974

**Case Number:** 183/1973 (97/74)

**Before:** Manyindo J

**Sourced by:** LawAfrica

*[1] Criminal Practice and Procedure – Charge – Withdrawal – D.P.P. may withdraw without leave –*

*Magistrates’ Courts Act* 1970, *s*. 119 (*U*).

*[2] Criminal Practice and Procedure – Trial – State Attorney unable to proceed – Discharge proper.*

**Editor’s Summary**

On the date fixed for the hearing of a criminal case the State Attorney applied for a further adjournment,mand when this was refused was recorded as applying for leave to withdraw the charge.

The magistrate refused the application and acquitted the accused.

On appeal it was contended that the State Attorney had in fact exercised the powers of the Director of

Public Prosecutions to withdraw a charge, for the exercise of which power no leave is required, and that the magistrate was wrong in holding that the prosecution had not failed to establish a *prima facie* case as it had not refused to call witnesses who were present.

**Held** –

(i) the Director of Public Prosecutions has power to withdraw a charge without leave, but this power was not exercised;

( ii) there was no refusal to proceed with the case and accordingly the accused should not have been acquitted (*Uganda v. Milenge* (2) distinguished).

Discharge substituted.

**Cases referred to Judgment:**

(1) *R. v. Arvi Ratilal Ganji*, 6 U.L.R. 237 (see [1970] E.A. 270).

(2) *Uganda v. Milenge*, [1970] E.A. 269.

(3) *Uganda v. Okot*, H.C.Cr.A. 83/73 (unreported).