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EKO HOTELS & SUITES

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Abuse of Prosecutorial Powers

- Noble-cause corruption - a UK case study
- Some international law principles on prosecution and fair trial

Rees v Commissioner of Police of the Metropolis
Court of Appeal (Civil Division)
[2018] EWCA Civ 1587



- Senior police officer believed the claimants guilty of gangland murder
- Persuaded vulnerable witness to say he had seen the murder
- Presented the evidence to Crown Prosecution Service
- High Court judge said could not be ‘malicious’ prosecution because officer genuinely believed that was bringing suspects to justice.

Court of Appeal judgment - McCombe LJ



81 Can it be the law....that because a prosecutor believes a person is guilty of an offence, he prosecutes that person without malice (in the sense of dishonesty), even if the case which he presents to prove guilt is heavily reliant on the evidence of a witness which he has procured by subornation amounting to a criminal intention to pervert justice?

McCombe LJ

- I would hold that bringing a prosecution in that manner is not "bringing a criminal to justice" at all.
- "...the dishonest pursuit of a case even in a "noble cause" is always malicious prosecution. It is an improper motive to act knowingly unlawfully. Pursuit of the ends of justice must mean pursuit by honest and lawful means, not just the conviction of the guilty at any cost.

Right to a fair trial

- Article 7 African Charter on Human and Peoples Rights
- **Article 6 European Convention on Human Rights**
- Article 14 International Covenant on Civil and Political Rights

UN Guidelines on the Role of Prosecutors



- Prosecutors play a crucial role in the administration of justice
- Rules concerning the performance of their important responsibilities should promote their respect for and compliance with the right to a fair trial
- Contributing to fair and equitable criminal justice and the effective protection of citizens against crime

Principles 4 and 10

- States shall ensure that prosecutors are able to perform their professional functions **without intimidation, hindrance, harassment, improper interference** or unjustified exposure to civil, penal or other liability.
- The office of prosecutors shall be strictly separated from judicial functions

Principle 11

- Prosecutors shall perform their duties fairly, consistently and expeditiously.
- **Respect and protect human dignity and uphold human rights.**
- Thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

Principle 15



- Prosecutors shall give due attention to the prosecution of crimes committed by public officials
- Particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law

Principle 16

- Evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights,
 - **Prosecutor shall refuse to use such evidence against anyone**
- Shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.