

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA

CONSTITUTIONAL PETITION NO. 2 OF 1999

CORAM: HON. MR. JUSTICE C.M. KATO, J.A.
HON. MR. JUSTICE G.M. OKELLO, J.A.
HON. LADY JUSTICE A.E.MPAGI-BAHIGEINE, JA
HON. MR. JUSTICE J.P. BERKO, J.A.
HON. LADY JUSTICE C.N.B. KITUMBA, J.A.

10 CHARLES KABAGAMBE.....PETITIONER
VERSUS
UGANDA ELECTRICITY BOARD.....RESPONDENT

REASONS FOR THE DECISION:

Charles Kabagambe, to whom we shall refer as "The
Petitioner", filed a petition in this court on the 4th of
June 1999. He cited The Uganda Electricity Board, to
whom we shall refer as the respondent, to the petition.

20 In the petition he listed several acts committed by the
respondent, which he alleged, were inconsistent with and
contrary to Article 42 of the Constitution. He then
prayed for the following reliefs:

- (a) a declaration that the dismissal of the
petitioner was done in a manner and based on a
process that was inconsistent with and in
contravention of the requirement that just and
fair treatment shall be accorded to all persons
in making administrative decisions,
- 30 (b) grant an order of redress to the petitioner
against the respondent and
- (c) costs of the petition.

When the matter came up for hearing on the 30th June 1999, Mr. Kagumire, on behalf of the respondent, raised a preliminary objection that this court has no jurisdiction in the matter as the issues raised in the petition do not require interpretation of any provision of the Constitution. He was supported in that regard by Mr. Cheborion Balishaki who appeared on behalf of the Attorney General as *Amicus Curiae*. We upheld the preliminary objection and dismissed the petition with costs to the respondent and reserved our reasons which we now proceed to give.

The following is a brief account of what led to the petition. The petitioner was on 4th February, 1991 appointed the Board Secretary of the respondent. The appointment was probationary for the first six months. After the successful completion of the probationary period his appointment was confirmed on the 28th November 1991 in the category of a permanent senior staff. He held that post until he was dismissed from the said office by the respondent acting as an administrative body. The dismissal was communicated to the petitioner in a letter dated 6th May, 1999.

It is the complaint of the petitioner that his dismissal was the result and culmination of a series of administrative decisions by the respondent and a fundamental flawed administrative hearing process that infringed his right to a fair and just treatment under Article 42 of the Constitution and was thereby inconsistent with and in contravention of the Constitution.

Instances of the alleged administrative decisions and flawed administrative hearing process are:

10 (a) On the 18th August 1998 the respondent sent the petitioner on forced leave in a manner that, by reasons of the terms of such leave, amounted to the imposition of administrative sanctions on the petitioner. The said action was taken before granting the petitioner a right to be heard and, that, according to him, was in contravention of the principles of Natural Justice. The sanctions imposed were also *ultravires* the regulations governing his employment.

(b) The hearing was conducted unfairly and unjustly in that:

20 (i) he was repeatedly denied access to evidence and documents in possession of the respondent,

(ii) the hearing was characterised by attempts to ambush him and mislead him as to the true nature of the charges against him;

(iii) he was denied a right to counsel when the respondent was represented by counsel;

30 (iv) members of the Tribunal acted both as prosecutor and judge in the conduct of the purported hearing, and thus

violated the rules of natural justice;

(v) the Tribunal had in its composition two members, Mr. Frank Katusiime and Mr. Kagule - Magambo, who had personal differences with him and who had refused to disqualify themselves from participating in the hearing. Their participation in the hearing resulted in unfair and unjust treatment of him;

(vi) evidence was adduced before the respondent's tribunal in his absence at a second hearing on the 6th May 1999 and he was neither given notice of the fact that the tribunal had received the said evidence nor given a chance to rebut or respond to it;

(vii) he was ordered out of the hearing of 6th May 1999 by the respondent's Chairman and his absence from the hearing was afterwards relied on by the respondent to justify his dismissal on a false allegation that he had walked out of the hearing and

(viii) the respondent took a long time to make a decision after

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having completed hearing on
the 18th September 1998.

It is with this background that the petitioner filed this petition. As we have indicated earlier on, when the petition came up for hearing, counsel for the respondent raised a preliminary objection that there was no Constitutional issue requiring interpretation by this court and consequently that this court has no
10 jurisdiction in the matter.

Mr. Kagumire argued that the cause of action in the petition is an alleged violation of the provisions of Article 42 of the Constitution which guarantees all persons appearing before any administrative official or body a right to be treated justly and fairly. The article itself provides a forum through which a person can challenge an administrative decision taken against him. That forum is not this court. The petitioner was a
20 servant to the respondent who was appointed under sections 5(6) and 9(1)(e) of the Electricity Act, (Cap 135). The Act gives the respondent power to hire and to dismiss servants. If the servant feels that he has wrongfully been dismissed, he goes to an ordinary court and claims damages for wrongful dismissal. In support of his argument he cited and relied on the case of *Vidyodaya University of Ceylon and Others v Silva* [1964] 3 All E
R 865 PC.

30 Mr. Kagumire further argued that any person who claims that a fundamental right guaranteed to him under the Constitution has been infringed cannot come direct to this court for redress except by way of reference under Art 137 (5) of the Constitution. He cited and relied on

the cases of Attorney General vrs. Major General David Tindefuza, Constitutional Appeal No. 1 of 1997, Supreme Court, (unreported), and Dr. James Rwanyarale and Another v Attorney General, Constitutional Petition No. 11 of 1997.

He finally submitted that for the above reasons, the petition was in a wrong court. He prayed that it should be dismissed with costs.

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Mr. Cheborion Balishaki contended that the petition is for enforcement of right under the Constitution and therefore it is in a wrong court. He agreed that it should be dismissed.

On behalf of the petitioner, Mr. Byenkya argued that the petition is brought under Article 42 of the Constitution. The article creates two separate rights. The first right is given to any person who appears before any administrative official or body to be treated justly and fairly. The second is a right to go to court and challenge an administrative decision taken against him. According to Mr. Byenkya the right to just and fair treatment is absolute.

The respondent is an administrative body. The petitioner appeared before it. He was not treated justly and fairly. The cause of action is not wrongful dismissal. The petition is grounded on Article 137(3)(b) of the Constitution which empowers the petitioner to ask for a declaration and also seek redress. The complaint of the petitioner is that the respondent did not treat him justly and fairly on the days he appeared before it and dismissed him unjustly. The issue here is whether

this court has jurisdiction in the matter and not whether other courts also have jurisdiction.

According to counsel, it is not true that the majority of the Justices of the Supreme Court decided in Tinyefuza (Supra) that this court is for interpretation only. He referred to excerpts in the judgment to support his argument.

10 He finally submitted that this court is one of the courts for enforcement of fundamental rights and freedoms. He abandoned reliance on Article 50 of the Constitution.

Article 42 of the Constitution which is alleged to have been violated reads:

20 "Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her".

We do not agree with the argument of Mr. Byenkya that the article creates two separate and distinct rights. The right to go to court of law is conjointly linked with the administrative decision taken against the person who appeared before an administrative official or body when that person had not been treated justly and fairly. In otherwords, the right to go to court is given to the person who appears before an administrative official or
30 body to challenge whatever administrative decision made against him when he was not treated justly and fairly at the time or times he appeared before the said administrative official or body. It is the decision that arose from the unjust and unfair treatment that gives one

the right to apply to a court of law and challenge it. The unjust and unfair treatment of the petitioner by the respondent resulted in the dismissal of the petitioner. Therefore we do not agree with Mr. Byenkya's argument that the petition is not about a wrongful dismissal. In our view the petition is precisely about that.

10 The allegations that are said to have constituted the unjust and unfair treatment are contained in the petition. They have been exemplified and elaborated in the petitioner's affidavits in support. These have been denied by the respondent in its answer and supporting affidavit. Issues are therefore joined between the petitioner and the respondent. The resolution of those issues do not require interpretation of Article 42 and, for that matter, any, provision of the Constitution.

20 The dispute about the import of the decision of the Supreme Court in Attorney General v David Tinyefuza (Supra) concerning the jurisdiction of the court has finally been put to rest by the Supreme Court in the Constitutional Petition No. 2 of 1998 Between Ismail Serugo and Kampala City Council and Another. Mulenga JSC had this to say:

30 "Although there are a number of issues in that case decided on the basis of majority view, it is evident from a proper reading of the seven judgments in that case, that it was the unanimous holding of the court that the jurisdiction of the Constitutional court was exclusively derived from Article 137 of the Constitution. It was not a holding in any of the judgments that Article 50 of the Constitution confers, on the Constitutional

Court, any additional and/or separate jurisdiction to enforce the right and freedoms guaranteed under the Constitution. It seems to me that what Mr. Mbabazi may have misconstrued is the holding..... that the Constitutional Court was "a competent court" for purpose of Art 50 to which an application (for redress) may be made when such right or freedom is infringed or threatened. It must be noted, however, that this holding is subject to a rider..... to the effect that such application for redress can be made to the Constitutional Court, only in the context of a petition under Art 137 brought principally for interpretation of the Constitution. It is provisions in clauses (3), and (4) of Art 137 that empower the Constitutional Court, when adjudicating on a petition for interpretation of the Constitution, to grant redress where appropriate. Clause (3) provides in effect, that when a person petitions for a declaration on interpretation of the Constitution, he may also petition for redress where appropriate. Clause (4) then provides:

"(4) Where upon determination of the petition under Clause (3) of this article the Constitutional court considers that there is need for redress in addition to the declaration sought, the Constitutional Court may -

(a) grant an order for redress; or

(b) refer the matter to the High Court to investigate and determine the appropriate redress".

10 It follows that a person who seeks to enforce a right or freedom guaranteed under the Constitution, by claiming redress for its infringement or threatened infringement, but whose claim does not call for interpretation of the Constitution, has to apply to any other competent court. The Constitutional Court is competent for that purpose only upon determination of a petition under Art 137(3)."

Wambuzi CJ also had this to say:

20 "In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a Constitutional provision has been violated. If therefore rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent court.....

30 I am aware that the Constitutional Court is also a competent court under Article 50 but this court has already held that the Constitutional Court has no

jurisdiction in any matter which does not involve the interpretation of a provision of the Constitution. See *Attorney General v Tinyefuza - Const. App. No. 1 of 1997*".

10 It is therefore now settled once and for all that if the matter does not require an interpretation of a provision of the Constitution, then there is no juristic scope for the invocation of the jurisdiction of this court.

Here the petitioner alleges that his rights were violated and claims declaration and redress. On the facts available one cannot rule out wrongful dismissal. This is a matter dealt with by specific laws. They can be enforced by a competent court and should a question of interpretation of the Constitution arises, that question can always be referred to this court.

20 It was for the foregoing reasons that we held that this court had no jurisdiction in respect of the claims against the respondent and dismissed the petition with costs to the respondent.

Dated *July* at Kampala this *15th* day of.....1999.

[Signature]
C.M. Kato
Justice of Appeal.

[Signature]
G.M. Okello
Justice of Appeal.

30 *[Signature]*
A.E. Mpagi-Bahigeine
Justice of Appeal.

[Signature]
J.P. Berko
Justice of Appeal.

[Signature]
C.N.B. Kitumba
Justice of Appeal.