

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 25 OF 2009

BETWEEN

- 1. ENGINEER EDWARD TURKOMURUGYENDO K
- 2. BARIGYE BIRIMBIRA ROGERS
- 3. RWAKIBWANA BARNABAS

.....PETITIONERS

VERSUS

- 1. ATTORNEY GENERAL
- 2. PROF. ISAAH NDIEGE
- 3. KYAMBOGO UNIVERSITY
- 4. ORYEM SAMUEL
- 5. DR. MPANDEY D.BASIMA

.....RESPONDENTS

CORAM: **Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ**
 Hon. Mr. Justice Kenneth Kakuru, JA/ JCC
 Hon. Mr. Justice Egonda-Ntende JA/ JCC
 Hon. Lady Justice Hellen Obura, JA/ JCC
 Hon. Mr. Justice Ezekiel Muhanguzi JA/ JCC

JUDGMENT OF THE COURT

The Petition is brought under *Article 137* of the 1995 Constitution of Uganda. The petitioners in this matter are seeking from this Court declarations and orders which are reproduced in this Judgment.

5 At the hearing of this petition Dr. *James Akampumuza* and Mr. *Nesta Byamugisha* learned Counsel appeared for the petitioners while Mr. *Mubiru Steven Kalenge* learned Counsel appeared for the 2nd, 3rd, 4th & 5th respondents and Mr. *Geoffrey Atwiine* learned Counsel appeared for the 1st respondent.

10 When the petition came up for hearing, Mr. Atwiine for the respondents raised a preliminary objection to the effect that the petition does not raise any questions for Constitutional interpretation by this Court and as such it is incompetent and ought to be dismissed on that account alone.

15 He contended that this Court's jurisdiction is limited to interpretation of the Constitution under *Article 137* and since the petition does not raise any issues for Constitutional interpretation, this Court has no jurisdiction to entertain the Petition.

20 For the petitioner, it was contended that the petition was properly brought before this Court and that it raises serious issues that require the interpretation of this Court under *Article 137* of the Constitution.

25 Since this Court's jurisdiction under *Article 137* is limited to the interpretation of the Constitution, See: *Charles Kabagambe vs Uganda Electricity Board Constitutional Petition No. 2 of 1999*, we shall proceed to determine the preliminary issue raised by the respondent as it has the capacity to determine the petition as a whole.

30 In order to do so, we have found it pertinent to first set out all the grounds of the petition. They are set out as follows:-

1. *That your 1st Petitioner is a male adult Uganda of Sound mind employee of the 2nd Respondent at a Senior Management level since*

1991 and one of the persons affected by certain decisions and actions relating to his employment and an ardent believer in the Rule of Law and Constitutionalism.

2. That your 2nd Petitioner is a male adult Ugandan of sound mind employee of the 2nd Respondent at a Senior Management level since 2003 and one of the persons affected by certain decisions and actions relating to his employment and an ardent believer in the Rule of Law and Constitutionalism.

5 3. That your 3rd Petitioner is a male adult Ugandan of sound mind employee of the 2nd Respondent at a Management level and one of the persons affected by certain decisions and actions relating to his employment and to the adjudication process thereof and an ardent believer in the Rule of Law and Constitutionalism.

10 4. That in the course of your Petitioners' duties, they became aware of a decision taken by the Management of the 2nd Respondent headed by the 3rd Respondent and at the instigation of the 5th Respondent to terminate their employment which had been reached without informing
15 them of the process and reasons and their fate.

5. That the 2nd Respondent had prior to that attempted to demote the 1st Petitioner from the Rank of Estates Officer to that of Assistant Estates Officer Mechanical without any justification whatsoever although he has
20 remained in Office performing that role. The Respondents also irregularly reduced the 1st Petitioner's salary, allowances and entitlements for no good cause.

6. That the Petitioners promptly petitioned the High Court of Uganda
25 challenging the legality of the Respondents' actions and decisions and on

5 22nd June 2009, Justice Yorakamu Bamwine of the High Court granted them an interim Order of Injunction stopping any further action affecting your Petitioners' employment until the hearing of the main application.

10 7. That immediately thereafter, the 3rd Respondent embarked on a retaliatory and victimization campaign, authoring a series of warnings in order to accumulate the prescribed number to enable dismissal to take place; this was designed to bypass the Court order and to defeat justice to the prejudice of your Petitioners; these were acts of contempt of Court and interference with the judicial process calculated to render nugatory
15 the applications that were filed by the Petitioners and which were pending before Court.

20 8. That your Petitioners brought a motion for Contempt of Court against the 3rd Respondent before the High Court which was adjourned for hearing to 14/12/2009 but the 3rd Respondent continued with his acts of contempt and interference, all aimed at dislodging your petitioners from their public offices.

25 9. That the 3rd Respondent acting with the 4th Respondent alleged criminal charges against your Petitioners basing them on anonymous documents purportedly picked by the 4th Respondent. He then bypassed the local Police at Kyambogo University which is versed with the situation and used the individuals from the Police Headquarters who in abuse of the criminal
30 process arrested, detained and interrogated your Petitioners at Jinja Road Police Station on issues then pending in the civil Court.

10. That your Petitioners then Petitioned the High Court seeking redress and proceeded to ask for injunction and interim Orders to stop the Respondents' continued unwarranted interference with the Court

5 *process, the Course of justice and abuse of office and abuse of the
criminal process against your Petitioner.*

11. *That your Petitioners' Counsel appeared before the Registrar, High Court
on 30/11/2009, prosecuted the application for an interim order and
10 having been satisfied that Your Petitioners had brought out a case that
urgently merited the courts intervention by granting the various interim
orders to protect your petitioners and prevent the continued unwarranted
abuse of office and interference with a judicial process granted the
interim orders pending the determination of the main application for
15 injunction inter parties.*

12. *That the Minister of State for Higher Education went public and attacked
and chastised the Registrar and pronounced that the order issued was a
blatant abuse of the process of the Court. The Minister's rebuke of the
20 Registrar was published in the Government Newspaper the New Vision.*

13. *That the Solicitor General then followed the above letter with his own
letter to the Chief Registrar, copied to the Chief Justice, Deputy Chief
Justice, Principal Judge, Chairman Judicial Service Commission among
25 others, attacking the Registrar for the actions and decisions he took in the
Course of the execution of his judicial duties and calling for his punishment
and to the prejudice of your Petitioners. The same letter was reproduced
in the Government Newspaper. The 1st Respondent never bothered to file
any Court pleadings in the matter, but opted for the intimidating
30 epistolary reproach to chastise the judiciary and to take the law and the
judiciary into his own hands.*

14. *That on the 7th December, 2009, the matter came up and before the
Judge could hear your Petitioners who had just been served with an*

5 application by the 2nd, 3rd and 4th Respondents seeking to vacate the
Interim Orders; and without the 1st Respondent having filed any
application, the Judge relied on the letters from the Executive which were
adversely and prejudicially published in the Government owned New
Vision Newspaper and vacated Order 4 of the Interim Orders without due
10 process and in violation of the rules of natural justice, fair hearing and
contrary to the judicial mandate.

15 15. That despite your Petitioners requests that the Honourable Judge desists
from the wrong procedure adopted and from taking his unilateral
decisions and first hears their side of the story and that a question be
referred to this Court for interpretation under Article 137 (5) (b) of the
Constitution of the Republic of Uganda, the Honourable Judge flatly
declined to entertain your petitioners and refused to make the reference.

20 16. That on 7th December 2009, your Petitioners' Counsel wrote a letter to the
Registrar to protest the blatant interference with the judicial process and
calling for the punishment of a judicial officer for the exercise of his judicial
functions to the prejudice of your petitioners.

25 17. That the Chief Registrar wrote back to the Solicitor General on 8th
December 2009 confirming that the matter had already been rectified by
the High Court to the satisfaction of the government and all
inconveniences caused to the Executive by the incident were highly
regretted. The Registrar also lauded the Solicitor General for making the
right decision to instruct his officers to file an application to set aside the
30 Order, whereas no such application had been filed. She also told the
Solicitor General that the chastised Registrar had already been
admonished on how to handle such applications in the future, in keeping
with the Solicitor General's directions.

18. That the triumphant 3rd Respondent immediately after leaving Court has on 9/12/2009 issued yet a new warning to the 2nd Petitioner to pile up evidence for his dismissal.

10 19. That your Petitioners are interested in and/or aggrieved by the following matters being inconsistent with the Constitution whereby your Petitioners are aggrieved.

20. That your petitioners contend that:

- 15 a. The Solicitor General's action of directing the Chief Registrar and other judicial authorities to whom his letter was copied to punish the Registrar for the decisions and orders he made in his exercise of his judicial duties to the prejudice of your petitioners is inconsistent with and/or in contravention of Articles 128 (1), (2), (3), and (4); 126(1), (2)(a)(b)(c)(d) and (e), 50(1), 20 (1) (2), 21 (1) (2) (3), 28(1), 43(1) & 2(a) (c), 44(c) and 20 45 of the Constitution.
- 25 b. The act of the Solicitor General of calling for the Constitutional protection of the 3rd and 4th Respondents viz a vis your Petitioners is an incident of selective application of the law and the Constitution in favour of the 3rd and 4th Respondent who are accused in Court of victimizing your Petitioners who are Public Servants and denying them equal protection of law and is discriminatory and is inconsistent with and/or in contravention of Articles 30 50(1), 20 (1)(2),21(1)(2)(3),119,173, and 250 (1) & (2) of the Constitution.
- c. The act of the Solicitor General directing the Chief Registrar on how the High Court should conduct Interim applications in the course of settling 30 disputes involving the Executive and other private litigants like your Petitioners is inconsistent with and/or in contravention of Articles 128 (1), (2), (3), and (4); 126(1), (2) (a) (b) (c) (d) and (e), 50(1), 20 (1) (2), 21(1)(2) 2)(3),28(1),43(1)& (2) (a)(c), 44(c) and 45 of the Constitution.
- 35 d. The act of the Chief Registrar professing obedience to the Solicitor General and admonishing and chastising the Registrar is not judicial and is inconsistent with and/or in contravention of Articles 128 (1), (2), (3), and

5 (4); 126, 20(1)(2),21(1)(2)(3),28(1), 43(1)(2)(a)(c), 44(c) and 45 of the Constitution.

- 10 e. The act of making pronouncements on the validity of a Court decision or otherwise by the members of the Executive and causing the publication of the same to the prejudice of your petitioners is inconsistent with and/or in contravention of Articles 128 (1), (2), (3), and (4); 126(1), (2)(a)(b)(c)(d) and (e), 50(1), 20 (1)(2), 21 (1)(2)(3),28(1),43(1) & 2(a)(c), 44(c) and 45 of the Constitution.
- 15 f. The act of disobeying Court Orders and proceeding to do actions inconsistent with Orders issued by the High Court to the prejudice of your petitioners and subjecting your Petitioners to an orchestrated Disciplinary process parallel to the Court is inconsistent with and/or in contravention of Articles 128 (1), (2), (3), and (4); 126(1), (2)(a)(b)(c)(d) and (e), 50(1), 20 (1)(2),21 (1)(2)(3),28(1),43(1) & 2(a)(c), 44(c) and 45 of the Constitution.
- 20 g. The act of chastising and directing the judiciary on how to handle the case was a gross violation of the independence of the judiciary, oppressive of your Petitioners and is inconsistent with and/or in contravention of Articles 1 (3), 28(1), 42, 43(1) & 2(a)&(c), 44(c), 45, 126(1)(2)(0),128(1)(2)(3)(4), 129(1) of the Constitution of Uganda, 1995.
- 25 h. The act of vacating Court orders without there being any application by the Solicitor General and without first hearing your Petitioners grossly prejudiced the applicants and coyly favoured the Attorney General, is in violation of the Judicial oath, the inviolable right to a fair hearing, is arbitrary, oppressive and not judicial; and is inconsistent with and/or in contravention of Articles 28(1), 42, 43(1) & 2(a)&(c), 44(c), 45, 126(1)(2)(0),128(1)(2)(3)(4) and 129(1) of the Constitution of Uganda, 1995.
- 30 i. The act or omission of Chief Registrar and the Judge to protect the integrity of the judicial process and officers and to call the Solicitor General to order and to protect citizens and public employees from oppressive treatment at the hands of Administrative officials is inconsistent with and/or in contravention of Articles 20, 21 (1) (2)(3), 26, 28(1), 42, 43(J)2()(c), 44(c), 45, 126(2)(0), 128 and 173 of the Constitution of Uganda, 1995.
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- 5 j. *The act of refusing to accept your petitioners' application for a reference to the Constitutional Court was on administrative error and was not judicial and is inconsistent with and/or in contravention of Article 137 (5)(b) & (6) of the Constitution of Uganda, 1995.*
- 10 k. *The decision and action to punish your petitioners for having petitioned Court through the respondent's various actions is inconsistent with and/or in contravention of article 257(3) & (5) of the Constitution of Uganda, 1995.*
- 15 l. *The decision to dismiss your petitioners from office without being notified, given reasons thereof or informed of their fate is inconsistent with and/or in contravention of Articles 173 (0) &(b), 20 (1) (2),21 (1) (2) (3), 43(1) & 2(a)(c), 44(c) and 45 of the Constitution of Uganda, 1995.*
- 20 m. *The act of the 2nd, 3rd and 5th Respondents advertising the 1st Petitioners job of Estates Officer and when the matter was in Court which had issued an injunction is inconsistent with and/or in contravention of Articles 173 (a)(b), 257 (3)(5), 128 (1)(2)(3)(4); 126, 20(1)(2), 21(1)(2)(3), 28(1), 43(1) (2)(a) (C), 44(c) and 45 of the Constitution.*
- 25 n. *The act of discriminating against your Petitioners based on their tribe and place of origin is inconsistent with and/or in contravention of Articles 173 (a) &(b), 20 (1)(2), 21(1)(2)(3),43(1) & 2(a)(c), 44(c) and 45 of the Constitution of Uganda, 1995.*
- 30 o. *The act of the 2nd Respondent refusing to implement the Inspector General of Government's decision that the 5th Respondent is guilty of various acts of misconduct and abuse of Office and that he should be removed from office is inconsistent with and/or in contravention of Articles 225 (a) (b) (c)(d)(e), 226, 230(1)(2)(4), 235 of the Constitution of Uganda, 1995.*
- 35 p. *The act of directing the Police to prosecute your Petitioners and for the offences they allegedly committed by virtue of having petitioned Court against their boss is inconsistent with and/or in contravention of Articles 2, 21,28 (1) & (9),42, 44(c), 45,120 (3)(a) (4)(a) &(5); 128 of the Constitution.*
- q. *The act of Police arresting, restricting and detaining, interrogating your Petitioners without informing them of the charges against them and allowing them access to their Lawyers is inconsistent with and/or in*

5 *contravention of Articles 20, 21, 23(1) (2) (3) (5)(a)(7), 28 (7), 42, 43(1) & 2(a)(c), 44(c), 45,120 (3)(a) (4)(a) &(5), 212(d), 221 of the Constitution.*

10 *r. The acts of demoting the 1st Petitioner from the Rank of Estates Officer to that of Assistant Estates Officer (Mechanical) and the reduction of his salary, allowances and entitlements is inconsistent with and or in contravention of Articles 20 (1)(2), 21(1)(2)(3), 26, 28(1), 43(1) & 2(a)(c), 44(c) and 45 of the Constitution.*

s. Rule 6 of the Civil Procedure (Government Proceedings) Rules is inconsistent with and or in contravention of Articles 20 (1) (2), 21 (1) (2)(3), 28(1),43(1) & 2(a)(c), 44(c), 45,126,128 and 129 of the Constitution.

15 The petitioners contend that the acts of the respondents complained of above, were inconsistent with or in violation of various provisions of the Constitution set out therein and prayed for declarations to that effect.

20 We have carefully perused the grounds of the petition and the affidavits in support thereof together with all the annexures thereto. We find that the grounds are a narrative and also argumentative and therefore offend *Rule 66(2)* of the Court of Appeal Rules and *Rule 3* of the Constitutional Court (Petitions and References) Rules, 2005.

25 Rule 3 of the Constitutional Petition (Petitions & References) Rules sets out the format petitioners are required to adopt, modify if necessary and follow while presenting their petitions. Rule 3 stipulates as follows:-

Rule 3 Form and contents of petition

(1) A petition under article 137(3) shall be in the form specified in the Schedule to these Rules.

30 *(2) The petition shall allege—*

(a) that an Act of Parliament or any other law or anything in or done under the authority of any law is inconsistent with or in contravention of a provision of the Constitution; or

(b) that any act or omission by any person or authority is inconsistent with

5 or in contravention of a provision of the Constitution;

(3) The petition shall be divided into paragraphs numbered consecutively, each of which shall be confined, as nearly as may be, to a distinct inconsistency or contravention complained of.

(4) No costs shall be allowed for the drawing or copying of any petition not substantially in compliance with this rule, unless the Court otherwise orders

We are also constrained to reproduce the form described in in the Rule 3 above.

PETITION FOR A DECLARATION UNDER ARTICLE 137 (3) OF THE
CONSTITUTION
IN THE CONSTITUTIONAL COURT OF UGANDA.
THE CONSTITUTIONAL COURT (PETITIONS AND REFERENCES) RULES,
2005

The petition of AB of (or of AB of and CD of as the case may be) whose name(s) is (or are) stated at the foot of this petition.

1. Your petitioner(s) AB (and CD) allege(s)—

(a) that (state the Act of Parliament) is inconsistent with or in contravention of the Constitution for

.....

(b) that(state which other law) is inconsistent with the

.....

(c) that (state which thing done in or under the authority of any law (stating which law) was inconsistent with or in contravention of the Constitution).

(d) that(state which act or omission by which person or which authority) is inconsistent with or in contravention of a provision of the Constitution namely (state what was inconsistent with or in contravention of which provision of the Constitution).....

2. Your petitioner(s) state(s) that (here state the reasons relied on to show why the Act, or law, or thing done under the authority of law, or the act or omission, is inconsistent with or in contravention of the Constitution).

5 3. Therefore your petitioner(s) prays (pray) that the Court may-
(a) make a declaration-
(i) that the Act of Parliament (state which Act);
(ii) that any other law (state which law);
10 (iii) that the thing done in or under the authority of any law (state
what law) was inconsistent with or in contravention of the
Constitution (state which provision of the Constitution)

(b) grant an order of redress (..... (state the redress sought) or
refer the matter to the High Court to investigate and determine an
15 appropriate redress.

DATED this day of, 20

My (our) address(es) is (are).....

My (or our) advocate(s) is (are)

Or

20 I am (or we are) acting for myself (ourselves) The address of the
respondent(s) is (are)

Signed:

25 NB. The Petition must be accompanied by an affidavit setting out the facts on
which the petition is based.

Rule 23 of Constitutional Court (Petitions and References) Rules SI 91 of 2005
brings into play the Court of Appeal Rules, the Rule, relevant to the format of a
petition is 66(2) which stipulates as follows:-
30

Rule 66(2) of the Court of Appeal Rules stipulates as follows:-

35 "The memorandum of appeal shall set forth concisely and under distinct
heads numbered consecutively, without argument or narrative, the grounds
of objection to the decision appealed against, specifying, in the case of a first
appeal, the points of law or fact or mixed law and fact and, in the case of a
second appeal, the points of law, or mixed law and fact, which are alleged to
have been wrongly decided, and in a third appeal the matters of law of great
public or general importance wrongly decided."
40

5 The above Rule read together with Rule 3 of SI 91 of 2005 (*Supra*), provide clear guidelines as to how petitions before this Court ought to be drafted and what they ought to contain.

This petition before us appears not to conform with the above Rules. It does not
10 specifically set out the Act of Parliament or other law or act that requires Constitutional interpretation. This is not a matter of form but substance as the jurisdiction of this Court is only limited to the interpretation of the Constitution.

The respondents in a petition of this nature and the Court are entitled to know
15 precisely the issues raised under *Article 137* that require Constitutional interpretation. What we have in this petition is a long narrative of facts which do not point the issues requiring Constitutional interpretation. The Petition does not set out concisely, without argument or narrative the issues that require constitutional interpretation and does not specify the law or act in each case, that
20 contravenes the Constitution in such away as to require its interpretation under *Article 137* or is otherwise unconstitutional.

Rule 3 of the Constitutional Court (Petitions and References) Rules specifically sets out the format for the petition, a guide to ensure petitioners present to Court
25 a clear, brief and concise petition. That form ought to be complied with as much as possible. We are unable to find that this petition was drawn along the guidelines set out in *Rule 3* (*supra*).

We also find that, this petition as presented offends *Rule 66(2)* of the Court of
30 Appeal Rules, both in form and substance. We would on this account alone dismiss this petition.

Be that as it may, the jurisdiction of this Court which is derived from *Article 137* of the Constitution is limited only to matters that require the interpretation of the

5 Constitution.

This Court not long ago discussed this same issue in *Mbabaali Jude Vs Hon. Edward Kiwanuka Ssekandi, Constitutional Petition No. 0028 of 2012*. In that petition this Court discussed the jurisdiction of the Constitutional Court as set out
10 in a number of authorities dating as far back as 1997. It set out the decision of this Court and the Supreme Court on this issue in *Attorney General Vs Major General David Tinyenfuzza, Supreme Court Constitutional Appeal No. 1 of 1997, Serugo vs KCC and Attorney General, Supreme Court Constitutional Appeal No. 2 of 1998 (unreported), Herman Semujju Vs Attorney General Constitutional Petition*
15 *No. 1 of 1998, Charles Kabagambe vs Uganda Electricity Board (Supra), Paul Ssemwogerere and 2 others Vs Attorney General Constitutional Petition No. 1 of 2002, Alenyo George William Vs Attorney General Constitutional Petition No. 5 of 2005, Uganda Network On Toxic Free Malaria Control Limited vs The Attorney General Constitutional Petition No. 14 of 2009 and Asiimwe Gilbert vs Barclays*
20 *Bank Uganda Ltd and 2 Others Constitutional Petition No. 22 of 2010*.

In all the above decisions and others we have not cited it was held that this Court has jurisdiction only under *Article 137* of the Constitution to interpret the Constitution. It is not concerned with and has no jurisdiction to entertain matters
25 relating to violation of rights under the Constitution for which parties seek redress alone. Such matter ought to be brought before a competent Court under *Article 50* for redress.

What is apparent here is that the petitioners are complaining against
30 administrative actions of their superiors and employers. They had rightly in our view instituted judicial review proceedings in respect of this same matter at the High Court. No reason has been given as to why that cause of action was not pursued to its logical conclusion. We have not been told what eventually happened to it. It appears to us clearly that the dispute between the parties to the

5 petition ought to have been better resolved through a normal suit under the Civil Procedure Act or perhaps by way of Judicial Review proceedings.

In *Mbabaali Jude Vs Hon. Edward Kiwanuka Ssekandi* (Supra) this Court found that, that Constitutional petition was a disguised election petition. Similarly this
10 petition before us clearly appears to be an administrative law action disguised as a constitutional petition. This Court has no jurisdiction to entertain an administrative law matter.

Accordingly we find no merit in the petition which we hereby dismiss with costs
15 to the respondent.

Dated at Kampala this 17th day of April 2019.

20 **Alfonse C. Owiny-Dollo**
DEPUTY CHIEF JUSTICE

25 **Kenneth Kakuru**
JUSTICE OF APPEAL/ JUSTICE CONSTITUTIONAL COURT

30 **F.M.S Egonda-Ntende**
JUSTICE OF APPEAL/ JUSTICE CONSTITUTIONAL COURT

35 **Hellen Obura**
JUSTICE OF APPEAL/ JUSTICE CONSTITUTIONAL COURT

Ezekiel Muhanguzi
JUSTICE OF APPEAL/ JUSTICE CONSTITUTIONAL COURT