



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA  
AT KAMPALA**

*(Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi & Gashirabake, JJCC)*

**CONSTITUTIONAL PETITION NO. 6 OF 2018**

**COL. (RTD) DR. KIZZA BESIGYE ..... PETITIONER**

**VERSUS**

**THE ATTORNEY GENERAL ..... RESPONDENT**

## **JUDGMENT OF MONICA K. MUGENYI, JCC**

### **A. Introduction**

1. This Petition was lodged by Col. (Rtd) Dr. Kizza Besigye ('the Petitioner'), a self-styled socio-political activist, that was in May 2016 arraigned for the offence of Treason contrary to section 23(2)(a) of the Penal Code Act, Cap. 120. The Petitioner now challenges the constitutionality of that statutory provision and the offence of treason created thereby for their perceived inconsistency with Articles 20(2), 21(2), 28(12), 29, 43 and 44 of the Constitution. He does also contest his repeated appearances before Magistrates Courts owing to the failure by the office of the Director of Public Prosecutions (DPP) to commit him to the High Court for trial, for its supposed contravention of Articles 24, 28(1), 43(2)(a), 44 and 120(5) of the Constitution. The Petition is supported by an affidavit deposed by the Petitioner and lodged in this Court on 30<sup>th</sup> January 2018.
2. It is opposed by the office of the Attorney General ('the Respondent'), which neither discerns any question for constitutional interpretation in the Petition nor any infringement of the cited constitutional provisions. The Respondent contends that the impugned statutory provision and any act undertaken thereunder by the DPP are necessary, in the public interest and demonstrably justifiable in a free and democratic society. The Answer to the Petition is supported by the affidavit of Ms. Goretti Arinaitwe, a Senior State Attorney in the Attorney General's Chambers that was sworn and lodged in this Court on 8<sup>th</sup> February 2018.
3. At the hearing, the Petitioner was represented by Messrs. Ernest Kalibbala and Apollo Katumba; while Messrs. Geoffrey Madete and Allan Mukama, Senior State Attorney and State Attorney respectively, appeared for the Respondent.

### **B. Petitioner's Case**

4. The Petitioner contends that section 23(2)(a) of the Penal Code Act and any actions undertaken pursuant thereto are unconstitutional, and the impugned statutory provision is not demonstrably justifiable in a free and democratic society