

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA
HOLDEN AT KAMPALA
CONSTITUTIONAL PETITION NO. 26 OF 2021

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CORAM:

Hon: Lady Justice Catherine Bamugemereire, JCC
Hon: Mr. Justice Stephen Musota, JCC
Hon: Mr. Justice Christopher Madrama, JCC
Hon: Mr. Justice Muzamiru Kibeedi, JCC
Hon: Lady Justice Irene Mulyagonja, JCC

10 DAVID CHANDI JAMWA..... PETITIONER

VERSUS

THE ATTORNEY GENERAL..... RESPONDENT

JUDGMENT OF CATHERINE BAMUGEMEREIRE JCC

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This constitutional petition was brought under Article 137 (1), (3) (a), (4) and (7) of the Constitution of the Republic of Uganda 1995 and also under rule 3 of the Constitutional Court (Petitions and Reference) Rules 2005.

20 The Petitioner alleged that:

1. The Judgment of the Court of Appeal, in Criminal Appeal No. 77 of 2011 from which the Judgment of the Supreme Court in Criminal Appeal No. 2 of 2018 arose was inconsistent with and / or in contravention of Articles 2 (2), 135 (1), 126 (2) (b), 28 (1), 28 (3) (d) and 44 (c) of the Constitution.
2. The Judgments of the High Court, the Court of Appeal and Supreme Court in relation to the conviction of the accused for

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Causing Financial Loss contrary to Section 20 of the Anti-Corruption Act, 2009 were made in contravention of Articles 2 (2), 28 (1), 28 (7), 28 (12), 44 (c), 79 (1) and 79 (2) of the Constitution.

5 3. Section 5(3) of the Judicature Act, to the extent that it limits the right of convicted persons to appeal to the supreme Court on matters relating to their sentences contravenes Articles 2(2), 28 (1), 44 (c), 129 (2), 129 (3) and 139 (1) of the Constitution.

10 Before I delve into resolving the matters raised in the grounds of the petition, I will endeavour to provide context to it by laying out the background that forms the bone of contention.

Background

The facts as ascertained from the record are that the petitioner was
15 appointed as Managing Director of the National Social Security Fund (NSSF) by the Minister of Finance on 2nd February 2007. On 4th December 2008, the Minister of Finance interdicted the petitioner. He was arrested by the Inspector General of Government (IGG), arraigned before the courts, and charged with several offences including; Causing
20 Financial Loss contrary to section 20 of the Anti-Corruption Act and Abuse of Office contrary to s.11 of the Anti-Corruption Act (ACA). At the High Court, the petitioner was acquitted of the offence of Abuse of Office contrary to section 11 of the ACA. He was however, found guilty of the offence of Causing Financial Loss contrary to section 20 of the
25 ACA. The petitioner was sentenced to 12 years' imprisonment, and he was also barred from holding any public office for 10 years after completing his custodial sentence.

The petitioner appealed the conviction and sentence to the Court of Appeal in respect of the offence of Causing Financial Loss c/s 20 of the ACA. At the same time, the Inspector General of Government cross-appealed the petitioner's acquittal in respect of the offence of Abuse of office c/s 11 of the ACA. In 2018, the Court of Appeal upheld the petitioner's conviction and sentence in respect of Causing Financial Loss and entered a conviction against him in respect to the offence of Abuse of Office c/s 11 of the ACA and sentenced him to 4 years' imprisonment to be served concurrently with the 12 years sentence of Causing Financial Loss.

The petitioner further appealed his convictions and sentences to the Supreme Court which Court upheld all convictions and sentences against him.

The petitioner has now petitioned this court (Constitutional Court), alleging various inconsistencies and contraventions of articles of the Constitution of Uganda arising from the Judgments of the High Court, the Court of Appeal and the Supreme Court.

Representations

At the hearing of the petition, Mr. Peter Kabatsi (SC) together with Mr. Bruce Musinguzi of Messrs Kampala Associated Advocates appeared for the petitioner while Mr. Bichachi Ojambo a State Attorney from the Attorney General's Chambers appeared for the respondent.

The Petitioner's Submissions

At the hearing of the Petition, Senior Counsel Mr. Peter Kabatsi informed court that they were no longer pursuing the issue regarding