

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 12 OF 2013

5 1. **HASSAN BASAJJABALABA**
 2. **BASAJJABALABA MUZAMIRU** }**PETITIONERS**

VERSUS

ATTORNEY GENERAL.....RESPONDENT

CORAM: HON. JUSTICE S.B.K.KAVUMA, DCJ

HON. JUSTICE REMMY KASULE, JCC

10 **HON. JUSTICE ELDAD MWANGUSYA, JCC**

HON. JUSTICE RUBBY AWERI OPIO, JCC

HON. JUSTICE SOLOMY BALUNGI BOSSA, JCC

JUDGMENT OF THE COURT

15 **Introduction**

This is a constitutional petition brought under Article 137 (1), (3) (b) and (4) of the Constitution of the Republic of Uganda, 1995 and the Constitutional Court (Petitions and References) Rules, S.I. 91 of 2005 seeking declarations and other reliefs and redress as will be laid down.

20 **Background**

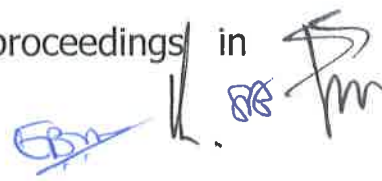
The Petitioners were awaiting trial at the Chief Magistrates Court, Buganda Road, which had granted them bail. Following a complaint on oath made by a private citizen, the Petitioners were summoned to Buganda Road Chief Magistrate's Court on January 14, 2015 vide Miscellaneous Application No.
25 22 of 2013, to answer charges of conspiracy to defeat tax laws c/s 392 of



the Penal Code Act and uttering false documents c/s 351 of the Penal Code Act. The Petitioners pleaded not guilty and were granted bail. Each of the Petitioners was ordered to deposit shs. 30,000,000/= cash and the sureties were bonded in the sum of shs. 1,000,000/= not cash. The 1st Petitioner deposited his passport in Court. Subsequently, the Court allowed the 1st Petitioner to travel to Nairobi and attend an urgent meeting. His passport, was returned to him for the purposes of his travel. While at Entebbe Airport, on his way to Nairobi, the 1st Petitioner was intercepted by members of the Uganda Police Force and detained incommunicado at Kireka Special Investigations Unit.

On January 16, 2015, the 1st Petitioner was produced at the Anti-Corruption Division of the High Court at Kololo in the Chief Magistrate's Court, where he was charged with offences similar to those he had already been charged with at Buganda Road Chief Magistrate's Court.

Unknown to the 1st Petitioner, as he was being charged in the Anti-Corruption Division of the High Court in the Chief Magistrate's Court on January 16, 2015, parallel proceedings were taking place in Buganda Road Chief Magistrate's Court, despite the fact that the matter had been adjourned to February 12, 2013. In the said proceedings, the DPP formally moved the Buganda Road Chief Magistrate's Court to discontinue proceedings and sought the consent of the Court to do so. The Buganda Road Chief Magistrate's Court allowed the DPP to discontinue proceedings in Miscellaneous Application No. 22 of 2013.



Meanwhile in the Anti-Corruption Division of the High Court in the Chief Magistrate's Court, the 1st Petitioner was charged afresh with the offences of Conspiracy to defeat tax laws c/s 392(a) of the Penal Code Act, Forgery of judicial document c/s 349 of the Penal Code Act and uttering a false document c/s 351 of the Penal Code Act. He denied the charges and informed court that he was on bail. He was remanded in Luzira Prison. He was released on bail on January 18, 2013 on a cash bail of Uganda shs. 60,000,000/= . He had to deposit his passport in Court. His sureties were bonded Uganda shillings 4,000,000,000/= not cash.

On March 6, 2013, the DPP amended the charge sheet in the Chief Magistrate's Court of Anti-Corruption Division of the High Court and applied for committal of the Petitioners to the High Court. The bail of the Petitioners was cancelled without being heard. The Petitioners were released on bail on March 13, 2013 by the High Court Anti-Corruption Division.

The offences with which the Petitioners are charged stem from the dealings of Haba Group (U) Limited (hereinafter referred to as the Company), a company representing interests of related companies.

Sometime from the beginning and mid-2000, the Company entered into different contracts with the Kampala District Tender Board and Land Board for leases and contracts for development of various markets and other facilities in Kampala City. The Government of Uganda cancelled the different leases and contracts between the Company and Kampala City Council. The 1st Petitioner, on behalf of the Company claimed compensation from the Government for the loss incurred as a result of the cancellation of the various

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contracts and leases. The government finally agreed to compensate the Company for the losses and on the amount to be paid. A private citizen alleged that the Company did not pay taxes on the amount that was compensated and started a private prosecution against the Petitioners in Buganda Road Chief Magistrate's Court on charges of conspiracy to defeat payment of tax.

It is on the basis of what the Petitioners allege to be irregular withdrawal of proceedings in Buganda Road Chief Magistrate's and charging them afresh in the Anti-Corruption Division of the same offences that the Petitioners bring this Petition. The Petitioners also challenge their trial in the Anti-Corruption Division.

Declarations sought

a) The acts of the Uganda Police Force and the Director of Public Prosecutions in arresting the 1st petitioner for offences on which he was out on bail, detaining the 1st petitioner in a police cell in respect of the same offence, arraigning the 1st petitioner before a court with similar jurisdiction and charging the 1st petitioner with the same offences, counts and facts without first of all legally and/ or lawfully taking over and or legally or lawfully withdrawing the charges against him in the Chief Magistrate's Court of Buganda Road is inconsistent with and in contravention of Articles 2, 28 (1), 28 (3) (a), 28 (9), 120 (5), 126 (1) and 128 (2).

b) The act of the Director of Public Prosecutions of irregularly and illegally withdrawing the charges against the petitioners in the Chief

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Magistrate's Court of Buganda Road in their absence is unconstitutional in so far as it contravenes Article 2, 28 (1), 28(5), 44 and 120 (3)(c) of the Constitution of the Republic of Uganda.

5 c) The acts of the Director of Public Prosecutions in producing the petitioners before the Chief Magistrate's Anti-Corruption Division of the High Court and charging them with offences in which they were released on bail by the Chief Magistrate's Court of Buganda Road while their bail was subsisting is inconsistent with and in contravention of Articles 2, 28(1), 28 (3) (a), 29, 44, 120 (5), 126 (1) and 128 of the
10 Constitution of the Republic of Uganda.

d) The act of the Director of Public Prosecutions of asking for harsh and stringent terms of bail in all the three courts and the obnoxious amounts of 30, 000,000/= deposited by the petitioners in Buganda Road Chief Magistrate's Court and 60,000,000/= for the 1st petitioner and 40,000,000/= for the 2nd petitioner in the Chief Magistrate's Court
15 Anti- Corruption Division of the High Court and other terms of bail by the High Court including reporting to Police every two weeks, depositing the passport, depositing a title is inconsistent with and in contravention of Articles 2, 28 (1), 28 (3) (a), 29, 44 (c), 120 (5) and
20 126 (1) of the Constitution.

e) The act of the Director of Public Prosecutions and the proceedings of the Chief Magistrate's Court of the Anti-Corruption Division of the High Court of the 6th of March 2013, in which the petitioners' bail was cancelled upon committal to the High Court for trial purportedly under
25 the pretext of exceptional circumstances and in view of the subject

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matter involved and the summary of evidence intended to be adduced without first according the petitioners a right to be heard is inconsistent with and in contravention of Articles 2, 23, 28 (1), 28 (3) (a), 29, 44, 120 (5) and 126 (1) of the Constitution.

- 5 f) The act of the Director of Public Prosecutions of charging your petitioners in the Anti-Corruption Division of the High Court with Conspiracy to Defeat Tax Laws c/s 392 of the Penal Code Act, Forgery of a Judicial Document c/s 349 of the Penal Code Act and Uttering a false document c/s 351 of the Penal Code Act which offences do not
10 fall within the ambit of the Anti-Corruption Act and in which the Anti-Corruption Division of the High Court is not seized with jurisdiction is inconsistent with and in contravention of Articles 2, 20, 28(1), 28 (3) (a), 42, 44 (c), 120 (5) and 133 (b) of the Constitution.
- 15 g) The act of the Director of Public Prosecutions in indicting and continuing to prosecute the petitioners before the Anti-Corruption Division of the High Court whose creation is unconstitutional and which is not seized with jurisdiction to try the offence of conspiracy in the circumstances of this case is inconsistent with and in contravention of Articles 2, 28 (1), 28 (3) (a), 120 (5) and 126 of the Constitution.
- 20 h) The act of the learned Chief Justice in issuing Directions 2, 8 and 10 of the High Court (Anti-Corruption Division) Practice Directions of 2009 which provides for the appointment to and exercise of judicial duties by the Chief Magistrate's and Grade 1 Magistrate's in the Anti-Corruption Division of the High Court distorts the constitutional
25 composition and functions of the High Court and is inconsistent with


and in contravention of Articles 2, 79, 126, 138 and 257 (1) of the Constitution.

5 i) The act of the learned Chief Justice in issuing Directions 2, 8 and 10 of the impugned Directions which provide for the appointment to and exercise of judicial duties by the said 'Designated Magistrates' under the Anti-Corruption Division of the High Court which is not a designated Magisterial Area or Magistrate's Court is inconsistent with and in contravention of Articles 2, 79, 126, 133 (1) (b) and 138 of the Constitution.

10 j) The act of the Learned Chief Justice in issuing Direction 8 of the impugned directions which in effect amends section 52 of the Anti-Corruption Act and is inconsistent with and in contravention of Article 79 of the Constitution,

15 k) The act of the Learned Chief Justice in issuing Direction 10 of the impugned Directions which allows the said 'Designated Magistrates' who are judicial officers of a subordinate court to double as judicial officers of the High Court and exercise unlimited territorial jurisdiction concurrently with the High Court is inconsistent with and in contravention of Articles 2, 79, 126, 128, 20 and 139 of the Constitution.

20 l) The proceedings conducted by the Chief Magistrate Anti-Corruption Division of the High Court leading to the Petitioners committal to the High Court infringed the Petitioners right to a fair hearing before an independent and competent Court established by law and is

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inconsistent with and in contravention of Articles 2, 28 (1), 44 (c) and 126 of the Constitution.

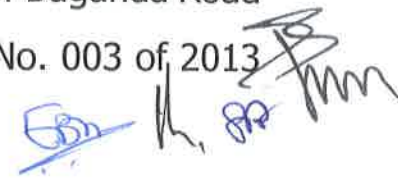
5 m) Section 392 (a) of the Penal Code Act Cap 120 under which the Petitioners are charged is inconsistent with and in contravention of Articles 2 (1), (2), 28 (1), (3) (b), 28 (12), 42, 44 (c) of the Constitution.

10 n) The charges and the indictment preferred against the Petitioners in the Chief Magistrate's Court of Buganda Road and the Anti-Corruption Division of the High Court are incurably defective, duplex and inconsistent with and in contravention of Articles 2 (1) & (2), 28 (1), 3 (b), 28 (12), 42, 44 (c) of the Constitution.

15 o) The act of the Judicial Service Commission and the President of the Republic of Uganda in not fully constituting the Constitutional Court, the Court of Appeal and the Supreme Court thereby allowing the Director of Public Prosecutions and the Chief Magistrate's Courts to abuse fundamental rights and freedoms of the Petitioners who do not have access to a fully constituted Constitutional Court and Supreme Court for final remedies and redress is inconsistent with and in contravention of Articles 2, 28(1), 44(c), 126 (1), 128, 147 (1) (a) & 20 (e), 130, 134 (b) and 137 (2) of the Constitution.

Orders sought

a) Permanently staying all pending criminal charges and proceedings against the Petitioners in the Chief Magistrate's Court of Buganda Road vide Misc. Application No. 22 of 2013, Criminal Case No. 003 of 2013



in the Anti-Corruption Division of the High Court and any other pending criminal charges pending relating to the two above.

b) Directing the respective Courts seized of the said proceedings and charges to immediately discharge the Petitioners.

5 c) An order permanently prohibiting the respondents or its agents from using the processes of any Courts so as to initiate and prosecute the Petitioners for any charges whatsoever arising out of or in connection with the compensation of the Haba Group (U) Limited with the sums that were approved by the respondent.

10 d) Compelling the President of the Republic of Uganda and the Judicial Service Commission to appoint Judges and to fully constitute the Constitutional Court and the Supreme Court with immediate effect.

e) General damages be awarded.

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Issues

1. Whether the Petition discloses a cause of action.

20 2. Whether the acts of the Directorate of Public Prosecutions (DPP) and the Uganda Police Force complained of in the Petition are inconsistent with and, or in contravention of the Constitution.

3. Whether the concurrent trial and proceedings against the Petitioners in the Chief Magistrates Court of Buganda Road and the Anti-Corruption Division of the High Court are inconsistent with and, or in contravention of stated provisions of the Constitution.

4. Whether Directions 2, 8 and 10 of the High Court (Anti-Corruption Division) Practice Directions, 2009 are inconsistent with and, or in contravention of the Constitution.
5. Whether Section 392 (a) of the Penal Code Act Cap 120, is inconsistent with and, or violation of the Constitution.
6. Whether the charges and indictment preferred against the Petitioners are inconsistent with and, or in violation of the Constitution.
7. Whether the Petitioners are entitled to damages.
8. What reliefs are available to the Parties?

10 **Representation**

At the hearing of the Petition, the Petitioners were represented by Mr. J.M.Mugisha, Mr. Caleb Alaka, Mr. Obedi Mwebesa and Mr. Joseph Kyazze while the respondent was represented by George Kalemera, Senior State Attorney and Imelda Adong.

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Issue 1

Whether the Petition discloses a cause of action.

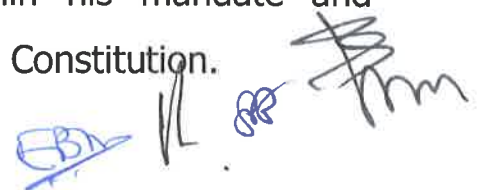
Counsel for the Petitioner cited the case of **Baku & Another v Attorney General Constitutional Appeal No. 1 of 2003**, where the Supreme Court citing with approval Ismael Serugo, held that a petition brought under Article 137 (3) of the Constitution sufficiently discloses a cause of action if it describes the act or omission complained of and shows that the provision of the Constitution with which the act or omission is alleged to be inconsistent or which is alleged to have been contravened by the act or omission and



pray for a declaration to that effect. Counsel also referred to **Okello Okello John Livingstone & Others v the Attorney General Constitutional Petition No. 4 of 2005** and submitted that the petition satisfies the criteria expounded by the Supreme Court in **Ismael Serugo v K.C.C & Another**
5 **Supreme Court Constitutional Appeal No. 2 of 1998**, in as much as it challenges the constitutionality of the acts of the Uganda Police Force, the Director of Public Prosecutions (DPP), the proceedings before the Anti-Corruption Division of the High Court and the acts of the learned Chief Justice.

10 Counsel for the Respondent submitted that the Petition did not raise any matter for Constitutional interpretation, was frivolous and had no merit. Counsel for the Respondent also raised a Preliminary Point of law that the Petition raised matters that were subject of adjudication by this Court in **Davis Wesley Tusingwire v Attorney General Constitutional Petition**
15 **No. 2 of 2013** where the constitutionality of the establishment of the Anti-Corruption Division of the High Court was pending determination.

Counsel further contended that any and all actions by the DPP and the Uganda Police Force were executed within their mandate. Counsel submitted that the actions of the DPP in withdrawing charges against the Petitioners in
20 the private prosecution, arraigning and charging them, opposing bail, committal, indictment and prosecution were within his mandate and discretion and is consistent with the provisions of the Constitution.



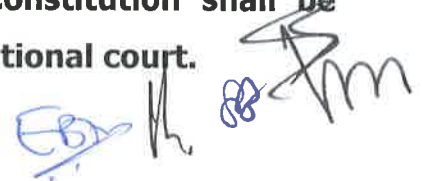
Preliminary observations

As a preliminary matter, we do not find this Petition frivolous since whether or not there is any merit in the Petition can only be determined after the acts alleged to be inconsistent with the Constitution have been examined. From
5 the outset, it must be made clear that it is not enough for the respondent to assert that the Uganda Police Force and the Director of Public Prosecutions (DPP) were acting within their constitutional mandate when they arrested the Petitioners and produced them in the Anti- Corruption Division of the High Court. While acknowledging that the Uganda Police Force and the DPP
10 enjoy the mandate which the respondent is so defensive of, it must be remembered that it is exercisable within the parameters of the same Constitution that gives that mandate. It is the same Constitution that affords protection to persons who may feel aggrieved that while they are exercising that mandate, their constitutional rights are infringed upon and that is how
15 this Petition arises.

We now turn to resolution of issue No. 1. The question of whether a petition raises questions for constitutional interpretation has been a subject of controversy and debate but this Court strongly believes that the answer is found in the constitutional provision that establishes this Court. **Article 137**
20 provides:

“(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional court.

(3) A person who alleges that__



a) an Act of Parliament or any other law or anything in or done under the authority of any law; or

b) any act or omission by any person or authority,

is inconsistent with or in contravention of a provision of this constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate.

(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 of redress; or

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

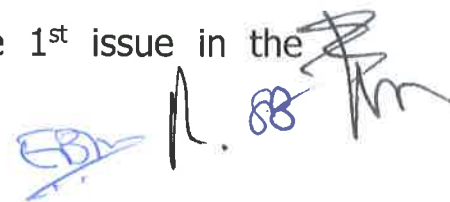
The Supreme Court has interpreted this section in several cases. The first case is **Ismail Serugo v Kampala City Council Constitutional Appeal No. 2 of 1998 (SC)**. This case was referred to by Odoki CJ, (as he then was) in the case of **Raphael Baku Obudra v Attorney General Constitutional Appeal No. 1 of 2003 (SC)**. While addressing the issue of what amounts to cause of action in constitutional matters, he observed:

"According to the principles in Serugo (supra) the petitioner had to show that the provisions of the section he is complaining about violated a right guaranteed by the Constitution. The instant petition does not allege those facts, which alleged contravene the provisions of the Constitution or those that are inconsistent with its provision. For those reasons we think the petition does not disclose a cause of action. There would be nothing to interpret. The petition would be dismissed with costs.

In **Serugo vs Kampala City Council, Constitutional Appeal No.2 of 1998**, this Court pronounced itself on the meaning of cause of action as regards Constitutional petitions. Generally, the main elements required to establish a cause of action in a plaint apply to a Constitutional petition. But specifically, I agree with the opinion of Mulenga, JSC in that case that a petition brought under Article 137 (3) of the Constitution *"sufficiently disclose a cause of action if it describes the act or omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent or which is alleged to have been contravened by the act or omission and pray for a declaration to that effect."*

In my opinion, where a petition challenges the constitutionality of an Act of Parliament, it sufficiently discloses a cause of action if it specifies the Act or its provision complained of and identifies the provision of the Constitution with which the Act or its provision is inconsistent or in contravention, and seeks a declaration to that effect. A liberal and broader interpretation should in my view be given to a Constitutional petition than a plaint when determining whether a cause of action has been established." (sic)

From the above and looking at the instant Petition, we are satisfied that in alleging that the acts of the DPP and the Uganda Police Force contravened the cited provisions of the Constitution, the Petitioners have established that their Petition raises a cause of action or that there are indeed matters for constitutional interpretation. We therefore answer the 1st issue in the affirmative.



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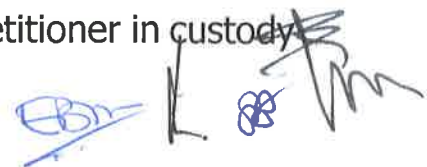
Issue 2

Whether the acts of the Directorate of Public Prosecutions (DPP) and the Uganda Police Force complained of in the Petition are inconsistent with and, or in contravention of the Constitution.

5 Counsel for the Petitioners submitted that the respondent did not deny that the 1st Petitioner was arrested by officers of the Uganda Police Force, detained and held incommunicado for charges and offences on which he had been released on bail and consequently arraigned in the Anti- Corruption Division of the High Court before its Chief Magistrate and charged with the
10 same offences based on the same facts, counts and charges. He further submitted that no evidence of charges being withdrawn before the arraignment had been provided.

Counsel submitted further that the Petitioners enjoyed the right to liberty under **Article 23 (1)** and that liberty could only be deprived under the
15 conditions laid down in **Article 23 (1)**. Counsel argued that the arrest of the 1st Petitioner, the receiving, detaining and keeping him in custody while he was out on bail on an offence and charges similar to what he had been released on bail is inconsistent with and in contravention of **Articles 2, 23 (1), 28, 29, 44, 120 and 126** of the Constitution.

20 Counsel also submitted that under **Article 221** of the Constitution, all security agencies in Uganda, including the Police, are obliged to observe human rights and yet the arrest and detention of the 1st Petitioner in custody while out on bail contravened **Article 221**.

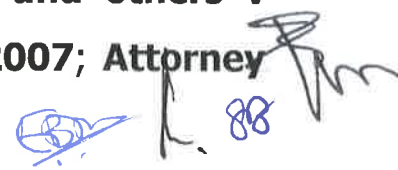


Counsel argued also that the arrest, detention and consequent arraignment of the Petitioners while out on bail on similar offences was not only in contravention of **Articles 23 (1)** and **221** of the Constitution, but it also violated **Article 28 (1)** which protects the right to fair trial, a right that is
5 non-derogable under **Article 44 (c)** of the Constitution.

Counsel argued that there can be no fair trial if an accused person is in the first instance brought before the trial Court through an arbitrary, illegal and unconstitutional process. Counsel argued further that the Constitutional Court should not look on as the due process and rule of law is trampled upon
10 under an illegal conspiracy of the DPP and the Uganda Police Force. According to Counsel, the unlawful arrest and detention of the 1st Petitioner also amounted to a violation of several International Treaties and Covenants that have condemned arbitrary detention and imprisonment without due process of law.

15 Counsel cited these to include: The African Charter on Human and People's Rights, The International Covenant on Civil and Political Rights, the United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

20 Counsel further submitted that Uganda's Constitutional Court has previously shown a willingness to look to international and foreign jurisdictions when interpreting the Constitution, citing the cases of **Uganda Law Society v Attorney General [2006] UGCC 11; Kiiza Besigye and others v Attorney General Constitutional Petition No. 7 of 2007; Attorney**

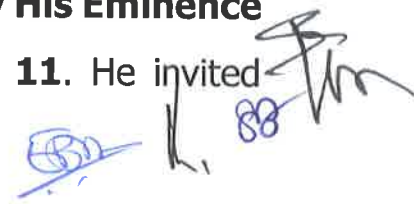


General v Susan Kigula & 417 others Constitutional Appeal No. 3 of 2006, where the Supreme Court relied on international instruments in reaching its decision.

- 5 Counsel contended that the decision to proceed with criminal prosecutions against an accused who has been released on bail and whose right to liberty has been violated would amount to an abuse of process and, in the instant case, violated the Petitioners' right to a fair trial.

Counsel also submitted that the DPP is obliged under **Article 120 (5)** of the
10 Constitution to exercise his powers with "regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process", yet the DPP instigated the Buganda Road Chief Magistrates Court to bring forward proceedings adjourned in an open court to a latter day and proceeded in the absence of the 1st Petitioner as he charged the 1st
15 Petitioner with the same offence before the Anti- Corruption Division of the High Court. He added that the DPP did not consent to the charges before the Anti- Corruption Division and proceeded to charge the Petitioners with offences which do not fall within the ambit of the Anti-Corruption Act and asked for harsh and stringent conditions of bail in total disregard to Section
20 49 of the Anti- Corruption Act.

Counsel submitted that what the DPP did in the way it handled the Petitioners was illegal and stated that an illegality once brought to the Court's attention should not be ignored, referring to **Makula International v His Eminence Emmanuel Cardinal Nsubuga and Anor [1982] HCB 11**. He invited



Court to take the approach it took in **Dr. Kiiza Besigye** (supra) arguing that the Petitioners fall precisely within the same group as the **Bennett** and **Besigye** cases and that they should therefore be discharged.

5 Counsel argued that the Chief Magistrate of the Anti-Corruption Division of the High Court should have accorded the Petitioners a hearing before cancelling their bail upon committal. Counsel thus submitted that pursuant to **Articles 28 (1) (3) (c) (g), (6)** of the Constitution, a person is entitled to a fair hearing, should be accorded adequate time and facilities for the preparation of his or her defense, is presumed innocent until proved guilty,
10 is to appear before an independent and an impartial tribunal or Court and that right is non-derogable and is entrenched in the Constitution. He referred to the cases of **Uganda Law Society v. Attorney General** (supra), **Bakaluba Peter Mukasa v. Nambooze Betty Bakireke Election Petition Appeal No. 4 of 2009** where Court addressed the issue
15 of fair trial.

On the cancellation of the Petitioners' bail that had been granted by the Chief Magistrates Court at Buganda Road and charging them again under the Anti-Corruption Division of the High Court, Counsel argued that it contravened **Articles 2, 23, 28 (1), 28 (3) (a), 29, 44, 120 (5) and 126 (1)** of the
20 Constitution. He relied on the authority of **Hon. Sam Kuteesa & others v Attorney General Constitutional Petition No. 46 of 2011.**

Counsel thus submitted that all the above amounted to abuse of Court process and yet Courts have a duty under **Article 126 (1)** to prevent an
abuse of its process. It was stated that the inherent jurisdiction of the High

Court to prevent abuse of process of the court is recognized in Section 17 (2) of the Judicature Act, Cap 13, which provides:

5 **"With regard to its own procedures and those of the magistrates' courts, the High Court shall exercise its inherent powers to prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice."**

Counsel further submitted that the Ugandan Courts' approach toward a trial following clear abuses of process was exemplified in **Dr. Kiiza Besigye & others v The Attorney General, Constitutional Petition No. 7 of**
10 **2007**, where this Court stated that it could not sanction the continued prosecution of the petitioners where during the proceedings, the human rights of the petitioners have been violated to the extent described in that case. This Court further stated that no matter how strong the evidence against them may be, no fair trial can be achieved and any subsequent trials
15 would be a waste of time and an abuse of court process.

Counsel also cited other authorities including; Albanus Mwasia Mutua v Republic (Kenya), Criminal Appeal No. 120 of 2004 and Republic v Amos Karuga Karatu (Kenya), High Court Cr. Case No. 12 of 2006; Moevao v Department of Labour [1980] 1 NZLR 464; Shabahuria Matia v Uganda
20 Criminal Revisional Cause No. MSK 00 CR 005 of 1999 [1999] UGHC 1; R v Horseferry Road Magistrates Court Ex p. Bennet (No. 1), [1994] 1 A.C. 42, to buttress his argument that there is need for any Court to protect its processes from being degraded, and misused.

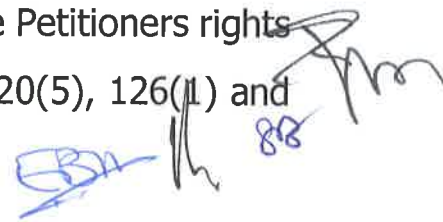
Counsel further submitted that the concurrent proceedings amounted to
25 double jeopardy and contravened Articles 2, 28 (1), 28 (3) (a), 29, 44, 120

(5), 126 (1) and 128 of the Constitution. He cited Attorney General v Uganda Law Society Constitutional Appeal No. 1 of 2006 on concurrent proceedings.

Counsel's submissions touch on various aspects of the proceedings in Buganda Road Chief Magistrate's Court the Chief Magistrate's Court of Anti-
5 Corruption Division of the High Court. We shall address them in turn, starting with the actions of the Police and DPP.

A keen perusal of the Petition and the affidavits in its support give a detailed
10 account of what the Petitioners faced in January 2013 from the moment the private prosecutor instituted private proceedings up until the time they were arraigned in the Anti-Corruption Division of the High Court and re-charged on the same facts that they had been charged with at Buganda Road Chief Magistrates Court and duly granted bail. The Prosecution did not provide the Chief Magistrates' Court of the Anti-Corruption Division of the High Court with any evidence of the earlier charges having been withdrawn.

15 We find the actions of the DPP and the Uganda Police in arresting the Petitioners, arraigning them in Court on facts, charges, and offences with which they had already been charged at the Buganda Road Chief Magistrate's Court, without first providing evidence to the latter Court that
20 the earlier charges had been withdrawn, were high-handed, inexplicable and deplorable. The proper course would have been to withdraw the earlier charges first before instituting new ones. As it turned out, the proceedings to withdraw the earlier charges were held parallel to the proceedings relating to the new charges. In this regard, the actions violated the Petitioners rights
25 to liberty, contrary to Article 2, 28(1), 28(3)(a), 28(9), 120(5), 126(1) and



128(2) of the Constitution, for which the Petitioner is entitled to compensation.

Moreover, the respondent in his reply did not deny that the Petitioners were treated as they alleged and neither did the respondent explain to Court why the DPP and the Uganda Police decided to take that particular course of action.

Counsel for the Petitioner argued that the double proceedings would amount to double jeopardy. We find that line of argument rather far-fetched. Double jeopardy occurs where a person has been successfully tried and court made its finding. Attempting to subject them to another trial under the same facts for which they already faced would then amount to double jeopardy. That cannot be said to have been the case in the instant Petition. There were only parallel proceedings in two different Courts and the DPP sorted that anomaly by withdrawing the charges at Buganda Road Magistrates Court, albeit clumsily.

Conditions for grant and cancellation of the Petitioners' bail before committal for trial in the High Court

On the conditions for grant and cancellation of the Petitioners' bail before committal for trial in the High Court, we consider that the issue of the grant of bail and the conditions for the grant are matters for the trial court to resolve. In the first place the DPP does not set conditions for bail. His role is merely to submit on the suitability of an applicant for grant of bail for consideration by the court. The conditions for bail are set by court which is also empowered to revise them if deemed harsh.

The trial Magistrates at Buganda Road Chief Magistrate's Court was also obliged to make an order for refund of the petitioner's cash deposit after the DPP had withdrawn the case. Rather than petition the constitutional

court for remedies, the Petitioners should have pursued all the issues related to bail before the trial court or the High court by way of appeal or revision.

Cancellation of the Petitioners' bail upon committal

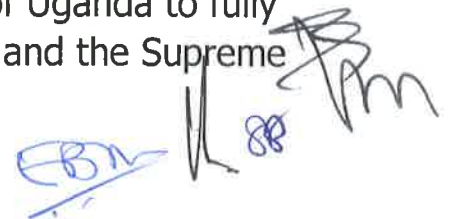
5 However, regarding the cancellation of the Petitioner's bail upon committal for trial in the Anti-Corruption Court Chief Magistrate's Court, we find that the learned committing Magistrate should not have cancelled the Petitioners' bail automatically, without first giving them a hearing on bail. On the right to bail, this Court in the case of **Hon. Sam Kuteesa v. Attorney General**
10 **Constitutional Petition No. 46 of 2011**, held that:

15 **"The express provisions that provide for derogation (of the right to liberty) are set out in Article 23(1) (h). The automatic cancellation of bail, without any right to be heard, based on the mere fact that one is being committed to the High Court for trial, contained in Section 168 (4) of the Magistrates Courts Act, is not part of the expressly stipulated circumstances of derogation from the right to protection of liberty in the Constitution."**

Therefore, we find that the Petitioner's right to be heard was violated when their bail was automatically cancelled without first giving them a hearing. This violated Articles 2, 23, 28 (1), 28 (3) (a), 29 (2) (a), 44, 120 (5) and
20 126 (1) of the Constitution.

Failure of the Judicial Service Commission and the president of the Republic of Uganda to fully constitute the Constitutional Court, the Court of Appeal and the Supreme Court

25 The petitioners also raised an issue related to the failure of the Judicial Service Commission and the President of the Republic of Uganda to fully constitute the Constitutional Court, the Court of Appeal and the Supreme Court to handle abuse of their fundamental rights.



We consider this issue to be moot because at the trial, the petitioners had access to a fully constituted Constitutional Court to hear their petition.

Stay of proceedings

5 On the basis of the above violations, the Petitioners prayed that because of that unfair treatment the charges against them ought to be dropped since they cannot expect a fair trial arising from the unfair treatment they received prior to the trial. In support of that contention, they referred to some authorities including **Kiiza Besigye & others v Attorney General** (supra).
10 This Court has, in the case of **Consolidated Constitutional Petition Nos. 55 and 56 of 2011, Omar Awadh Omar and Others v. Attorney General**, distinguished between the prolonged and aggravated nature of the abuses that were suffered by the Petitioners in the case of **Besigye v. Attorney General** (supra) and those that were allegedly suffered by the
15 Petitioners in the former case. The Court had this to say;

"While we agree with the principle laid down in the case of **Dr. Kiiza Besigye and others v. Attorney General** (supra) that this court can stay proceedings if the abuse of process would mean that no fair trial can result, we nevertheless consider that the circumstances in that case were different and
20 can be distinguishable from the instant case. The petitioners were civilians who were accused of acts of treason and misprision of treason committed between 2001 and 2004. The petitioners, together with 12 other co-accused who had applied and been granted amnesty, were committed to the High Court for trial on the charges of treason and misprision of treason. The High
25 Court subsequently granted eleven of the petitioners bail.

In an effort to prevent the release of the bailed petitioners on bail as ordered by the High Court, various officials, authorities and agencies of the State committed certain acts. They deliberately and systematically carried out two armed sieges and invasions of the High Court and assaulted a journalist, the
30 petitioners as well as some counsel for the petitioners. They charged the petitioners with terrorism and unlawful possession of firearms in another

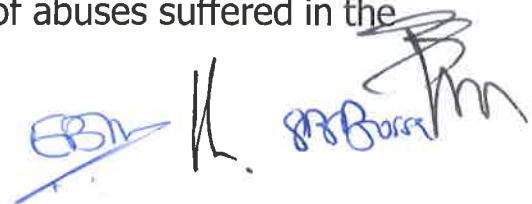
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criminal case before the General Court Martial. They detained the bailed petitioners in Luzira Maximum Prison. They continued the proceedings in the General Court Martial despite this Court's decision that they were unconstitutional. They disobeyed production warrants in respect of the bailed petitioners issued by the High Court. High ranking state officials issued statements presupposing that the petitioners were guilty of grave offences. The petitioners were arrested and charged at different times and in different courts with treason, unlawful possession of firearms, terrorism, rape and murder arising out of similar facts. This entailed manipulation of the process of civilian and military courts in order to deprive the petitioners their rights to liberty and a fair trial. Despite several orders of the High Court and the Constitutional Court that the petitioners should be released on bail, most of them were still unlawfully on remand at the time their petition was filed.

This Court noted in that case that the evidence was a harrowing account of the arrest and detention of the petitioners, their struggle to obtain bail from the High Court, their experience with two military sieges of the High Court and their then pending trials in some of those courts. It is apparent that the abuse in that case involved the Uganda Police and Uganda Armed forces directly invading the court premises with impunity during the trial and causing mayhem, including contempt of court, and willful disobedience of court orders. These allegations were not controverted by the State in that case. The full participation and of culpability of the Police, Intelligence agencies and the military personnel from the Army was clearly identifiable, prolonged and aggravated indeed and was not in question. The Judges were not spared the intimidation. Their conduct was clearly unconstitutional.

In these circumstances, this Court accepted the petitioner's contention in that case that their lengthy and unlawful detention and treatment by the agents of the State caused the petitioners physical and psychological torture. The trial of the petitioners was therefore stayed as no justice could be obtained in those circumstances."

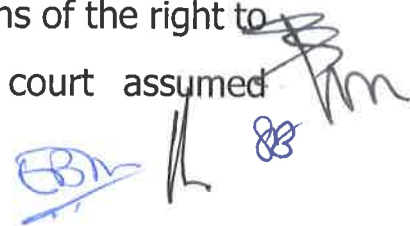
While the Court found disgraceful and regrettable the conditions in which the Petitioners in the *Omar Awadh Omar Case* (supra) were allegedly held and referred the matter for investigation by the High Court, it nevertheless found that they fell short of the aggravated nature of abuses suffered in the *Kiiza Besigye* case (supra).



In the present case, the allegations of the Petitioners are not seriously controverted. We have already found the conduct of the Police and DPP high handed, inexplicable and deplorable. The above notwithstanding, this Court wishes to observe that the case of **Kiiza Besigye** (supra) was unique and it ought to be distinguished from the instant Petition. In **Kiiza Besigye's** case, the manner in which the matter was handled was described by the Court as nearly tearing the 1995 Constitution into shreds. The Court found that the extent to which the rights of the Petitioners had been violated was such that no fair trial could be achieved.

It cannot be the case that every time a person is wrongly mistreated, then that acts as ground to discharge him of whatever claims are lying against him or her. By the time charges are laid against a person, there is reason for that and it is only until the person has been found innocent that the claims can be disproved.

In the case of **Julius Kamau Mbugua v Republic Court of Appeal of Kenya Criminal Appeal No. 50 of 2008**, Court pointed out the difference between breach of a right that is trial related and one that is not trial related. For instance, the breach of the right to personal liberty is not trial –related. It noted that is not the duty of the trial court or appellate court to go beyond the scope of the criminal trial and adjudicate on the violations of the right to personal liberty which happened before the criminal court assumed jurisdiction over the accused.



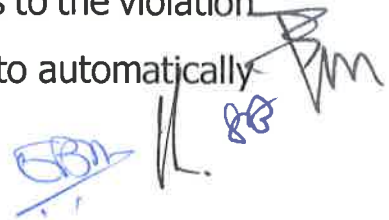
The Court of Appeal of Kenya held:

5 **"Lastly, had we found that the extra judicial detention was unlawful and that it related to the trial, nevertheless, we would still consider the acquittal or discharge as a disproportionate and draconian remedy seeing that the public security would be compromised. If by the time an accused person makes an application to the court, the right has already been breached, and the right can no longer be enjoyed, secured or enforced, as is invariably the case, then the only appropriate remedy under Section 84 (1) would be an order for**
10 **compensation for breach."** (sic)

We have been persuaded by the approach of the Kenyan Court in the above case. Despite establishing that the acts of the DPP and the Uganda Police Force in treating the Petitioners the way they did was high-handed,
15 inexplicable and deplorable, nonetheless, we do not find that that would justify the dropping of or discharging the Petitioners from facing trial for the charges that were brought against them. Rather, the aggrieved persons can seek compensation for the breach or violation of their rights, which this Court has clearly recognized.

20

It is not uncommon that sometimes the circumstances surrounding the arrest or treatment of accused or suspected persons inevitably leads to the violation of their rights. It would be absurd if that mistreatment were to automatically
25 justify their discharge.



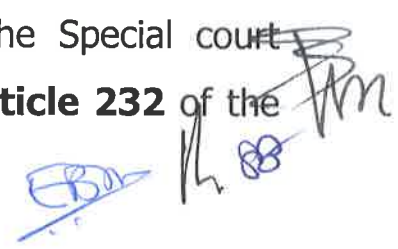
We reiterate that the high-handed, inexplicable and deplorable conduct of the DPP and Police violated the rights of the 1st Petitioner contrary to **Articles 2, 28, 28(1), 28(3)(a), 28(9), 120(5), 126(1) and 129(2) of the Constitution**. The breach entitles the 1st Petitioner to compensation.

5 However, the violations are not of such an aggravated and prolonged nature to justify stay of proceedings.

Issue 4

10 **Whether Directions 2, 8 and 10 of the High Court (Anti-Corruption Division) Practice Directions, 2009 are inconsistent with and, or in contravention of the Constitution.**

Counsel for the Petitioner submitted that the Anti-Corruption Division of the High Court is not a competent Court established by law as envisaged under **Article 28 (1)** of the Constitution. Counsel argued that the Directions under
15 which the Court was established was issued by the Chief Justice under **Article 133**. According to Counsel, the heading of that Article provides for administrative functions of the Chief Justice and it was their submission that that function does not include the function to alter the structure, functions, composition and establishment of Courts. Counsel contended that that
20 power is vested in Parliament which has the powers to make laws providing for the structures, procedures and functions under Chapter eight of the Constitution in regard to Courts and in the case of the Special court envisaged to fight Corruption, it is provided for under **Article 232** of the
Constitution.



Counsel further submitted that this is a Constitutional office with a Constitutional duty and Magistrates are not part of the High Court but are rather subordinate under **Article 129 (d)** of the Constitution. He argued that by creating a division of the High Court to include a magistrates Court, and by making magistrates to have unlimited territorial jurisdiction to try offences the division of the High Court is vested with jurisdiction, the Chief Justice usurped powers of the Legislature and the Constitution, which to counsel was unconstitutional.

Counsel further stated that that being the Court which committed the Petitioners to the High Court for trial, those committal proceedings emanating from such an unconstitutional and illegal Court are a nullity and the proceedings are null and void ab initio since **Article 28** of the Constitution provides that an accused person is entitled to appear before an independent and impartial Court or tribunal established by law.

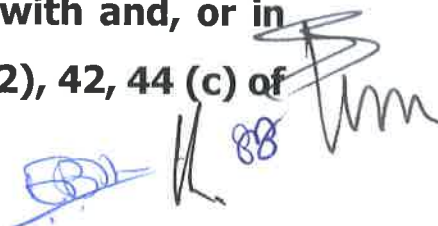
There are two aspects to this issue. The first one is the Constitutionality of Directions 2, 8 and 10 of the High Court (Anti-Corruption Division) Practice Directions, 2009. This was addressed by this Court in **Davis Wesley Tusingwire v Attorney General Constitutional Petition No. 2 of 2013**. In that case, the Constitutional Court found that in exercising the powers vested to him by the Constitution, the Chief Justice was not usurping Parliament's powers. The Court addressed all the questions raised here and arrived at the finding that Directions 2, 8, and 10 of the impugned Directions do not conflict with or contravene Articles 2, 79, 126, 128 (2), 133, 138 and 139 of the Constitution. We do not find reason to depart from the position arrived at by this Court in that case.

The second aspect which was strongly canvassed in this Petition is the subject matter jurisdiction of the Division. The argument is that the Anti-Corruption Division which was established as a specialized Division of the High Court to try offences under the Anti-Corruption Act has no jurisdiction to try offences like the ones the Petitioners are charged with which are not corruption-related. According to **Davis Wesley Tusingwire** (supra), the creation of the Division was an administrative measure that did not establish a Court but a Division of the High Court for better management of corruption cases and the administrative measures cannot override specific provisions as regards jurisdiction to try a matter. By way of analogy, a judge in the Commercial Division of the High Court can try a land matter and the trial will not be a nullity for lack of jurisdiction merely because the trial judge sits in a Division of the Court by way of an administrative arrangement. The judges and magistrates attached to the Anti-Corruption Division are not precluded from trying the other offences that are not provided for under the Anti-Corruption Act so long as they have the general jurisdiction to do so.

Issue 4 is therefore in the negative. The grounds relating to this issue are accordingly dismissed.

Issue 5

Whether Section 392 (a) of the Penal Code Act Cap 120 under which the Petitioners are charged is inconsistent with and, or in violation of Articles 2 (1) & (2), 28 (1) (3)(b), 28 (12), 42, 44 (c) of the Constitution.



Counsel for the Petitioners submitted that the Petitioners were charged in Count 1 with Conspiracy to defeat tax laws c/S 392 of the PCA. According to him, there are several tax laws in Uganda including but not limited to the Income Tax Act, Cap 340, the East African Customs Management Act 2004, Value Added Tax Cap 349 and Stamps Act, Cap 72. Counsel further submitted to prevent, or defeat or enforce are different and they cannot form the same ingredient of an offence under the provisions of Section 392(a) PCA. He cited the case of **Charles Onyango Obbo & Anor v Attorney General Supreme Court Constitutional Appeal No. 2 of 2002** and argued that it lays down the principle that precision and clarity in the definition of a criminal offence is essential, if a person accused of the offence is to have a fair trial.

Counsel therefore concluded that Section 392 (a) of the PCA under which the Petitioners were charged under Count 1 is not precise as a penal provision.

That Section provides as follows;

"Any person who conspires with another to effect any of the following purposes__

- a) **To prevent or defeat the execution or enforcement of any written law;**

Commits a misdemeanor and is liable to imprisonment for five years.

We find the section clear and unambiguous. The elements mentioned therein are not cumulative. The burden rests on the prosecution to identify the appropriate law and properly incorporate it in the charge sheet and

choose from those elements the one that best fits the matter in issue. The
Petitioner has failed to prove any constitutional violation regarding section
392(a) of the Penal Code Act. We therefore find no merit in the Petitioners
submissions on this issue. Their prayers in this regard are accordingly
5 dismissed.

Issue 6

Whether the charges and indictment preferred against the Petitioners are inconsistent with and, or in violation of the Constitution.

10 Counsel for the Petitioners submitted that the charges in the charge sheet
of the Petitioners are duplex and incurably defective on the face of it in that
the offences are said to have been committed in Kampala District, an area
that has five divisions including Kampala Central, Nakawa, Makindye, Rubaga
and Kawempe and they had not been consented to by the DPP. He referred
15 to Section 49 of the Anti- Corruption Act which provides that a prosecution
under the Act shall not be instituted except by or with the consent of the
DPP or the Inspector General of Government (I.G.G). Counsel also argued
that the charge sheet was sanctioned by the Resident State Attorney and
the charges were preferred by a Police Officer.

20 Counsel further argued that Courts have held in cases where other statutes
which have similar provisions that require the prior written consent of the
DPP that absence of the prior written consent of the DPP removes the
jurisdiction of the courts to try the case and renders the trial a nullity and
that this consent must be obtained before the commencement of the trial.

He relied on the cases of **Abdalla Suleiman El Harthi v. R (1954) 21 EACA 404 and Kinyua v. Republic [1972] EA 54.**

5 Counsel also cited Section 52 of the Anti-Corruption Act which provides for punishments for attempts, preparations, abetments and criminal conspiracies and the punishment for that is as prescribed under the Penal Code Act and argued that the conspiracy envisaged should be an offence under the Anti- Corruption Act before any a person is charged with the offence of conspiracy. According to Counsel, the Petitioners are charged with Conspiracy to defeat tax laws contrary to Section 359 (a) of the PCA and
10 that is not the genre of conspiracy envisaged under the Anti-Corruption Act.

Counsel further argued that the other two counts in the charge sheet are not corruption related offences and the Anti-Corruption Division of the High Court is not vested with the special jurisdiction to try the other two counts. He prayed that Court finds the Anti- Corruption Division to be an incompetent
15 Court which is not envisaged under **Article 28** of the Constitution. He also prayed that Court finds that the charges preferred by the DPP are void incurably defective ab initio and that the Petitioners do not expect any fair trial in any Court and the charges against them should be quashed since their fundamental rights and freedoms were grossly abused by the DPP and
20 the Courts.

Section 88 of the Magistrates Courts Act, Cap 16 provides for the rules for framing of charges. Among them is Section 88 (o) which we believe is relevant to the particular question raised by the Petitioners. It provides:

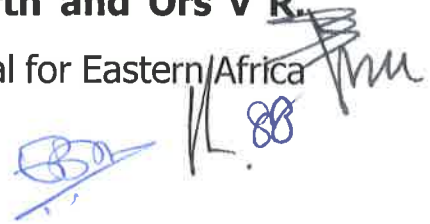
25 **"It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the**

enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence”.

5 The 1st Petitioner alleges that the charge sheet did not specify what division of Kampala the offences were committed from. From the rules generally and the one quoted above, it is not necessary that the actual details of where the offence was committed from if from the particulars and from the trial proceedings that fact shall be established. We do not find that the failure to name what part of Kampala the offences were committed from makes the charge sheet defective. A look at the charge sheet showed what the
10 Petitioners would be tried for and in our view, that is all that **Article 28 (12)** of the Constitution envisages; that accused person is able to know what charges are being brought against them and that way, they can ably prepare their defense.

15 In the instant Petition, however, we find the allegation of the defectiveness of the charge sheet rather pre-mature seeing that that is a matter that can be raised at any point during trial and the trial Court will decide accordingly and make the relevant orders.

20 On the issue of sanctioning of the charge sheet for offences tried under the Anti-Corruption Act, this arises from Section 49 of the Anti- Corruption Act which provides that a prosecution under the Act shall not be instituted except by or with the consent of the DPP or IGG The importance of this was
25 addressed in the case of **Abdulla Suleiman El Hearth and Ors v R. [1955] 22 EACA 404**, where the defunct Court of Appeal for Eastern Africa



referred to section 230 of the Indian Criminal Procedure Code and stated:-

"Nevertheless, it is clear that the Court in Zanzibar could not proceed with an amended or additional charge for which previous sanction was necessary if based on new facts, until such sanction was forthcoming."

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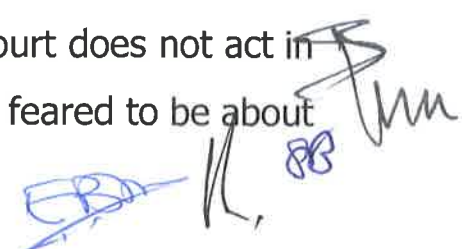
The Petitioners also allege that the charges brought against the Petitioners were not duly sanctioned by the DPP. Section 49 of the Anti-Corruption Act on prosecution of offences provides:

"A prosecution under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions or the Inspector General of Government; but a person charged with such an offence may be arrested, or a warrant for his or her arrest may be issued and executed, and the person may be detained or released on police bond, notwithstanding that the consent of the Director of Public Prosecutions or the Inspector General of Government, to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained."

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From the facts of the Petition, the Petitioners' trial had not yet commenced when this Petition was filed. Clearly, the opportunity for the petitioners to raise the issue and satisfactorily argue that Section 49 of the Anti- Corruption Act had been violated has not yet arisen. This is also another matter that this Court believes could be handled as and when it arises at the trial. There is no declaration this Court will make before the contravention even takes place. As has been stated in numerous decisions, this Court does not act in speculation of the wrongs that may be committed or are feared to be about

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to be committed. The grounds relating to the above aspects are therefore dismissed accordingly.

Issue 7

5 Whether the Petitioners are entitled to damages.

Counsel for the Petitioners submitted that general damages were a remedy which could be sought in an independent Court and observed that, however, to avoid a multiplicity of proceedings and for the reasons advanced in respect of the grounds of the Petition, a case was made out warranting court to grant general damages. He prayed that the Court be pleased to award general damages under Article 50 to the tune of Uganda shillings 1,000,000,000/- (one billion only). He contended that from the facts it was clear that the wilful and oppressive conduct of the respondent's servants which was illegal and amounted to abuse of office, resulted in the imprisonment of the Petitioners and further subjected them to the payment of exorbitant sums in cash bail when indeed the same was unnecessary. He added that the oppressive and callous conduct of the DPP and the Uganda Police Force subjected the Petitioners to untold anguish, suffering, mental and psychological torture for which they are entitled to the aforementioned damages.

As we have already observed above in addressing the issue of the manner in which the Petitioners were handled by the DPP and the Uganda Police, we re-emphasize that the only remedy available to them would be compensation



for the breach and violation of their rights in cancelling their bail and in re-charging them on the same facts in another Court.

5 We consider that the issue of damages in this case is a triable issue and the High Court is best placed to assess the damages in appropriate proceedings after being properly addressed by Counsel on the issue. We therefore, order that the Petitioners should be paid compensation for the violation of their rights and refer the file to the High Court to determine the amount due in accordance with Article 135(5) of the Constitution.

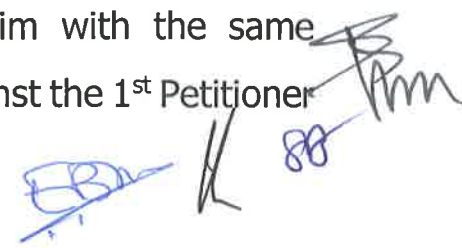
10 **Issue 8**

What reliefs are available to the Petitioners?

Counsel for the Petitioners prayed that Court allows this Petition in full and grant the declarations and orders if redress in the terms set out in the prayers in the Petition.

15 We find that this Petition has partly succeeded and we make the following declarations and orders:

1. The Uganda Police and the Director of Public Prosecutions contravened Articles 2, 28(1), 28(3) (a), 120(5), 126(1) and 128(2) they arrested the 1st Petitioner for offences on which he was out on bail, detained him in a police cell in respect of the same offence, arraigned him before a Court with similar jurisdiction and charged him with the same offences without first withdrawing the charges against the 1st Petitioner in Buganda Road Chief Magistrate's Court.



2. The act of the DPP of withdrawing the charges against the Petitioners in Buganda Road Magistrate's Court in the absence of the Petitioners and the proceedings of Buganda Road Court in hearing the application for withdrawal of the charges in the absence of the Petitioners
5 contravened Articles 2, 28(1), 28(3) (a), 29, 44, 120(5), 126(1) of the Constitution.
3. The act of the DPP and the proceedings of the Chief Magistrate's Court of the Anti-Corruption Division of the High Court of March 6, 2013, in which the Petitioners' bail was cancelled upon committal to the High
10 Court for trial without first according the Petitioners a right to be heard contravened Articles 2, 23, 28(1), 28(3) (a), 29, 44, 120(5), and 126(1) of the Constitution.
4. The act of the DPP of charging the Petitioners in the Anti-Corruption Division of the High Court with conspiracy to defeat tax laws c/s 392
15 of the Penal Code Act and Uttering a false document c/s 351 of the Penal Code Act does not contravene any Article of the Constitution.
5. The act of the DPP in indicting and continuing to prosecute the Petitioners before the Anti-Corruption Division of the High Court is not unconstitutional as the creation of the Division was not
20 unconstitutional.
6. Section 392(a) of the Penal Code Act under which the Petitioners were charged is not inconsistent with and in contravention of the Constitution.
7. The Petitioners are entitled to compensation for the violations detailed
25 above. The quantum of damages due to each Petitioner will be

determined by the High Court in appropriate proceedings after hearing the parties.

Conclusion

5 This petition has succeeded only in part as detailed above and this entitles the Petitioner to 50% of the costs. The rest of the grounds of the Petition are dismissed.

10 The prayer for stay of criminal proceedings pending at the High Court High Court Criminal Case No. 0003 of 2013 Uganda v. Hassan Bassajjabalaba is denied.

15 The Registrar is directed to remit the file for Criminal Case No.0003 of 2013 Uganda v. Hassan Bassajjabalaba to the High Court for the trial of the Petitioners to proceed.

Dated this 2 day of May 2015 2018.

Signed by;

20 Hon. Justice S. B. K. Kavuma _____

Deputy Chief Justice

Hon. Justice Remmy Kasule 
Justice of the Constitutional Court

25

Hon. Justice Eldad Mwangusya



Justice of the Constitutional Court

Hon. Justice Rubby Aweri Opio



5 **Justice of the Constitutional Court**

Hon. Justice Solomy Balungi Bossa



Justice of the Constitutional Court