

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA
CONSTITUTIONAL PETITION NO. 28 OF 2011**

FRANCIS ATUGONZA.....PETITIONER

VERSUS

- 1. BRIG. JAMES MUGIRA**
- 2. MAJOR BENSON MONDAY**
- 3. MAJOR ABEL KANDIHO**
- 4. LT. C.K. ASSIMWE**
- 5. LT. ALEX B. TUMUSHABE**
- 6. THE ATTORNEY GENERAL.....RESPONDENTS**

CORAM: Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ
Hon. Mr. Justice Kenneth Kakuru, JA/ JCC
Hon. Mr. Justice F.M.S Egonda-Ntende, JA/ JCC
Hon Justice Cheborion Barishaki, JA/ JCC
Hon. Mr. Justice Christopher Madrama, JA/JCC

RULING OF THE COURT

This is a constitutional reference from the High Court in High Court Miscellaneous Cause No. 118 of 2009 before Yorakamu Bamwine J (as he then was).

It is brought under Article 137 (5) b of the Constitution and seeks an answer to the following Constitutional question:-

'Whether the committee in enacting the Judicature (Fundamental Rights and Freedom) (Enforcement Procedure) Rule S1 55 of 2008 the MC 118 of 2008 was brought contravened Article 50 (4) of the Constitution.

When the reference came up for hearing learned Counsel Mr. Alex Rezida sought to withdraw it. We declined to allow the application for withdrawal and asked him to proceed with the reference. The reason we declined to allow the withdrawal is that a reference is made by the Court that seeks an answer to the question stated. Accordingly this Court is required to answer that question unless perhaps the Court preferring the reference withdraws it.

Be that as it may, we ascertained that the question set out in this reference is exactly the same as the one that was set out in *Constitutional Petition No. 26 of 2010 Bukenya Church Ambrose vs Attorney General* a Ruling in respect of which was delivered on 21st March 2011. An appeal was preferred from that Ruling to Supreme Court in *Constitutional Appeal No. 3 of 2011, Bukenya Church Ambrose vs Attorney General*. The Supreme Court answered that question in the negative. There is nothing remaining for us to answer.

We wish to state by way of emphasis that, the absence of specific Rules of procedure for enforcement of Human Rights would not in itself bar a litigant from accessing Courts of law.

In *Re Rivas and the Belize Advisory Council [1993] 3 LRC 261* of the *Belize Constitution Court* while deliberating a similar matter held as follows:-

"Unique or not, any institution, be it an inferior court or a Superior tribunal, which deals with the legal and human rights of any subject, in any capacity whatsoever must conform to the time honoured and hallowed principles of fundamental rights and natural justice. Allegation that there has been a breach of any of these principles in relation to any person must in my view, be subject to inquiry by the Supreme Court, irrespective of the calibre of the institution in respect of which allegation has been made"

The right of access to Court for redress in respect of breach or infringement of a fundamental right and other human rights and freedoms was also considered in *Attorney General vs. Ali and others [1989] LRC 474 at P. 525*. It was held by the Court of Appeal of Guyana that:-

" ... a citizen whose Constitutional rights are allegedly being tram led upon must not be turned away by procedural hiccups. Once his complaint is arguable, a way must be found to accommodate him so that other citizens become knowledgeable of their rights. ..."

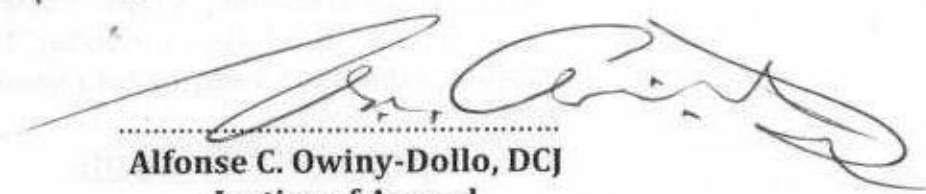
In *Juandoo vs. Attorney General of Guyana (1971) AC 972 P. 982*, Privy Council while deliberating on a similar issue arising from an Appeal from the Supreme Court of Guyana, where no rules of procedure had been prescribed by Parliament for enforcement of fundamental rights and freedoms though the Constitution commanded that Legislature would make the rules for enforcement of fundamental rights and freedoms. The Privy Council held that:-

"...the clear intention of the Constitution that a person who alleges that his fundamental rights are threatened should have unhindered access to the High Court is not to be defeated by failure of Parliament or the rule making authority to make specific provisions as to how that access should be gained".

Courts of law have inherent powers to make such orders as may be necessary for ends of justice. See:- Section 98 of the Civil Procedure Act and Rule (2) (2) of Court of Appeal Rules (SI 13-10). These rules enshrine Courts with power to allow a litigant who is seeking a remedy under chapter four of the Constitution to proceed under any appropriate procedure, in this case, the Civil Procedure Rules.

We accordingly order that, the file be returned to High Court for it to proceed with the trial without any further delay the question set having been answered in the negative.

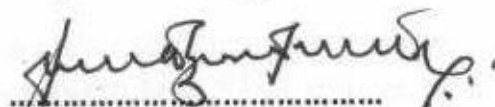
Dated at Kampala this 4th day of Oct 2019.



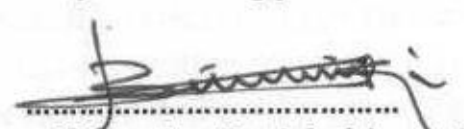
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Alfonse C. Owiny-Dollo, DCJ
Justice of Appeal



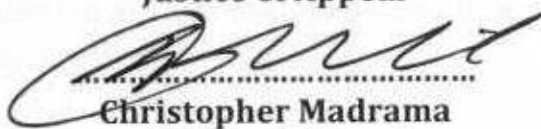
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