

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 30 OF 2014

KAZINDA GEOFFREY ::: PETITIONER

VERSUS

ATTORNEY GENERAL ::: RESPONDENT

CORAM: HON. JUSTICE KENNETH KAKURU, JA/ JCC

HON. JUSTICE GEOFFREY KIRYABWIRE, JA/ JCC

HON. JUSTICE CHEBORION BARISHAKI, JA/JCC

HON. JUSTICE EZEKIEL MUHANGUZI, JA/ JCC

HON. JUSTICE STEPHEN MUSOTA, JA/JCC

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA/ JCC

Introduction

This is a constitutional petition brought under Article 137 (1), (3) (a) (b) and 5(b), Article 21(1), (2), 28(1), 28(3), 28(9), 44(c), 166(4), 173(a), (b) and 120(5) of the Constitution of the Republic of Uganda 1995 (as amended) seeking declarations and other reliefs and redress as will be laid down.

Background

The petitioner was an employee of the Government of Uganda under the Office of the Prime Minister as a Principal Accountant until 2012 when he was arrested and charged in the Anti-Corruption Court. The
5 petitioner has numerous trials at the Anti-Corruption Court and he filed this petition seeking redress in that regard.

The petitioner alleges that;

- 10 a) The petitioner was a civil servant employed by the Government of Uganda under Article 172(b), as a Principal accountant, Office of the Prime Minister whose appointment was subject to the constitution of Uganda, the Public Service Act and regulations there under, public service standing orders all under Article 166(4) and the Pension Act (Cap 281).
- 15 b) The petitioner was arrested on 22nd July 2012 and charged on 9th August 2012 in the Anti-Corruption Court on 2 counts of Abuse of Office C/S 19(b), 2 counts of Fraudulent False Accounting and 1 count of Causing Financial Loss C/S 20(1) all under the Anti-Corruption Act, 2009 , 26 counts of Forgery C/S 342 and 347 of the Penal Code Act cap 120 and Conspiracy
20 to Commit a Felony C/S 390 of the Penal Code Act under Criminal Case No. 105 of 2012 for which he was granted bail.
- c) On 10th October 2012 the petitioner while on bail in Criminal Case No.105 of 2012 was again arrested and brought before the Anti-Corruption Court for Criminal Case No. 138 of 2012 on 1

count of making a document without authority C/S 335(a) of the Penal Code Act and 2 counts of Unlawful Possession of Government Stores C/S 316(2) of the Penal Code Act.

5 d) Sometime in April 2013, while Criminal Case No. 138 of 2012 was still pending in Court, the petitioner was further charged with 3 counts of diversion of Public resources C/S 6 of the Penal Code Act and 3 counts of Conspiracy to Defraud C/S 309 under Criminal Case No. 47 of 2013.

10 e) On 19th June 2013 the petitioner was sentenced to a prison term of 5 years in respect of Criminal Case No. 138 of 2012 which had the same factual origin on which Criminal Case No. 105 of 2012 and Criminal Case No. 47 of 2013 are founded.

15 f) Agents of the State having taken documents from the petitioner's office and home during several searches, the petitioner applied to court for documents to be availed to him by the State for his trial under Miscellaneous Application No. 21 of 2014, but the Magistrates Court ruled against his application and he has therefore not been availed documents to prepare his defence. Dissatisfied with the ruling, the petitioner
20 filed an appeal under Criminal Appeal No. 007 of 2014.

g) Prior to determination of the appeal No. 007 of 2014 on 12th March 2014 Criminal Case No. 105 of 2012 was heard and charges against the petitioner were withdrawn but another Criminal Case No. 62 of 2014 was instituted against the

petitioner with 20 counts with the same facts as those upon which Criminal Case No. 105 of 2012 was based.

h) The said Criminal Case No. 62 of 2014 was also on the 16th June 2014 withdrawn and replaced by Criminal Case No. 101 of 2014 also with the same facts as Criminal Case No. 105 of 2013 and Criminal Case No. 62 of 2014.

i) Up to date the petitioner has not been cause listed for the Criminal Appeal No. 007 of 2014 and the appeal has been frustrated by events which include withdrawing of Criminal Case 62 of 2014 and replacing the same facts with Criminal Case 101 of 2014, the committing of both cases to the High Court and while in the High Court, amending the indictment for Criminal Case No. 47 2013.

j) The petitioner's Constitutional rights have been infringed on in the following instances:

On indicting the petitioner under Criminal Case No, 101 of 2014, he is arraigned to be tried with among others 17 counts of Forgery C/S 342 and 347 of the Penal Code Act, an offence for which the petitioner is already serving a prison sentence in Criminal Case No. 138 of 2012 which is a violation of the petitioner's rights guaranteed under Article 28(9) of the constitution.

After indicting the petitioner, the indictment of Criminal Case No. 47 2013, was amended to accommodate another 30 counts

of Forgery, an offence for which he is already serving a prison term and a violation of petitioner's right guaranteed under Article 28(9) of the Constitution.

5 The petitioner was denied the necessary documents related to the charges and in possession of the state, to enable him prepare his defence, which is a violation of his right to a fair hearing under Articles 28 (3)(c), (g) 44(c) and 41(1).

10 k) Based on the above facts, and facts in the petitioner's affidavit, Government agents, departments, the Anti-corruption Court and various people have deliberately committed acts which contravene various provisions of the Constitution and others which are calculated to gravely prejudice the right to a speedy and fair hearing, as charges have continued to be preferred against him founded on the same facts, which form part of a series of offences on the same or of similar character for which he is already serving a prison term.

15 l) The acts of the Officials complained of in paragraph (i) include:-

20 (i) The manner in which he was brought to Court having not handed over office and participated in the Audit and appearing before Public Accounts committee of Parliament, issues he would have been in position to explain had he been given a chance by responsible Government agents, but are now used as potential cases where the DPP is preferring charges in piece meal

unlawfully and contrary to Article 28(1), 44(c), 120(5), 166(4) and 137(a) and (b) of the Constitution.

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- (ii)** Charging the petitioner under Criminal Case No. 105 of 2012, which was heard and withdrawn, and later changed to Criminal Case No. 62 2014, which was heard and withdrawn, and later indicted as Criminal Case No. 101 of 2014 and indicting the petitioner with Criminal Case No. 47 of 2013 which are all founded on the same facts with Criminal Case No. 138 of 2012, for which he is already serving a 5 year prison term at Luzira Prison, is contrary to Article 28(9) of the Constitution.
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- (iii)** Trying the petitioner again after conviction under Section 90 and 91 of the Magistrates Courts Act (MCA) and Sections 29 and 30 of the Trial on indictments Act (TIA) contrary to Article 28(9), of the Constitution.
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- (iv)** Withdrawing documents from the petitioner under search, charging him and using court process to frustrate him (the petitioner) from accessing the same relevant documents to enable him to defend himself in contravention of Article 28(3)(c),(g) and Articles 41(1) and 44(c) of the Constitution.
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- (v)** The continuous actions of Police in concluding several endless criminal investigations against the petitioner in respect of the same offense and offences founded on the same facts as in the Attorney General's written statement
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of defense in Civil Suit No. 372 of (2013 Nanfuka Teopista vs Attorney General) which include E/408/2012 (illicit Enrichment), E/121/2013 GEP:389/2012, E/131/2013, E/119/2013, E/130/2013, E/116/2013, E/122/2013, E/124/2013, E/123/2013, E/118/2013, E/139/2013, E/117/2013, E/142/2013, E/143/2013 E/120/2013, E/144/2013, E/148/2013, E/150/2013, E/155/2013, AND GEF:390/2012, E/437/2012, E/419/2012 (All on Abuse of Office, Embezzlement, Causing Financial Loss and Conspiracy), which is in contravention of Articles 28(9) and 28(1) of the Constitution.

(vi) Following the above actions of state, the petitioner raised the matter before Lady Justice Margaret Tibulya and requested her to refer the matter to the Constitutional Court for interpretation but in her capacity instead decided as a Constitutional court and directed the matter to be tried.

(vii) The Anti-corruption Court has now set hearing dates of Criminal matters namely Criminal Case No. 101 of 2014 and Criminal Case No. 47 of 2013 which are unconstitutional and infringe on the Constitutional right of the petitioner”.

Declarations sought

- i. A declaration that the manner in which the petitioner was brought to Court without giving him chance to handover and to appear for audit and in Parliament was unlawful and contravened Articles 28(1), 3(c), (g), 44(c), and 173(a) and (b) of the Constitution and laws provided under 166(4) of the Constitution.
- ii. A declaration that the acts of the Director of Public Prosecutions in splitting and sequentially initiating charges of offences founded on the same facts within different cases against the petitioner prior to his conviction contravened Articles 28(1),28(3),(c) and 120 (5) of the Constitution.
- iii. A declaration that the continued actions of the DPP and the police in endless investigations in respect of the petitioner are in contravention of Article 28(1), 28(9) and 120(5), an abuse of law provided for under S. 166(4) of the Constitution.
- iv. A declaration that the acts of the Director of Public Prosecution in initiating criminal offences under Criminal Case No. 47 of 2013 and Criminal Case No. 62 of 2014 now Criminal Case No. 101 of 2014 against the petitioner which are founded on the same facts and are part of a series of a similar character with criminal offences under Criminal Case No. 138 of 2012 for which he is already serving a five year Prison term contravenes Article 28(9) of the Constitution and are null and void.

- v. A declaration that in respect of the petitioner, In addition to S.29, S.30 and S.59 of the Trial on Indictment Act being inconsistent with each other, trying the petitioner under Section 89, 90 and 91 of the Magistrate's Court Act, and /or Section 28, 29, 30 of the Trial on Indictment Act after being convicted are contrary and contravene Article 28(9) of the Constitution.
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- vi. A declaration that within the plain natural and practical meaning of Articles, 28(3) (a), (c), (g), 44(c) and 41(1) of the Constitution of the Republic of Uganda, an accused/indicted person in a court or tribunal is entitled to access the copies or Originals of documents confiscated from him during the search, investigation or otherwise that constitute evidence against Criminal liability or public criticism.
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- vii. A declaration that the decision by the trial Judges in Criminal Case No.47 of 2013 to determine whether to refer the petitioner's matter for Constitutional interpretation was in contravention of Article 137(1), 5(b).
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- viii. A declaration that all investigation initiated and/or concluded contrary to the Laws under Article 166(4) of the Constitution are null and void.
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- ix. A declaration that the indictments before court are in contravention of Article 120(5) of the Constitution and are null and void.

Orders sought

5 x) An order nullifying or permanently staying the proceedings against the petitioner in the pending criminal Case No.47 of 2013, Criminal Case No. 62 of 2014, now Criminal Case No. 101 of 2014 and directing the Anti-corruption Court to immediately discharge the petitioner in the above Cases and any future cases whose offences are founded on the same facts.

10 xi) An order granting the petitioner a right to engage services or works of a private technical, professional firm to assess the reliance on the content of Auditor General's report as a basis for alleged criminal liability or wrong doing or omission.

15 xii) An order permanently prohibiting the Sate from using any process of any Court so as to initiate and prosecute the petitioner for any offences similar in character or founded on
20 the same facts whatsoever arising out of or in connection with his former employment as Principal Accountant, office of the Prime Minister.

25 According to the affidavit of Jane Frances Abodo (as she then was) sworn on October 17, 2014 accompanying the respondent's answer to the Petition, the act and conduct of the Director of Public

Prosecutions and other government agencies in charging and prosecution of the petitioner with various criminal offences does not in any way violate the petitioner's rights under the 1995 Constitution. That the act of prosecuting the petitioner in various criminal cases
5 premised on different facts, different transactions in which he is involved with different accused persons does not in any way amount to abuse of legal process.

She further stated that Criminal Case No. 105 of 2012 and Criminal Case No. 47 of 2013 are founded on different facts, different
10 transactions and the other accused persons are different from those in Criminal Case No. 138 of 2012 in which the petitioner was charged alone and convicted. That the petitioner was availed the documents at different trials.

Issues

- 15 1. Whether the respondents' act of successively prosecuting the petitioner after the first conviction contravenes and is inconsistent with Article 28(9) of the Constitution.

- 20 2. Whether Sections 90 and 91 of the Magistrates Court Act and Sections 29 and 30 of the Trial on Indictment Act (TIA) are in contravention and are inconsistent with Article 28(9) of the Constitution.

3. Whether the respondents act of successively prosecuting the petitioner after the first conviction contravenes and is inconsistent with Article 120(5) of the Constitution.
- 5 4. Whether the respondent's act of successively prosecuting the petitioner after the first conviction contravenes and is inconsistent with Articles 28(1), 28(3), (a), (c), (d) of the Constitution.
- 10 5. Whether there are any remedies to the petitioner.

Representation

At the hearing of the petition, the petitioner represented himself while Mr. Richard Adrole, a State Attorney, appeared for the respondent.

15 The parties filed written submissions.

Constitutional court jurisdiction

The jurisdiction of the Constitutional Court of Uganda is derived from the provision of Article 137 of the 1995 Constitution.

Article 137 provides that:

20 *“(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.

The Supreme Court has interpreted this Article 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 a 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 are alleged to

contravene the provisions of the Constitution or those that are inconsistent with its provisions. 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.

5 *In Serugo vs Kampala City Council, Constitutional Appeal No.2 of 1998, this Court pronounced itself on the meaning of a 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*
10 *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*
15 *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
20 *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*
25 *plaint when determining whether a cause of action has been established." (sic)*

Principles of constitutional interpretation

Let me restate here below some of the time tested principles of constitutional interpretation I consider pertinent in the determination of the Constitutional Petition before me. These have
5 been laid down in several decided cases by the Supreme Court, this Court and Courts of other jurisdictions. They have also been expounded upon in a number of legal literature of persuasive authority.

- 10 1. The Constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of the inconsistency. See: - Article 2(2) of the Constitution.

- 15 2. In determining the constitutionality of a legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining constitutionality, of either an unconstitutional purpose or an unconstitutional effect
20 animated by the object the legislation intends to achieve. See:- **Attorney General vs. Salvatori Abuki Constitution Appeal No. 1 of 1998.**(SCU)

3. The Constitution must be interpreted as a whole. This principle was settled in the case of **South Dakota V North Carolina 192 US 268 (1940) 448** by the Supreme Court of the US that “no single provision of the constitution is to be segregated from others and be considered alone but that all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the purpose of the instrument”. Therefore in law, the Constitution is a wholesome legal document and all provisions must be regarded as constituting it. The normal logic in this canon is that in order to ascertain the true meaning and intention of the legislators, all relevant provisions must be considered. It is thus dangerous to consider any one particular human right provision in isolation of all others, and any Court which tries to do this is bound to get an inconsistent conclusion.

4. Where words are clear and unambiguous, they must be given their primary, plain, ordinary and natural meaning. Such language must be given in its common and natural sense and, natural sense means that natural sense which they bore before the Constitution came into force. The cardinal rule for the construction of Acts in parliament is that they should be construed according to the situation expressed in the Acts themselves. The tribunal that has to construe an Act of a

legislature or indeed any other document has to determine the intention as expressed by the words used...if the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver.

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5. Narrow construction to be preferred in case of derogation from a guaranteed right. It is not in doubt that save for the rights mentioned in article 44 which are stated to be non-derogable, the rest can be limited. But the power to do so is not at large and is not to be arbitrarily exercised by Courts. Indeed under article 43, it is stated that in the enjoyment of the rights and freedom prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedom of others or the public interest. Public interest is in turn stated not to permit among others any limitation of the enjoyment of those rights beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in this constitution.

6. A constitutional provision containing a fundamental right is a permanent provision intended to cater for all times to come and must be given an interpretation that realizes the full benefit of

the guaranteed right (**Attorney General V Uganda Law Society Constitutional Appeal No. 1 of 2006 (SC)**).

7. The Constitutional Court has no jurisdiction in any matter
5 which does not involve the interpretation of a provision of the
Constitution. Also for the Constitutional Court to have
jurisdiction, the petition must show on the face of it that the
interpretation of a provision of the Constitution is required. An
application for redress can be made to the Constitutional Court
10 only in the context of a petition under Article 137 Constitution,
brought principally for interpretation of the Constitution
(**Attorney General v Tinyefuza Constitutional Appeal No. 1
of 1997**).

I have also relied on the Articles of the Constitution cited by the
15 parties and especially the following;

“28. Right to a fair hearing.

*(1) In the determination of civil rights and obligations or any criminal
charge, a person shall be entitled to a fair, speedy and public hearing
before an independent and impartial court or tribunal established by
20 law.*

(3) Every person who is charged with a criminal offence shall—

*(a) be presumed to be innocent until proved guilty or until that person
has pleaded guilty;*

- (b) *be informed immediately, in a language that the person understands, of the nature of the offence;*
- (c) *be given adequate time and facilities for the preparation of his or her defence;*
- 5 (d) *be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice;*
- (e) *in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State;*
- 10 (f) *be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial;*
- (g) *be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court.*
- 15 (9) *A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of*
- 20 *appeal or review proceedings relating to the conviction or acquittal.*

44. Prohibition of derogation from particular human rights and freedoms.

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—

(c) the right to fair hearing;

5 *120. Director of Public Prosecutions.*

(5) In exercising his or her powers under this article, the Director of Public Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process.”

10 **Resolution of the issues**

I now proceed to resolve the issues following the order in which they were framed;

Issues 1 and 3.

Issues 1 and 3 are intertwined and will be resolved together.

15 **Petitioner’s submissions**

The petitioner argued that Article 28(9) is a double jeopardy clause within the constitution that offers protection against multiple prosecutions against an accused person and multiple punishments for the same offence. He relied on the decision in **Block Burger Vs United States 284 (1932) U.S 304** for the proposition that an
20 accused could be prosecuted for more than one criminal offence stemming from a single course of conduct when; the elements of proving an offence are not similar to the elements that proved the

offences in the other trials; the evidence used in the same act or transaction constitutes a violation of two different statutory provisions; each provision requires proof of any additional facts which the other does not.

5 The petitioner argues that he is being tried again in six (6) other successive prosecutions at the Anti-Corruption Court. These include Criminal Case No. 105 of 2012 which was prosecuted by the DPP on 9th August 2012 and withdrawn on 12th March 2014; Criminal Case No. 047 of 2013 which was commenced on 29th March 2013 and is
10 ongoing before Justice Margret Tibulya at the stage of hearing defence witnesses. Criminal Case No. 62 of 2014 commenced on 12th March 2014 and it replaced Criminal Case No. 105 of 2012 but was also part heard and withdrawn on 12th June 2014. Criminal Case No. 101 of 2014 replaced Criminal Case No. 062 of 2014 and Criminal
15 Case No. 059 of 2016 commenced on 26th March 2016 which is still ongoing.

The petitioner argues that an accused person may not be prosecuted twice for the same criminal offence regardless of the statutory elements of the offence. When subsequent prosecution requires proof
20 of a conduct for which the defendant has been prosecuted, it is constitutionally barred by the double jeopardy clause. Under the single larceny doctrine, although multiple items of property might be stolen from one or multiple people, it would still be considered one offence arising from one continuous act. The petitioner relied on the

case of **State Vs Allen, 59 NM 139 (1955)** which applied the single larceny rule to stealing money over a period of time.

The petitioner referred to the judgment of His Lordship David Wangutusi J, in what the petitioner referred to as his first trial, in which the trial Judge found that the manner in which the petitioner executed the crime by accumulating a heap of open cheques to fill in the amounts later in time was frightening. It is the petitioner's case, that the offences of embezzlement, Causing Financial Loss, Illicit enrichment, Forgery, Diversion of public funds and Conspiracy, with which the petitioner was charged are entangled with numerous common threads. He argued therefore, that it cannot be held that the respondent is establishing different forms of conduct of criminal intent and offences different from those he did in the first conviction.

It is the petitioner's argument that in all these offences, at the time he allegedly committed them, he was a government employee under the Office of the Prime Minister (herein after referred to as OPM) and the offences were committed during the course of his employment. All the alleged offences arise from each other and the respondent cannot argue that the financial loss allegedly caused by the petitioner is unrelated to the offences of Embezzlement and Illicit enrichment. The petitioner argued that all the offences with which the petitioner is/was being charged by the DPP and the IGG arose out of the same conduct and criminal intent.

Further, that the intention of Article 28(9) of the Constitution is to prevent multiplication of offences. The respondent's intention is to

prosecute the petitioner continuously by only making minor alterations to the numerous criminal charges. By violating Article 28(9) of the Constitution, the respondent also violated Article 28(8) by imposing severe penalties than the maximum punishment for the offences charged. The petitioner relied on the case of **State Vs Quintana 69 NM 51 314** in which the Supreme Court of New Mexico held, that if the several offences are the same, as they arise out of the same transaction and were committed at the same time and were part of a continuous act, they are susceptible to only one punishment. Therefore, the only punishment the petitioner was supposed to receive was on the first conviction.

Respondent's submissions

For the respondent, it was argued that the DPP at all material times acted within the ambit of Article 120 of the Constitution while prosecuting the petitioner. Criminal case No. 101 of 2014, Criminal Case No. 105 of 2012, Criminal Case No. 47 of 2013 and Criminal Case No. 138 of 2012, in which the petitioner was charged, convicted and sentenced were premised on different facts, different transactions and the petitioner was charged with different persons. That this petition does not warrant Constitutional interpretation and the petitioner should have raised it at the trial court. This is an issue of enforcement of rights guaranteed under Article 50 and are enforceable before the High court and not the Constitutional Court.

It is therefore the respondent's argument that the respondent's act of successively prosecuting the petitioner after the first conviction does not contravene the cited Articles of the Constitution.

Resolution of issue 1

5 The Petitioner challenged the acts of the respondent of successively prosecuting the petitioner as being contrary to **Article 28(9)** of the constitution. It is important to appreciate the meaning and context of the entire **Article 28(9)**;

28. Right to a fair hearing.

10 *(9) A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a*
15 *superior court in the course of appeal or review proceedings relating to the conviction or acquittal.*

I note that Article 29(9) prohibits a second trial for a criminal offence that could have been tried and convicted/acquitted at the earlier trial. The petitioner alleges the following successive trials by the
20 respondent;

a) Criminal Case No. 138 of 2012 which was prosecuted by the DPP, the petitioner was convicted of the offences relating to constructive possession of financial instruments. The petitioner's actions contravened Sections 342, 347, 355 of the

Penal Code Act and section 11(i) of the Anti-Corruption Act and the petitioner was accordingly convicted.

b) Criminal Case No. 105 of 2012 which commenced on 9th August 2012, was part heard and withdrawn on the 12th of March 2014.

5 The respondent sought to prove that the petitioner, along with three others forged receipts and invoices which were alleged to have been used to falsely account or cover up fraudulent payments for fuel of Ugs. 316,893,456 that was meant for the delivery of food for famine victims in Karamoja in 2010.

10 c) Criminal Case No. 047 of 2013 which commenced on 29th March 2013 and is still ongoing at the stage of hearing the defence case. In this case, the petitioner is being charged with having conspired to secure money outside authorized disbursement procedures of the PRDP joint financing agreement between
15 government of Uganda and development partners onto a dormant account in the office of the Prime Minister. Thirty three forged financial instruments were presented by the petitioner to the Bank of Uganda to honor fraudulent payments and therefore causing financial loss.

20 d) Criminal Case No. 062 of 2014 which commenced on 12th March 2014, replacing Criminal Case No. 105 of 2012 but was part heard and withdrawn on 12th June 2014.

e) Criminal Case No. 101 of 2014 replaced Criminal Case No. 062 of 2014 and the petitioner was convicted on 31st May 2017.

25 f) Criminal Case No. 059 of 2016 which commenced on 26th March 2016 and is ongoing. The respondent alleged that the petitioner,

while being employed by the government of Uganda lived a standard life beyond his known sources of income and was in control and possession of property worth the 3.8 billion.

5 g) Criminal Case No. 056 of 2018 in which the petitioner was committed to the High Court on 29th March 2019 with another and the respondent seeks to prove that two instruments were presented to Bank of Uganda by the petitioner to honor genuine payments whose accountability was found to be false because the said activities were not undertaken.

10 The main issue for this court to resolve herein is whether the continuous prosecutions of the petitioner amount to double jeopardy within the meaning of Article 28(9) of the Constitution.

According to **Black's Law Dictionary 2nd Edition**, double jeopardy is the term that is given to a second trial for the same offense. The double jeopardy principle/rule prevents a person from
15 being tried again for the same crime. In simple terms, no one should be punished twice for the same crime. The rule may be regarded as having two limbs. The first involves the plea of *autrefois acquit* or *autrefois convict*. A person cannot be prosecuted for the same offence
20 for which he has previously been acquitted (*autrefois acquit*) or convicted (*autrefois convict*).

Similarly, a person cannot be convicted twice on two different charges arising from the same conduct unless they are significantly different. For instance, a person may not be convicted of both murder and

manslaughter for the same killing, but he can be convicted of both murder and robbery if the murder arose out of said robbery.

In the instant case, the petitioner alleges a number of trials at the Anti-corruption division of the High Court to wit Criminal Case No. 5 138 of 2012 in which the petitioner was charged and convicted of constructive possession of the same type of Financial Instruments. The prosecution led evidence that the petitioner was in constructive possession of the same type of financial instruments which included blank cash withdraw authorization forms and security papers 10 recovered at the petitioner's mother's house. Furthermore, the charges against him in Criminal Case No. 105 of 2012 and Criminal Case No. 062 of 2014 were part heard and withdrawn.

Criminal Case No. 047 of 2013 is ongoing and the petitioner is being tried for conspiracy to secure money outside authorized 15 disbursement procedures of the PRDP joint financing agreement between the Government of Uganda and development partners onto a dormant account in the office of the Prime Minister. The petitioner is being tried under Sections 342 and 248 of the Penal Code Act and Sections 20 and 52(c) of the Anti-Corruption Act.

20 Criminal Case No. 101 of 2014 replaced Criminal Case No. 062 of 2014 in which the petitioner was convicted. The prosecution evidence was that the petitioner forged receipts and invoices which were alleged to have been used to falsely account for fuel of Ugx. 316,893,456/= that was meant for delivery of food to famine victims 25 in Karamoja in 2010. In Criminal Case No. 059 of 2016, the petitioner

is charged with Illicit Enrichment contrary to Section 33 (i) and (ii) of the Anti-Corruption Act.

Criminal Case No. 056 of 2018 in which the prosecution seeks to prove that two instruments were presented to Bank of Uganda by the petitioner to honor genuine payments whose accountability was found to be false because the activities were not undertaken and the petitioner was charged with Embezzlement.

From the foregoing, the petitioner has charges of Embezzlement, Causing Financial Loss, Fraudulent False Accounting, Illicit Enrichment and Forgery under the Anti-Corruption Act. The issue of whether the various trials against the petitioner amount to double jeopardy can only be dealt with after resolving the issue of whether the offences the petitioner is charged with are 'same offences' within the meaning of Article 18(9) of the Constitution.

The petitioner alleges that the prosecution should have charged him with all the offences together since they arise out of a series of events.

The petitioner, in Criminal Case No. 105 of 2012, was charged with 2 counts of Abuse of Office contrary to section 11(1) of the Anti-Corruption Act, 1 count of Embezzlement contrary to section 19(b) of the Anti-Corruption Act, 2 counts of Fraudulent False Accounting contrary to section 23(b) of the Anti-corruption Act and 26 counts of Forgery contrary to section 342 and 347 of the Penal Code Act.

The particulars of the offence of Abuse of Office, Conspiracy to commit a felony, Embezzlement, Causing Financial Loss and

Fraudulent False Accounting were that the petitioner, together with 2 others, while being employed by the OPM as Principal Accountant did an arbitrary act prejudicial to the interest of the employer and misappropriated Ugx. 316,893,456/= meant for procurement of fuel and lubricant for motor vehicles delivering relief food from the central relief stores to disaster victims in various districts.

The particulars of the 24 counts of Forgery are that the petitioner, with intent to defraud forged invoices of Total Ntinda service station purportedly issued on various dates. The petitioner was convicted of the charges in Criminal Case No. 105 of 2012.

In Criminal Case No. 138 of 2012, the petitioner was charged with 1 count of Abuse of Office contrary to section 11(1) of the Anti-Corruption Act, 1 count of Making documents without authority contrary to section 355(a) of the Penal Code Act, 2 counts of unlawful possession of government stores contrary to section 316(2) of the Penal Code Act and 26 counts of forgery contrary to section 342 and 347 of the Penal Code Act.

The particulars of the offence of abuse of office were that the petitioner, being in employment of the OPM, did an arbitrary act and kept in a private residence computer generated letters (security papers) and cash withdraw forms bearing a forged signature of the Permanent Secretary of the OPM. The particulars of the 26 counts of Forgery were that the petitioner, with intent to defraud, forged the signature of the Permanent Secretary of the OPM contained in the computer generated letters.

The particulars of the offence of Making document without authority were that the petitioner, without lawful authority made computer generated letters (security papers) on account of the Permanent Secretary of OPM addressed to the Director banking, Bank of Uganda. The particulars of unlawful possession of government stores are that the petitioner unlawfully had in his possession government stores to wit cash withdraw authorization forms belonging to the OPM.

The petitioner, while appearing in court for mention of Criminal Case No. 105 of 2012 and hearing of Criminal Case No. 138 of 2012, another Criminal Case No. 47 of 2013 was read to him in which he was charged with 3 counts of diversion of public resources c/s 6 of the Anti-Corruption Act, 3 counts of Abuse of Office contrary to section 11 of the Anti-Corruption Act, 4 counts of Causing Financial Loss and 3 counts of Conspiracy to Defraud c/s 309 of the Penal Code Act.

The particulars of the offences are that the petitioner conspired to secure money outside authorised disbursement procedures of the PRDP joint financing agreement between government of Uganda and development partners onto a dormant account in the OPM.

In Criminal Case No. 59 of 2016, the petitioner is charged with offences under section 33 (i) and (ii) of the Anti-Corruption Act. That the petitioner, while being employed by the Government of Uganda, lived a standard of life beyond his known sources of income and was

in control and possession of property worth UGS 3.8 billion shillings and charged with illicit wealth.

In Criminal Case No. 56 of 2018, the petitioner is being charged with Embezzlement contrary to Section 19(1) of the Anti-Corruption Act
5 on the particulars that two instruments (security papers) were presented to the Bank of Uganda by the petitioner to honor genuine payments whose accountability was found to be false because of activities for which payments were approved were not done.

The rule on joinder of offences is that where an accused person is
10 alleged to have committed more than one offence, he may be charged in the same proceedings with all the offences provided that the offences are founded on the same facts or form part of a series of offences of the same or similar character. See S.86 (1) Magistrates Courts Act and S.23 (1) Trial on Indictments Act. Thus in order to
15 join more offences than one in the same charge or indictment, it must be established that the offences were founded on the same facts.

David Ross QC stated in **the Article "Joinder of Counts against One Accused" [2004] Deakin Law Rw 8; (2004) 9(1) Deakin Law Review 199** that;

20 *"There can be no joinder of counts in the one indictment unless they comprise a series of offences of the same or similar character. The courts have had no end of trouble in their interpretation of those words. The formidable Dixon J seemed to have difficulty in coming to grips with the word "series".*

*In **Packett v The King** [1937] HCA 53; (1937) 58 CLR 190, 207, he said,*

'The word 'series' is somewhat vague, but it connotes some connection between the crimes.'

5 *It may be true that the word 'series' is not wholly apt to describe less than three components, but so to limit its meaning in the present context would produce the perverse result that whereas three murders could be charged in the same indictment, two could not. The construction of the rule has not been restricted in*
10 *this way in practice during the fifty years which have followed the passage of the Act and it is too late now to take a different view. **See R v Kray and Others** [1970] 1 QB 125-130.... The word "series" has to my mind a difference in meaning from the phrase "same or similar character". The word imports a course or*
15 *sequence of offences, part of a routine, and likely to be planned. The phrase seems to relate to offences which are matching and are of the same kind."*

For two or more offences to constitute a series, there must be a nexus or connection between them. All the offences with which the
20 petitioner is being charged and some with which he was convicted were committed while he was the Principal Accountant at the Office of the Prime Minister. As already stated above, in Criminal Case No. 105 of 2012, the petitioner was charged with Abuse of Office, Embezzlement, Fraudulent False Accounting and Forgery; in
25 Criminal Case No. 138 of 2012, he was charged with Abuse of Office,

Making documents without authority, Unlawful Possession of Government Stores and Forgery and in Criminal Case No. 56 of 2018, he is being charged with Embezzlement.

As already stated above, Article 28 (9) of the Constitution provides for the right to a fair hearing that; A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence **shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence,** except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal. (Emphasis mine)

These offences, in my view, fall well within the definition of offences of the same character and could adequately have been joined in one trial. The numerous trials for offences similar in character amounts to a deprivation of the right to a fair hearing and contravenes Articles 28(1) and (9) of the Constitution. Article 28(1) provides;

28. Right to a fair hearing.

(1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. (Emphasis mine)

Needless to say, Article 2 provides for supremacy of the constitution; “This Constitution is the Supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. If any

law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency be void” [Emphasis mine]

5 Failure to adhere to the above provisions of the constitution would lead to duplicity of charges against an accused person which infringes on the right to a fair hearing. From the foregoing, issue 1 and 3 in the petition are answered in the affirmative.

This finding, however, excludes Criminal Case No. 59 of 2016 on
10 charges of illicit wealth, contrary to Section 33(i) and (ii) of the Anti-Corruption Act. Article 28(9) of the Constitution does not affect the charges of illicit wealth, because it is not of the same character as the charges discussed above.

Issue 2

15 Whether Sections 90 and 91 of the Magistrates Courts Act (MCA) and Section 29 and 30 of the Trial on Indictments Act (TIA) are in contravention and inconsistent with Article 28(9) of Constitution.

Petitioner’s submissions

The petitioner submitted that the Magistrates Courts Act and the
20 Trial on Indictments Act must be construed with modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution. Under Article 2(i) of the Constitution, the Constitution is the supreme law of the land with binding force on all authorities and persons in Uganda and

Under Article 2(2), the Constitution prevails over any other law or custom thereby making such other written law void to the extent of its inconsistency.

5 The petitioner invited court to find that Sections 29 and 30 of the Trial on Indictments Act and Sections 90 and 91 of the Magistrates Courts Act, which enable the respondent to prosecute a convicted or acquitted person for offences that might have been charges at the former trial are subordinate laws to the constitution and as such are inconsistent with the Constitution.

10 **Respondent's submissions**

The respondent submitted that both Sections 90 and 91 of the Magistrates Courts Act and Sections 29 and 30 of the Trial on Indictments Act are not inconsistent with or contrary to Article 28 of the Constitution.

15

Resolution of issue 2

I find it necessary at this stage to set out Sections 90 and 91 of the Magistrates Courts Act and Sections 29 and 30 of the Trial on Indictments Act, together with the relevant parts of the Article of the
20 Constitution mentioned above.

Sections 90 and 91 of the Magistrates Courts Act Provides:

90. Persons may be tried again for separate offence.

A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he or she might have been charged on the former trial under section 86(1).

5 *91. Consequences supervening or not known at time of former trial.*

10 *A person convicted or acquitted of any act causing consequences which together with that act constitute a different offence from that for which the person was convicted or acquitted may be afterwards tried for the last mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he or she was acquitted or convicted.*

15 Sections 29 and 30 of the Trial on Indictments Act provides;

29. Persons may be tried again for a separate offence.

A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he or she might have been charged on the former trial under section 23(1).

20 *30. Consequences supervening or not known at time of former trial.*

A person convicted or acquitted of any act causing consequences which together with that act constitute a different offence from

that for which that person was convicted or acquitted may be afterwards tried for that last mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he or she was acquitted or convicted.

5

Sections 90 and 91 of the Magistrates Courts Act are a replica of Sections 29 and 30 of the Trial on Indictments Act. I have also noted the provisions of Article 28(9) of the Constitution which I have earlier quoted in my judgment but for ease of reference, I will restate it here;

10

28. Right to a fair hearing.

(9) A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

15

It is not disputed that sections 29 and 30 of the Magistrates Courts Act and sections 90 and 91 of the Trial on Indictments Act laid out above allow for a person to be tried again for an offence with which he could have been tried at the former trial. The question is: are these provisions inconsistent with Article 28(9) of the Constitution?

20

Black's law dictionary 2nd Edition defines inconsistent as mutually repugnant or contradictory; contrary to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other. It is clear that Sections 29
5 and 30 of the Trial on Indictments Act and Sections 90 and 91 of the Magistrates Courts Act allow for a person convicted or acquitted of any offence to afterwards be tried for any other offence with which he or she might have been charged within the former trial. It goes without saying that these statutory provisions are not in conformity
10 with Article 28(9) of the Constitution which is clear, that: *A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence.*

15 I reiterate that one of the principles of constitutional interpretation is, that the Constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of the inconsistency.

20 Further, Article 2 of the Constitution provides;

2. Supremacy of the Constitution.

(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.

5

After considering the submissions of the parties and the evidence, it is my finding that the impugned sections of the Magistrates Courts Act and the Trial on Indictments Act under Sections 90 and 91, and 29 and 30 of the respective statutes are inconsistent with and
10 contravene Article 28(9) of the constitution and are thus declared null and void.

Issue 4

**Whether the respondent's act of successively prosecuting the petitioner after the first conviction contravenes and is
15 inconsistent with Articles 28(1), 28(3), (a), (c), (d) of the Constitution.**

Petitioner's submissions

The petitioner argues, that after the respondent set up criminal cases for the petitioner in a chain, this action contravenes the petitioner's
20 right to a fair hearing enshrined in Articles 28(1), 28(3), (a), (c), (d) and 44(c) of the Constitution.

The petitioner submitted that he was not given an opportunity to be heard prior to the trial. He was neither accorded a hearing at his place of work (OPM) nor was he heard by either the Auditor General

or Public Accounts Committee which was set to examine the Auditor General's Report according to the Public Service Standing Orders.

In addition, that the petitioner was not accorded adequate time to prepare his defence. The petitioner has faced an average of one completed case per year or three concurrent trials per year. Under these circumstances, the petitioner has been exposed to inadequate time to effectively prepare for his defence owing to the fact that two or more matters are litigated at the same time. From October 2018, the petitioner has been required to prepare defense witnesses for the third and sixth trials as well as prepare for the seventh trial. As a result, the petitioner lacks time to prepare his defence in the various trials. In addition, that the petitioner has been denied the right to a speedy trial due to the lengthy trials some of which have been withdrawn along the way.

The respondent did not file any submissions in regard to this issue. I will proceed to consider the petitioner's arguments on its merit.

For ease of reference, I will reproduce Articles 28(1), 28(3), (a), (c), (d) and 44(c) of the Constitution.

"28. Right to a fair hearing.

(1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

(3) Every person who is charged with a criminal offence shall—

(a) *be presumed to be innocent until proved guilty or until that person has pleaded guilty;*

(c) *be given adequate time and facilities for the preparation of his or her defence;*

5 (d) *be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice;*

44. *Prohibition of derogation from particular human rights and freedoms.*

10 *Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—*

(c) the right to fair hearing;”

The Public Service Standing Orders (f-r) (5 and 6) state that;

15 *“No public officer shall be subjected to any punishment without first being informed in writing what he or she has done and being given an opportunity to defend himself or herself in writing.*

Those handling disciplinary cases must be impartial and both sides in all cases must be heard.”

20 The case for the petitioner is that he was arrested at the time when he was on sick leave and was never given an opportunity to be heard regarding the queries at the OPM. As soon as he was arrested, the trials commenced which are ongoing to date. The petitioner argues

that he is being tried again in six (6) other trials at the Anti-Corruption Court in successive prosecutions.

These include *inter alia* Criminal Case No. 105 of 2012 which was prosecuted by the DPP on 9th August 2012 and withdrawn on 12th March 2014; Criminal Case No. 047 of 2013 which was commenced on 29th March 2013 and is ongoing before Justice Margret Tibulya at the stage of hearing defence witnesses. Criminal Case No. 62 of 2014 commenced on 12th March 2014 and it replaced Criminal Case No. 105 of 2012 but was also part heard and withdrawn on 12th June 2014. Criminal Case No. 101 of 2014 replaced Criminal Case No. 062 of 2014 and Criminal Case No. 059 of 2016 commenced on 26th March 2016 which is still ongoing.

I reiterate my earlier finding while resolving issue 1 of this petition that the successive trials against the petitioner deny him a right to a speedy trial and consequently, he cannot have adequate time to prepare his defence. This has caused irreparable prejudice to the petitioner in that he was not accorded a hearing at his place of work nor was he heard by either the Auditor General or the Public accounts Committee. Issue 4 is also resolved in favor of the petitioner.

Issue 5- Remedies available

DECLARATIONS

The declarations sought in this petition are stated in paragraph 3 of the petition;

Declarations sought

- 5
- i. A declaration that the manner in which the petitioner was brought to Court without giving him chance to handover and to appear for audit and in Parliament was unlawful and contravened Article 28(1), 3(c), (g), 44(c), and 173(a) and (b) of the Constitution and laws provided under 166(4) of the Constitution.

 - 10 ii. A declaration that the acts of the Director of Public Prosecutions in splitting and sequentially initiating charges of offences founded on the same facts within different cases against the petitioner prior to his conviction contravened Articles 28(1),28(3),(c) and 120 (5) of the Constitution.

 - 15 iii. A declaration that the continued actions of the DPP and the police in endless investigations in respect of the petitioner are in contravention of article 28(1), 28(9) and 120(5), an abuse of law provided for under S. 166(4) of the Constitution.

 - 20 iv. A declaration that the acts of the Director of Public Prosecution is initiating Criminal offence under Criminal Case No. 47 of 2013 and Criminal Case No. 62 of 2014 now Criminal Case No. 101 of 2014 against the petitioner which are founded on the same facts and are part of a series of a similar character with criminal offences under Criminal Case No. 138 of 2012 for which he is already serving a five year Prison term contravenes Article 28(9) of the Constitution and are null and void.

- v. A declaration that in respect of the petitioner, In addition to Sections 29, 30 and 59 of the Trial on Indictment Act being inconsistent with each other, trying the petitioner under Sections 89, 90 and 91 of the Magistrate's Court Act, and /or Section 28, 29, 30 of the Trial on Indictment Act after being convicted are contrary and contravene Article 28(9) of the Constitution.
- vi. A declaration that within the plain natural and practical meaning of Articles, 28(3) (a), (c), (g), 44(c) and 41(1) of the Constitution of the Republic of Uganda, an accused/indicted person in a court or tribunal is entitled to access the copies or Originals of documents confiscated from him during the search, investigation or otherwise that constitute evidence against Criminal liability or public criticism.
- vii. A declaration that the decision by the trial Judges in Criminal Case No. 47 of 2013 to determine whether to refer the petitioner's matter for Constitutional interpretation was in contravention of Article 137(1), 5(b).
- viii. A declaration that all investigation initiated and/or concluded contrary to the Laws under Article 166(4) of the Constitution are null and void.
- ix. A declaration that the indictments before court are in contravention of Article 120(5) of the Constitution and are null and void.

It is my considered view that the petitioner has proved his case. He is seeking for twelve declarations all stated in paragraph 3(i) – (ix) of the petition. The declarations sought logically follow from the findings of fact and law during the determination of issues considered above.

5 I do hereby grant all the declarations sought in the petition.

ORDERS

The petitioner also sought for three orders stated in paragraph 3 (x, xi and xii) of the petition (supra). I grant two of the orders sought
10 namely;

An order sought is to permanently stay proceedings against the petitioner in the pending criminal Cases No. 47 of 2013, No. 62 of 2014, now 101 of 2014 and directing the Anti-corruption Court to immediately discharge the petitioner in the above Cases and any
15 future cases whose offences are founded on the same facts. This order will be granted because of the reasons I have given above.

An order to permanently prohibit the State from using any process of any Court so as to initiate and prosecute the petitioner for any offences similar in character or founded on the same facts
20 whatsoever arising out of or in connection with his former employment as Principal Accountant, office of the Prime Minister.

Consequently, this petition succeeds.

Each party will bare its own costs.

Dated this 7th day of Aug 2020

5



Stephen Musota,

Justice of Appeal/Constitutional Court.

10

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 30 OF 2014

KAZINDA GEOFFREY ===== PETITIONER

VERSUS

ATTORNEY GENERAL =====RESPONDENT

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA/JCC

Hon. Mr. Justice Geoffrey Kiryabwire, JA/JCC

Hon. Mr. Justice Cheborion Barishaki, JA/JCC

Hon. Mr. Justice Ezekiel Muhanguzi, JA/JCC

Hon. Mr. Justice Stephen Musota, JA/JCC

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

I have had the opportunity of reading the lead Judgment of the Hon. Mr. Justice Stephen Musota, JA/JCC in draft.

I agree with it and I have nothing more useful to add.

Dated at Kampala this.....^{7th}..... day of^{Aug}..... 2020.

.....

HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO.30 OF 2014

CORAM: (Kenneth Kakuru, Geoffrey Kiryabwire, Cheborion Barishaki, Ezekiel Muhanguzi, Stephen Musota, JJA/JJCC).

KAZINDA GEOFFREY:..... PETITIONER

VERSUS

ATTORNEY GENERAL:..... RESPONDENT

JUDGMENT CHEBORION BARISHAKI, JA/JCC

I have had the benefit of reading in draft the Judgment of my brother Stephen Musota, JA/JCC and I agree with him that this appeal should succeed. I also agree with the declarations he has proposed.

The appellant was charged with constructive possession of financial instruments, forging receipts and invoices, false accounting, making fraudulent payments, conspiracy to secure money outside authorised disbursement procedures and living a standard of life beyond his known sources of income.

He was tried separately under HCT-OO-138 of 2012, HCT-00-AC-105 of 2012, HCT-00-AC-047 of 2013, HCT-00AC-062 of 2014, and HCT-AC-056 of 2018 for the listed offences.

The Charge sheets show that the offences were committed between 2010 and 2012 when the appellant worked as principal accountant in the office of the Prime Minister. All offences relate to obtaining Government money unlawfully.

Most of the offences were committed in the same place in the accounts department of the Office of the Prime Minister. Investigations majored in the same office and around the same period.

Because of the multitude of Charges in the different Charge sheets, the trials have taken a long time. This could have been avoided so as not to offend Article 28(1) of the Constitution of the Republic of Uganda which requires that an accused person should have a fair and speedy trial. The Article provides;

28. Right to fair hearing

(1) In determination of civil rights and obligations or any criminal Charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial Court or tribunal established by law.

It would appear that the offences were committed routinely in a sequence all related to the appellant getting money unlawfully. In order to have a speedy trial so as to meet the requirements of the Constitution, they should have been joined in one trial. I have failed to get the reason why this was not done. Deliberate protracted piece meal trials without reasonable explanation why it is being done offend Article 28(1) of the Constitution.

I would allow the petition on the terms set by Justice Stephen Musota, JA.

Dated at Kampala this.....^{7th}.....day of.....^{Aug}.....2020.


BARISHAKI CHEBORION

JUSTICE OF APPEAL/CONSTITUTIONAL COURT.

5
THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 30 of 2014

KAZINDA GEOFFREYPETITIONER

10
VERSUS

ATTORNEY GENERALRESPONDENT

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA/JCC
Hon. Mr. Justice Geoffrey Kiryabwire, JA/JCC
Hon. Mr. Justice Cheborion Barishaki, JA/JCC
15 Hon. Mr. Justice Ezekiel Muhanguzi, JA/JCC
Hon. Mr. Justice Stephen Musota, JA/JCC

JUDGMENT OF JUSTICE KENNETH KAKURU, JA/JCC

20 The background to this petition has been ably set out in the judgment of my learned brother Musota, JA/JCC. He has also laid down the principle for constitutional interpretation and has also set out the submissions of parties, I find no reason to reproduce them.

25 The case for the petitioner as I understand it, is that he is being tried for offences in respect which he had already been convicted or acquitted. This he contends violates his fundamental right enshrined under *Article 28(9)* of the Constitution which stipulates as follows:-

30 *"A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a*

5 *superior court in the course of appeal or review proceedings relating to the conviction or acquittal."*

The above provision of the Constitution is a complete defence against double jeopardy.

10 The defence of double jeopardy ought to have been raised at the trial as an objection to the indictment. I have not found any indication that this was done. The trial Court would then have been required to make a decision on the matter. The decision of the High Court in such a case I presume would be appealable to the Court of Appeal. I have found nothing in this petition that requires constitutional interpretation. The questions raised in this petition simply require application of the *Article 28(9)* of the
15 Constitution to the facts of the case. A trial Court should be able to make a decision on this matter.

The jurisdiction of the Constitutional Court is derived from *Article 137* of the Constitution and is limited to the interpretation of the Constitution. It provides as follows;-

20 (1) *Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.*

(2) *When sitting as a Constitutional Court, the Court of Appeal shall consist of five members of that Court.*

(3) *A person who alleges that-*

25 (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
30 appropriate.*

- 5 (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
10 appropriate redress.
- (5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the court-
- (a) may, if it is of the opinion that the question involves a substantial question of law; and
- 15 (b) shall, if any party to the proceedings requests it to do so, refer the question to the Constitutional Court for decision in accordance with clause (1) of this article.
- (6) Where any question is referred to the Constitutional Court under clause ((5) of this article, the constitutional court shall give its decision on the question, and the court in which the question arises shall dispose of the case in
20 accordance with that decision.
- (7) Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending
25 before it.

In *Attorney General vs Major General David Tinyenfuza*, Supreme Court Constitutional Appeal No. 1 of 1997, Wambuzi CJ had this to say:-

30 "In my view, jurisdiction of the Constitutional Court is limited in Article 137 (1) of the Constitution to interpretation of the Constitution. Put in a different way no other jurisdiction apart from interpretation of the Constitution is given. In these circumstances I would hold that unless the question before

5 the Constitutional Court depends for its determination on the interpretation or construction of a provision of the Constitution, the Constitutional Court has no jurisdiction.” (Emphasis added).

See also: *Mbabaali Jude vs Hon. Edward Kiwanuka Ssekandi Constitutional Petition No. 0028 of 2012*, *Herman Semujju vs Attorney General Constitutional Petition No. 1 of 1998*, *Charles Kabagambe vs Uganda Electricity Board Constitutional Petition No. 2 of 1999*, *Paul Ssemwogerere and 2 others vs Attorney General Constitutional Petition No. of 2002* and *Engineer Edward Turyomurugyendo & others vs Attorney General & others Constitutional Petition No. 25 of 2009*.

15 It is apparent from the petition that what the petitioner is seeking from this Court is not interpretation of any provisions of the Constitution, but he rather seeks for the application of *Article 28(9)* of the Constitution. He is still at liberty to raise the issues at the trial Court.

Accordingly I find that this Court has no jurisdiction to entertain this petition which is clearly misconceived.

20 I would accordingly dismiss it with costs. This is however the minority decision.

Justice Muhanguzi did not avail his judgment as he was elevated to the Supreme Court before he could do so. By majority decision Kiryabwire, Cheborion, Musota, JJA/JJCC this petition succeeds in the terms and orders set out in the judgment of Musota, JA/JCC

25 **Dated at Kampala** this^{7th}.....day of^{Aug}..... 2020.

.....

.....
Kenneth Kakuru

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT