### THE REPUBLIC OF UGANDA

## THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

# CONSTITUTIONAL PETITION NO 4 OF 1997 CORAM: <u>JUSTICE S•T. MANYINDO- DCJ JUSTICE G M OKELLO, J A.,</u> <u>JUSTICE J.P. BERKO J.A., JUSTICE S.G. ENGWAU J.A. & J A.</u> <u>TWINOMUJUNI, J.A.</u>

## ARUTU JOHN:::::PETITIONER VERSUS

DATE: 19/11/1997 Kabega M with Okumu Wengi for Petitioner, Tumwesige with Christopher Madrama (Senior State Attorney) and Charles Ogwal-Olwa (Principal State Attorney) for Respondent.

#### RULING OF THE COURT.

The Petitioner was charged in the Magistrates Court with the offences Abuse of Office contrary to Section 83 (1) of Penal Code in three counts. When the case went for trial before a Grade I Magistrate, Counsel for the Petitioner objected to the trial proceeding on the ground that the Petitioner, in his capacity as **a** Judicial Officer, enjoyed immunity from prosecution under Section 15 of Penal Code and Art 128 (4) of the Constitution Counsel requested for a reference to be made to the Constitutional Court in the matter. That was done under Constitutional Case No. 10 of 1997 on 30/9/97. However, on the 9/4/97 the Petitioner had lodged a Constitutional Petition No. 4 of 1997.

The common ground in both Petitions is that the Petitioner cannot be prosecuted for acts done in the Course of Judicial proceedings. When the two cases came for hearing before us, we raised the question whether the Criminal proceeding should not have continued and if in. The course of trial arose relating to the interpretation of the constitution; reference would have been made in accordance with the decision of the Supreme Court in civil Appeal No.7/92 Attorney General vs. Milton Obote Foundation ltd & another. Counsel for the respondent agreed and suggested that the matter be remitted to the trial court to proceed with the case.

On the other hand, counsel for the petitioner wanted a stay of the reference and to consider the petition.

In our view, the proper course will be to defer the petition and remit the reference to the trial Court to continue with the proceedings as soon as it is practicable and make a reference to this Court if it is justified on evidence before it. We so Order. Constitutional Petition No.4 Of 1997 is stayed in the meantime.

Dated at Kampala this 19th day of November, 1997

## S. T. MANYINDO DEPUTY CHIEF JUSTICE.

### G.M OKELLO

### JUSTICE OF APPEAL

J. P BERKO JUSTICE OF APPEAL

S. G. ENGWAU JUSTICE OF APPEAL.

### A.TWINOMUJUNI JUSTICE OF APPEAL.