

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA
CONSTITUTIONAL PETITION NO. 1 OF 1998

CORAM: HON. MR. JUSTICE S.T. MANYINDO, DCJ.
HON. MR. JUSTICE C.M. KATO, J.A.
HON. MR. JUSTICE G.M. OKELLO, J.A.
HON. MR. JUSTICE J.P. BERKO, J.A.
HON. MR. JUSTICE A. TWINOMUJUNI, J.A.

HERMAN SSEMUJU.....PETITIONER

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

REASONS FOR THE DECISION:

When this matter came up for hearing on the 6th May 1998 we upheld the preliminary objections made by Mr. Nasa Tumwesige Director of Civil Litigation, who appeared for the Attorney General, and struck out the petition as incompetent, whilst reserving our reasons, which we now proceed to give.

The Constitutional Petition was brought by Herman Ssemuju on his own behalf and on behalf of what he termed “**the oppressed National Freedom Party (NFP) members and other affected Ugandans**”. It was brought under Articles 137, (1) (2) (3) and 3(4)(b) of the Constitution and under the provisions of the **Fundamental Rights and Freedoms (Enforcement Procedure) Rules 1992 Directions 1996, Legal Notice 4 of 1996**.

The petition sought the following declarations:-

- (i) That the National Resistance Movement Government’s existence is a breach and a violation of Art 263(1) of the Constitution of the Republic of Uganda, formally declared Constitutional non-existent, null and void and terminated,

- (ii) That the Movement Act is inconsistent with Articles 70 and 36 of the Constitution of the Republic of Uganda, that it is partisan, not all embracing, unconstitutional, and null and void,
- (iii) That the Movement Act is a one party legal instrument inconsistent with Article 75 of The Constitution of Uganda, hence unconstitutional,
- (iv) That monies spent by the unconstitutional NRM Government contrary to Articles 263 and 154 of the Constitution of Uganda be refunded by the recipients,
- (v) That the existing cabinet of the Government of Uganda breaches and violated Articles 70 and 36 of the Constitution of Uganda, hence be terminated or suspended and/or reformed,
- (vi) That the denial of ownership of land from the people of Uganda under Article 237 of the Constitution be declared unconstitutional,
- (vii) That the Spraying of Uganda's fresh waters by Pollutive Poisonous and dangerous herbicides contrary to Articles 245 and 39 of the Constitution of Uganda be declared unconstitutional and be prohibited,
- (viii) That the ten year old and such other wars between the Uganda Government and its opponents without an option for peaceful solutions is a breach and violation of Art 209(b) and (c) of the Constitution of the Republic of Uganda, be censored (*Sic*),
- (ix) That the partisan and non – national status quo of the Uganda peoples defence forces contrary to Article 208(2) and 210(b) of the Constitution of the Republic of Uganda be declared unconstitutional, and, an order of recruitment, appointment and promotions of National and non-partism Uganda People's Defence Forces be made,
- (x) That all military of defence/UPDF assets including motor vehicles and all military references under the title of Resistance Army be declared unconstitutional and ordered to revert to Uganda Peoples' Defence Force,
- (xi) Appointments and promotions effected after the polmulgation (*Sic*) of the Constitution of Uganda without the authorisation of Parliament contrary to Art 210(b) of the Constitution of the Republic of Uganda be declared unconstitutional and reversed,
- (xii) That fighting of UPDF outside Uganda's territorial boundaries without the authority of Parliament contrary to

Art 210 of the Constitution of Uganda be declared unconstitutional, null and void and prohibited,

- (xiii) That the errand of officials of government be penalised, and
- (xiv) That the errand Uganda Government be terminated and/or suspended because of the gross Constitutional violations and an Order For Fresh Elections of the President of the Republic of Uganda be made and sealed.

The petitioner prayed for the award of general damages arising out of the Government's breach of the Constitutional provisions and costs of the petition.

In answer to the petition, the Attorney General contended:

1. That the petition was time barred,
2. The petition was frivolous, vexatious, incompetent, disclosed no cause of action and was an abuse of process of this honourable Court,
3. The National Freedom Party mentioned in the Paragraph 1 of the petition and thereafter was not known nor was it duly described in the petition and the respondent averred that petition is incompetent,
4. In response to paragraph 2 and 3 of the petition the respondent denied any breaches of the constitutional provisions and averred that contrary to what was stated in paragraph 3 thereof the current Constitution of Uganda came into force on 8th October, 1995 and not on 22nd September, 1995 as alleged therein,
5. In response to paragraph 4 (i) and (ii) of the petition the respondent averred that the National Resistance Movement Government ceased to exist in 1996 after the Presidential and Parliamentary elections of May and June, 1996 respectively and thereafter the Government envisaged under the Constitution took over power. The respondent furthermore averred that the Secretariat of the Movement was legally in existence as is clearly indicated in Section 4(2)(b) of Annex "B" to the petition,

6. In answer to paragraph 4(ii) (b) of the petition the respondent averred that the allegations of corruption, embezzlement and theft were not matters for determination by this honourable court and the petitioner should lodge his complaint and grievance in respect thereof to appropriate law enforcement agencies for appropriate action,
7. In response to paragraph 4(iii) of the petition the respondent averred that the 1995 Constitution, which is the Supreme Law of Uganda, mandated Parliament to make all Laws for Uganda. It is the very Parliament constituted in accordance with the constitutional provisions that seriously considered the Movement Bill and passed it into law as the Movement Act. Therefore the allegations by the petitioner that the Movement Act is unconstitutional were baseless,
8. Paragraph 4 (iv) of the petition was not admitted and the respondent averred that the Movement Act is not segregative and does not exclude anyone from representation and participation in positions of Leadership in Uganda,
9. In response to paragraphs 4 (v) and (vi) of the petition the respondent averred that all Ugandans have a right to participate in the conduct of the affairs of Uganda and everyone including the petitioner has always been and is free to compete for positions of power under the Constitution. The allegation that the Movement system of Government is exclusive, segregative, monolithic and an instrument of one party rule was therefore baseless,
10. In response to paragraph 4(vii) the respondent averred that the allegation contained therein was baseless. That Government can only acquire land in accordance with the provisions of the law. The respondent further averred that in the event that the Government acquires land to the displeasure of anybody, which it has not done, the appropriate remedy is not by seeking the interpretation of the constitution but seeking remedies through appropriate courts of law,
11. In response to paragraph 4 (viii) of the petition the respondent averred that the issue raised therein of the spraying the water hyacinth is not one that requires

interpretation of the Constitution. Furthermore, that the allegation contained therein was incorrect,

12. In response to paragraph 4 (ix) and (x) the respondent denied that the Government had encouraged civil strife, insecurity and wars among Ugandans or that it is monolithically oriented, partisan and its army officers were recruited unconstitutionally. The respondent averred that the allegations were incorrect and baseless,
13. In response to paragraph 4 (xi) the respondent averred that it is not the labels on the vehicles which necessarily depict the legal ownership of the vehicles especially where the name of the army and the legal status of all property belonging to it is conferred by law. The said ground of petition was therefore frivolous and misconceived,
14. In response to paragraph 4 (xii) and (xiii) the respondent averred that the Government had never insisted on fighting any war. That any war that the Government has been engaged in is for the defence and protection of Uganda as it is constitutionally mandated to do, and
15. In response to paragraph 4 (xiv) the respondent repeated the contents of paragraph 1 herein and further denied the alleged/perceived political persecution of the petitioner. The respondent averred that the petition was improperly before the court, was incompetent, disclosed no cause of action and therefore the declarations sought therein should not be granted.

When the petition came up for trial, Mr. Nasa Tumwesige, made five preliminary points of objection. In the first objection it was submitted that the petition was not properly before the court to the extent that it is partly brought on behalf of the Petitioner himself and on behalf of what the petitioner referred to as “**the oppressed National Freedom Party (NFP) members and other affected Ugandans**”. It was submitted that the petitioner was not entitled to bring the petition on behalf of the unknown members of his party and the other unspecified “**affected Ugandans**” without their authority or leave of the court to bring a representative action. Secondly the petition was time barred. Thirdly, it was frivolous and vexatious and disclosed no cause of action. The fourth

objection was that the petition was incompetent because it was not supported by evidence; and lastly, that some of the reliefs sought did not belong to this court.

It was submitted in the first ground of objection that the petition in its present form does not establish a legal relationship between the petitioner and the National Freedom Party and the **“affected Ugandans”** and that there is no evidence that the petitioner has the authority from the National Freedom Party and **“the other affected Ugandans”** to bring a representative action. It was pointed out by Counsel that it has not been shown that the National Freedom Party qualifies to be regarded as a **“group”** under Art 50(2) of the Constitution.

Learned Counsel further pointed out that the status of National Freedom Party is not known and whether it qualifies as a group to enforce collective group’s human rights action. Reliance was placed on Order 1 r 8 of the Civil Procedure Rules which is applicable to this court by virtue of **Rule 13(1) of Legal Notice No. 4 of 1996 and the cases of Sonko and others v Halona and Another (1971) E.A 443; Michael Otim v Wilberforce Okula M B No. 181 of 1968, and Constitutional Petition No. 11 of 1997 Dr. James Rwanyarare and Another v The Attorney General.**

Learned Counsel pointed out that the reasons for the first objection related to the question of costs. In the event of the petition being rejected with costs to the respondent which the petitioner was unable to meet, then the respondent would not be able to recover the costs from the unknown NFP members and the unspecified **“affected Ugandans”** purportedly represented by the petitioner. Counsel also pointed out that there would be nothing to prevent the other members of NFP and the **“other affected Ugandans”** from bringing similar petitions in future. He therefore prayed that the petition brought on behalf of other members of NFP and the **“other affected Ugandans”** be struck out. That would leave the petitioner the sole petitioner.

It was conceded by the petitioner that (i) he did not attach the names of members of his party and also the list of the **“other affected Ugandans”** he purported to represent to the petition; (ii) he did not apply for leave of the court to bring the representative action. He said that he was advised by his advocates that that was not necessary by virtue of Rule 3 (7) of Legal Notice No. 4 of 1996; (iii) his party was not registered as political parties cannot be

registered. He however said that his party was registered and was in existence at the time the Constitution came into force and consequently it continued to exist by virtue of Art 270 of the Constitution. He also conceded that he did not disclose the status of his party in the petition.

Under Order 1 r 8(1) of the Civil Procedure Rules, a person may bring a representative action with the leave of the court. It would have been at that stage of seeking leave that the petitioner would have disclosed the identity of those to be represented and whether he had their blessing to do so. We do not accept as correct the legal advice given to the petitioner by his alleged legal advisers that Rule 3 r 7 of Legal Notice No. 4 of 1996 makes the application for leave and the disclosure of identity of those to be represented unnecessary. The sub-rule requires the petition to be accompanied by a list of documents on which the petitioner intends to rely. That list would have included a list of the names of members of the party and the “**Other affected Ugandans**” he purported to represent and the leave given to bring the representative action. We agreed with Counsel for the respondent that the petitioner acted unlawfully in bringing the representative action as he did. He could only bring the petition on his own behalf. The groups’ petition is accordingly incompetent. See **Constitutional Petition No. 11 of 1997: Dr. James Rwanyarare & Another vs Attorney General (Supra)**.

The second point of objection was that the petition was incompetent as it is time barred in so far as it relates to the alleged continued existence of NRM and the passing of the Movement Act, respectively, because under Rule 4(1) of the **Modification to the Fundamental Rights and Freedoms (Enforcement Procedure) Rules, 1992. Directions 1996, Legal Notice No. 4 of 1996**, Constitutional Petitions to this court must be lodged in the Registry of this court within 30 days of the occurrence of the breach complained of. The petitioner is complaining of illegal acts by the present Government since the coming into force of the Constitution. The Constitution was promulgated on the 8/10/95 and not 22nd September 1995 as alleged by the petitioner. The present Government came into being on the 6th of July 1996. The movement Act was passed on the 16th August 1997. Accepting, as we do, that the petition challenges, in part, the alleged continued existence of NRM, then it ought to have been brought within 30 days when the present Government came into being, that is to say,

30 days from 6th July 1996, which comes to about the 7th August 1996. The petition in this case was filed on 6th January, 1998. It follows that that part of the petition is time barred.

As regards the challenge to the Movement Act, the petition ought to have been filed, at latest, 30 days from the 16th August, 1997, which comes to about the middle of September 1997. It follows that that part of the petition that challenges the Movement Act is time barred.

We were not persuaded by the argument of the petitioner that he could not file the petition in time because he was under disability as a result of political persecution. The petitioner does not state the form of the alleged political persecution, when it started and when it ended.

The third ground of the objection is that the petition is frivolous and vexatious as it does not disclose a cause of action. Ground 4(1) of the petition complains that the present Government is unconstitutional. It was submitted by learned counsel for respondent that the existence of Government is a question of law. The NRM Government ceased to exist after 6th July 1996, yet the petitioner seems to suggest that the NRM Government continues to exist even after the general elections. That was the reason for saying that the petitioner's claim that the NRM Government still exists is frivolous.

Again in 4(ii) (b) the petitioner complains that officials of the Government have committed grave acts of corruption, embezzlement and theft of colossal sums of money, yet he does not name the officials involved and what proof he has of such serious allegations. The complaint in ground 4(iv) is about recruitment and promotion of officers and men of Uganda People's Defence Force when Parliament had not enacted laws regulating such exercise. It was the submission of learned counsel that recruitment and promotion of officers and men of Uganda Peoples Defence Force are regulated by Statute i.e. The National Resistance Army Statute, 1992 Statute No. 3. It follows that that allegation is baseless. There is also an allegation contained in ground 4(xiii) that the Government has made Uganda Army to fight across the boarder when the function of the Army, among others, is to preserve and defend the Government and territorial integrity of Uganda. It was submitted that since the allegation was based on

press reports, it was hearsay. For the above reasons it was the submission by learned counsel that the petition is frivolous and vexatious and should be struck out.

The court has power to dismiss or strike out actions which are altogether frivolous and vexatious. The power seems to be inherent in the jurisdiction of every court of justice to protect itself from abuse of its process. See: Metropolitan Bank v Pooley (1884 – 85) 10 A C 210 AT 214. An action which the Plaintiff clearly cannot prove and which is without any solid basis, may be struck out under the inherent jurisdiction of the court as frivolous and vexatious. Thus, the House of Lords dismissed an action which appeared to have been brought for the trial of a hypothetical case: See: Glasgow Navigation Co. v Iron Ore Co. [1910] A C 293.

In the instant petition, there is an allegation that the NRM Government is still in existence.

Art 263(1) of the Constitution is clear on the matter. It provides

“Art 263(1) Notwithstanding anything in this Constitution, the Government of the National Resistance Movement existing immediately before the coming into force of this Constitution, in this Chapter referred to as *“the NRM Government”*

shall –

(a) continue in office until a new government is elected in accordance with the Constitution”.

In conformity with the provisions of this Article, there has been a Presidential election in which the petitioner was a participant and parliamentary elections. The new Government took office on 6/7/96 when the cabinet was sworn in. The NRM Government therefore automatically ceased to exist from that day. This is a matter that is known to the petitioner. Consequently when you find a petition in which the petitioner is alleging that the NRM Government is still in existence with full knowledge that the NRM Government ceased to exist after the Presidential and Parliamentary elections and that these occurred some time in May and June 1996 before the petition was brought, in our view if that is not frivolous and vexatious and annoying, it is difficult to see what it is.

This leads us to ground four of the objection, which alleges that the petition is not supported by evidence. It was submitted that there are no

facts and instances where the alleged breaches of the Constitution occurred. The petitioner, on the other hand, has submitted that the petition is supported by sufficient evidence. According to him, the evidence is contained in the list of documents he wished to rely upon but did not attach them to the petition.

Rule 12(1) of Legal Notice 4 of 1996 provides:

“Rule 12(1) all evidence at the trial in favour of or against the petition shall be by way of affidavit read in open court.”

It is plain from the provision of the rule that all the evidence in support of a petition must be contained in the supporting affidavit. The petitioner should have complied with the above provision which is mandatory.

To appreciate the force in that ground, perhaps, it would be necessary to reproduce the relevant parts of the petitioner’s affidavit. These are:-

- “2. That the 1995 Constitution of the Republic of Uganda came into force on the 22nd day of September 1995, wherefore, the new Government was elected and took office on the 6th day of July 1997,**
- 3. That ever since the new Government came into office it has grossly breached and gravely violated, interalia, Articles 263, 70, 36, 75, 237, 26, 245, 39, 208, 210 and 209 of the Constitution of the Republic of Uganda 1995 as rightly brought out in my petition,**
- 4. That I have often, warned Uganda Government not to violate the Constitution including giving the Respondent notices of intention to sue government but the Government adamantly refused and/or neglected to do so,**
- 5. That I verily and honestly believe and confirm that the acts I have petitioned against were and are unconstitutionally committed by the current Government as a result of being contrary with Articles 263, 70, 36, 75, 237, 26, 245, 39, 208, 210 and 209 of the Constitution of Uganda, 1995 and as**

such they are null and void and a violation of my and other Ugandans', Constitutional rights as guaranteed by the same Constitution,

- 6. That as a result of this violation, myself, together with several other Ugandans have suffered humiliation traumatic and lugubrious agony and misery through loss of millions of lives, trillions of shillings worth of properties and abject poverty, and**
- 7. That I could not file my petitions immediately after service of Statutory Notice to the Attorney General because of political persecution and lack of assent of the Movement Act."**

We agree with Mr. Tumwesige that it is impossible to conceive anything more shadowy and unsatisfactory than the affidavit in support of the petition. It does not show how and when the alleged violations of the provisions of the Constitution took place. It does not contain facts and instances, as might easily have been done, if the allegations were true, by which the allegations could be proved in this court or in any other courts. In our view the story told in the affidavit is a myth and has no substantial foundation.

The petition presents to our minds issues of improbabilities which are incapable of proof for lack of supporting evidence. We agree with the learned Director of Civil Litigation, that the petition is incompetent. See: **Dow Hager Lawrance v Lord Morreys & Another [1890] 15 AC 216.**

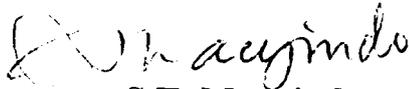
The fifth objection is that the majority of the matters in the petition are not for this court, in so far as, they do not require interpretation of any provision of the Constitution.

We agree. For example, the allegation in ground 4(ii)(b) is that several NRM officials have committed grave acts of corruption and have embezzled large sums of money. This is a matter fit for Criminal investigation. Such a complaint, if true, ought to have been reported to either the CID or the IGG. Again ground 4(v) complains that some groups and parties have been excluded from the movement. In our view if any member of the public or group or party feels that he/she or it has been unlawfully excluded from the movement system, he/she or it is

entitled to bring an action before any competent court for the enforcement of his right to be in the movement. Indeed most of the matters in the petition can best be aired on a “Soap box” at the Constitution Square. The petitioner conceded that some of the matters are for enforcement of Constitutional rights, whilst some were not supported by evidence. There is merit in that ground.

In the final analysis, we came to the conclusion that the petition was a piece of useless litigation and an abuse of the court’s process, which, in our opinion ought not to be encouraged. It was for these reasons that we upheld the objections and struck out the petition with costs to the respondent.

Dated at Kampala this.....4th.....day of.....June,.....1998.



S.T. Manyindo
DEPUTY CHIEF JUSTICE.



C.M. Kato
JUSTICE OF APPEAL.



G.M. Okello
JUSTICE OF APPEAL.



J.P. Berko
JUSTICE OF APPEAL.



A. Twinomujuni
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