

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CORAM: HON. LADY JUSTICE L.E MUKASA-KIKONYOGO, DCJ
HON. LADY JUSTICE A.E.N. MPAGI-BAHIGEINE, J.A.
HON. JUSTICE S.G. ENGWAU, J.A.
HON. JUSTICE A. TWINOMUJUNI, J.A.
HON. LADY JUSTICE C.N.B. KITUMBA, J.A.

CONSTITUTIONAL PETITION NO. 5 OF 2000

ALENYO GEORGE WILLIAM.....PETITIONER

V E R S U S

- 1. THE ATTORNEY GENERAL
- 2. THE LAW COUNCIL
- 3. JULIET NASUNA.....RESPONDENTS

RULING OF THE COURT

The petitioner who is an enrolled and practising advocate in Uganda filed this petition against the Attorney General and two others alleging in paragraph three thereof as follows:

“(a)(i)On the 14th February 2000 your petitioner secured premises on Uganda House for a law firm and applied for its inspection. As per Appendix “A” attached herewith.

For a period of 6 months Between 14th February 2000 and 7th July 2000 the Law Council “discriminated” against your petitioner and inspected several other law firms which had even applied later leaving out the petitioner’s chambers.

During which 6 months period your petitioner’s application was neither attended to nor given any consideration until 6 months later.

(ii) Your petitioner shall aver and contended that the above actions of the Law Council are inconsistent with and violated your petitioner’s right under Article 21 (1) and (2) of the Constitution.

(b)(i) On the 15th February 2000, following your petitioners application for enrolment as a Commissioner for Oaths, the Ag. Chief Registrar wrote to the Law Council for comments on your petitioner. See Appendix “B” here attached.

That despite several reminder the Law Council had by 7th July 2000 never written to the Ag. Chief Registrar.

(ii) Your petitioner avers that the above long silence to reply is inconsistent with and violated his right to

practice his profession under Article 40(2) of the Constitution.

- (c)(i) On the 7th July 2000 after 6 months, your petitioner received a letter herewith attached marked Appendix "C" declining to inspect your petitioners Law firm. Your petitioner was neither invited nor requested to be heard before this decision affecting him was reached.
- (ii) Your petitioner avers that by the Law Council; not hearing him before determining his fate, the Law Council's acts are inconsistent with and violated articles 28(1) and 44(c) of the Constitution.
- (d)(i) Since the 24th July 2000 your petitioner has been asking for the records, proceedings and minutes of the Law Council pertaining to the said decision. See Appendix "D" here attached.

The Law Council has declined to avail the said records to date.

- (ii) Your petitioner further avers that the said continued withholding of the said information violates your petitioner's rights to seek

administrative or Judicial rights in court of law as enshrined in Article 42 of the Constitution.”

The petition is supported by the affidavit of the petitioner deposed to on the 4th August 2000.

When the petition came up for hearing, Mr. Joseph Matsiko the Learned Senior State Attorney who represented the respondents raised a preliminary objection against the petition. He contended that the petition was incompetent because it does not seek interpretation of the constitution but seeks enforcement of rights and freedoms allegedly infringed by the respondents. He pointed out that the petitioner himself had conceded this point in his reply to the answer to the petition when he stated that:

“this petition is not for Constitutional Interpretation rather it is a petition for declaration as to whether the acts of the Law Council violated any of the mentioned petitioner’s constitutional rights.”

He pointed out further that the petition itself stated in paragraph five that the petition was brought under Article 50 of the Constitution and yet this court has held again and again that it had no jurisdiction to entertain actions filed under that article. He cited the cases of Dr. James Rwanyarare and Another vs. Attorney General, Constitutional Petition No.11 of 1997 (CA)(unreported) and Kabagambe vs. U.E.B. Constitutional Petition No.2 of 1999 (CA)(unreported) to support his argument that this court ha

no jurisdiction to entertain this petition. Mr. Matsiko requested the court to dismiss the petition with costs to the respondents.

Mr. Arthur Katongole who represented the petitioner, in reply submitted that this court had jurisdiction to entertain the petition. He sought to distinguish on facts the cases of Dr. Rwanyarare (supra) and Kabagambe (supra).

In his view, there was no specific allegations in those cases that specified acts of the respondent had contravened the constitution as is alleged in the instant petition. Moreover in the Kabagambe case, there was another court (the High Court) where it could have been filed which is not the case in the instant petition. He invited the court to reject the objection to the petition and to order the hearing of the same to proceed. Mr. Matsiko retorted that this was a case of enforcement of rights and could have been filed in the High Court in an action for mandamus and this court was the wrong place for it.

It is now trite that the jurisdiction of this court is exclusively derived from Article 137 of the Constitution. In the Supreme Court case of Ismail Serugo vs. Kampala City Council and Another Constitutional Appeal No 2 of 1988. It was held as per Mulenga J.S.C. that: -

“Although there are a number of issues in that case (Attorney General vs. Tinyefunza Constitutional Appeal No.1/99) decided on the basis of majority view, it is evident from proper reading of the seven judgments in that case, that it was the unanimous holding of the court

that the jurisdiction of the Constitutional Court was exclusively derived from Article 137 of the Constitution. It was not a holding in any of the judgments that Article 50 of the Constitution confers on the Constitutional Court, any additional and/or separate jurisdiction to enforce the rights and freedoms guaranteed under the Constitution. It seems to me that what Mr. Mbabazi may have misconstrued is the holding.... that the Constitutional Court was a "Competent Court" for the purpose of Article 50 to which an application (for redress) may be made when such a right or freedom is infringed or threatened. It must be noted, however, that this holding is subject to a rider..... to the effect that such application for redress can be made to the Constitutional Court, only in the context of a petition under Article 137 brought principally for Interpretation of the Constitution."

Article 137(1) provides: -

"Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court."

The Constitution does not define the word "Interpretation". However, Article 137(3) gives a clear indication of what the word means. It states:

“137(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.”

We hold the view that the allegations made to the Constitutional Court, if they are in conformity with Article 137(3), give rise to the interpretation of the Constitution and the Court has the jurisdiction to entertain them.

In the instant petition, the petitioner alleges that the Law Council is guilty of commissions and omissions, which are inconsistent with or in contravention of the Constitution. He has petitioned this court for a declaration to that effect. In our judgment these are the type of actions envisaged by Article 137(3)(b). He is not stating as a fact that he has a definite right that should be enforced. He is alleging that the conduct of the Law Council has violated his rights guaranteed by specified provisions of the Constitution and this Court should so declare. In order to do that the Court must determine the meaning of the specified provisions of the Constitution allegedly violated and whether the conduct complained of has actually violated those provisions. The carrying out of that exercise by the Court is an interpretation of the Constitution. It is not an enforcement of rights and

freedoms. The Court is being called upon to interpret the Constitution. It can make a declaration and stop there or it can grant redress if appropriate. Whether the alleged acts and omissions of the Law Council contravene or are inconsistent with the Constitution is not relevant to the issue of jurisdiction. It is what the Court is called upon to investigate and determine after it has assumed jurisdiction. It is not relevant either, that there is a remedy available to the petition somewhere else. That alone cannot deprive the Court of the jurisdiction specifically conferred on it by Article 137.

We are aware that the petition states in section five thereof that the petition is brought under Article 50 of the Constitution. But at the top of the petition it also states that the petition is brought under Articles 50 and 137. As can be seen from the above quoted judgment of Mulenga J.S.C. in the Serugo case this court can give redress in the process and within the context of interpretation under Article 137. It would have been different if the petition was based on Article 50 alone.

We are also mindful of the fact that the petitioner states in the reply to the respondents answer to the petitioner that:

“this petition is not for Constitutional Interpretation rather it is a petition for a declaration as to whether the acts of the Law Council violated any of the mentioned petitioner’s Constitutional rights.”

This statement alone does not deprive this court of the jurisdiction conferred by Article 137. The process of making a declaration whether the acts of the

Law Council violated the petitioner's Constitution rights involves Constitutional Interpretation.

We have also considered the cases of Rwanyarare and Another vs. Attorney General (supra) and Kabagambe vs. U.E.B. (supra) which were relied upon by Mr. Matsiko in support of the proposition that this petition is incompetent. The Rwanyarare case is distinguishable from the instant case because in that case, there was no allegation that any person or authority had done or failed to do anything inconsistent or in contravention of any specified provisions of the Constitution.

Secondly, the Court dismissed the petition because it included matters under Article 50 of the Constitution. The Court was then of the view that it could only handle such matters by way of reference made under Article 137(5) of the Constitution because it was not a competent court within the meaning of Article 129. However, the Supreme Court has since held in the case of Serugo (supra) that: -

- (a) The Constitutional Court is a competent court within the meaning of Article 129 of the Constitution.
- (b) In the process of Constitutional Interpretation under Article 137 the court can deal with matters of redress and compensation which are matters of enforcement of rights under Article 50 if the court deems it appropriate.

In our view, the particular point in the decision in the Rwanyarare case which Mr. Matsiko sought to rely upon had already been overruled by the Supreme Court and is no longer good law.

The Kabagambe case is also distinguishable from this case. The Constitutional Court was of the view, that it was a disguised case of wrongful dismissal and would be better handled by a competent court under Article 50 and 129. This petition is specific. It alleges that the Law Council has acted in a manner inconsistent with specified articles of the Constitution. It is seeking a declaration to that effect. That is well within Article 137(3)(b). This court has the jurisdiction to entertain it. The preliminary objection is therefore overruled and dismissed with costs to the petitioner.

Dated at Kampala this 29th.....day of June 2001

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L.E. Mukasa Kikonyogo
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Hon. Lady Justice L.E. Mukasa Kikonyogo
DEPUTY CHIEF JUSTICE

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Hon. Lady Justice A.E.N. Mpagi-Bahigeine
JUSTICE OF APPEAL

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S.G. Engwau
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Hon. Justice S.G. Engwau
JUSTICE OF APPEAL

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A. Iwinomujuni
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Hon. Justice A. Iwinomujuni
JUSTICE OF APPEAL

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C.N.B. Kitumba
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Hon. Lady Justice C.N.B. Kitumba
JUSTICE OF APPEAL

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HON. JUSTICE A. TWINOMUJUNI, JA

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HON. LADY JUSTICE C.N.B. KITUMBA, JA.

CONSTITUTIONAL PETITION NO.5 OF 2000

ALENYO GEORGE WILLIAM::::::::::::::::::::: PETITIONER

VERSUS

1. THE ATTORNEY GENERAL

2. THE LAW COUNCIL

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3. JULIET NASUNA ::::::::::::::::::::::: RESPONDENTS

RULING OF A.E. MPAGI-BAHIGEINE, JA.

(dissenting)

I have read in draft the ruling of the majority of the court. While I
profoundly respect their Lordships' opinion, I find great difficulty in
agreeing with it. The petitioner is complaining about the Law Council's
30 non-compliance with the provisions of the Advocate's Act, resulting in
violation of his constitutional rights guaranteed by Articles 21 (1) and (2);
28 (1), 40 (2), 41 (1), 42 and 44 (c) of the Constitution.

The Law Council whose conduct or misconduct is the subject of this petition is a creature of the Advocates Act (Cap 22/1970). This Act sets out the functions of the Law Council concerning the general supervision and control of the professional legal education in Uganda. The Act similarly provides for an appeal to the High Court by an advocate aggrieved by any decision of the Law Council, through the Disciplinary Committee.

I am of the opinion therefore that the Law Council's failure to act or perform its functions under the Act cannot be said to be "not a clear-cut" case so as not to indicate in which court to seek redress as alleged by Arthur Mr. Katongole.

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Most importantly, the last paragraph of the petition reads:

"5. Your petitioner brings this petition by virtue of the provisions of Article 50 of the Constitution of the Republic of Uganda."

Mr. Alenyo clearly reiterates throughout his pleadings that he is not seeking an interpretation of the Constitution, but only a declaration and redress.

I think it has been settled in Constitutional Petition No.2/1999 Charles Kabagambe vs U.E.B. thus:

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" It follows that a person who seeks to enforce a right or freedom guaranteed under the Constitution, but whose claim does not call for interpretation of the Constitution, has to apply to any other competent court.

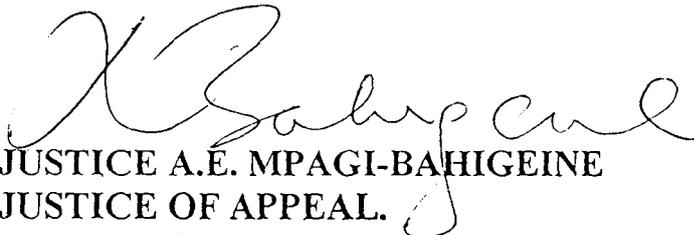
The Constitutional court is competent for that purpose only upon determination of a petition under Article 137 (3)."

This means, therefore, that a declaration and redress can only be granted by this court where appropriate when a matter is brought before it for interpretation. I do not think there can be a declaration without interpretation.

I would uphold the objections to the petition raised by the respondent and dismiss the petition with costs.

Dated at Kampala this 29th day of June 2001

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JUSTICE A.E. MPAGI-BAHIGEINE
JUSTICE OF APPEAL.