

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CORAM: HON LADY JUSTICE A.E.N. MPAGI-BAHIGEINE, JA  
HON MR JUSTICE S.G. ENGWAU, JA.  
HON MR JUSTICE A. TWINOMUJUNI, JA  
HON LADY JUSTICE C.N.B. KITUMBA, JA  
HON LADY JUSTICE C.K. BYAMUGISHA, JA

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CONSTITUTIONAL PETITION NO.4 OF 2004

- 1. S.P. OBOOTH
- 2. WEYRE SAM HIBINGA ::: PETITIONERS

VERSUS

THE ATTORNEY GENERAL ::: RESPONDENT

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JUDGMENT OF THE COURT

The petitioners, S.P. Oboth, the Chief Administrative Officer (CAO), Tororo and Weyre Sam Hibinga, a Councillor, Tororo District Local Council, filed this petition challenging the constitutionality of section 8 (1) of the Public Finance and Accountability Act, No.6 of 2003, as being inconsistent with and contravening article 188 (2) of the Constitution.

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They also challenged the act of the Permanent Secretary/Secretary to the Treasury in appointing a Senior Assistant Secretary/Senior Assistant Chief Administrative Officer one Julius Ogema the Accounting Officer of Tororo District, thus contravening article 188 (2) of the Constitution.

The petition was supported by the affidavits of both petitioners.

The respondent filed an answer to the petition supported by an affidavit deposed by Ms Angella Kiryabwire Kanyima, Principal State Attorney, in which it was denied that section 8 (1) of the Public Finance and Accountability Act 6 of 2003 is inconsistent with article 188 (2) of the Constitution as alleged and also denied that the act of the Permanent Secretary/Secretary to the Treasury in appointing Julius Ogema as Accounts Officer of Tororo District is unconstitutional.

When the petition was placed before us for hearing counsel for respondent, Mrs Ketrah Katunguka, Principal State Attorney, conceded the following:

1. That section 8 (1) of the Public Finance and Accountability Act 2003 is inconsistent with and contravenes article 188 (2) of the Constitution;
2. That the Accounting Officer of the District must be the Chief Administrative Officer as appointed by the District Service Commission.

She, however, indicated to us that 'positive' steps were being taken to rectify the disharmony through the Government White paper, Chapter 30 item 30.2. She thus asked the court to stay the proceedings until the Constitutional amendment exercise is completed.

In the alternative but without prejudice to the foregoing, she submitted that should the court find it necessary to make declarations at this point in time, the following should be taken into consideration:

1. Government is taking steps to harmonise the situation.
2. Government has not wasted court's time in unnecessary lengthy litigations.

3. This is a matter of great public interest and concern so that in exercising its discretion judiciously, the court should order each party to bear its own costs.

In response, Mr Ojakol learned counsel, for the petitioners expressed surprise for the bold stand taken by the respondent when they contested the petition inspite of the Solicitor General's opinion as reflected in Annextures "D" to the petition and "A" to the affidavit of the 2<sup>nd</sup> petitioner, which indicated that the act of the Permanent Secretary/Secretary to the Treasury was unconstitutional.

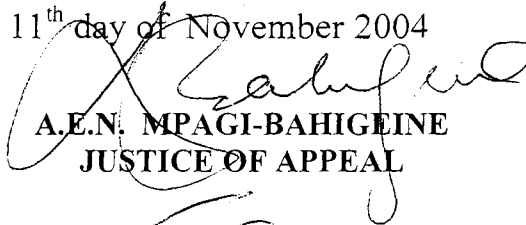
He prayed court to grant the declarations sought in view of the concessions made by the respondent with costs.

We find that in view of the concessions made by counsel for the respondent the following declarations have to be made:


1. That section 8 (1) of the Public Finance and Accountability Act No.6 of 2003 which gives the Secretary to the Treasury discretion to appoint/designate an officer other than the Chief Administrative Officer as the accounting officer for the District is inconsistent with and contravenes article 188 (2) of the Constitution.
2. That the act of the Permanent Secretary/Secretary to the Treasury in appointing another officer other than the Chief Administrative Officer as the accounting officer for Tororo District is inconsistent with and contravenes article 188 (2) of the Constitution.


3. We award costs of the petition to the petitioners as prayed.

Dated at Kampala this 11<sup>th</sup> day of November 2004

  
A.E.N. MPAGI-BAHIGINE  
JUSTICE OF APPEAL

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S.G. ENGWAU  
JUSTICE OF APPEAL

  
A. TWESOHU  
JUSTICE OF APPEAL

  
C.N.B. KITUMBA  
JUSTICE OF APPEAL

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C.K. BYAMUGISHA  
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