**THE REPUBLIC OF UGANDA**

**CONSTITUTIONAL PETITION NO. 7 OF 2005**

(Application arising from High Court Case No. 0013 of 2002)

**CONSTITUTIONAL COURT (MUKASA - KIKONYOGO, DCJ, OKELLO, TWINOMUJUNI, KITUMBA, BYAMUGISHA, JJ.A**

**CHARLES HARRY TWAGIRA;;;;;;;;;;;;;;;;;;;;;;;;;APPELLANT**

 **VERSE**

**THE ATTORNEY GENERAL;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;DEFENDENT**

*Constitutional Petitions—Constitutional rights—Right to fair hearing—Factors determining whether fair hearing has been conducted or that there was violation of right to fair hearing*

*Constitutional Petitions*—*Challenging procedural step—Finding of case to answer*— *Whether it requires constitutional interpretation*

The petitioner was arrested, charged and prosecuted in the Chief Magistrate's Court of embezzlement and theft by agent contrary to Sections 268 (b) and 271 of the Penal Code Act. The Chief Magistrate found that a prima facie case had been made out. His accounts were subsequently frozen. He did not make defence and instead filed this petition.

This petition was brought under Article 137 (3) (b) of the Constitution of the Republic of Uganda, 1995 and the Constitutional Court (Petitions and References) Rules under Statutory Instrument No. 91 of 2005 seeking the following declarations;

1. That charging and prosecuting the petitioner in the Chief Magistrate’s Court for offences of embezzlement and theft by agent under Section 268 (b) and 271 of the Penal Code Act respectively was malicious, not meant to promote criminal law but to achieve personal claims of individuals and was inconsistent with the principle of fair hearing guaranteed in Articles 28 (1), 28 (7) and (12), and 120 (5) of the Constitution.
2. That findings by the trial Chief Magistrate that a prima facie case had been made out against the petitioner on both counts was inconsistent with the right to a fair hearing guaranteed by Article 28 (1) of the Constitution.
3. The freezing of the petitioner’s personal bank accounts during the subsistence of those charges constituted torture, cruel, inhuman and degrading treatment or punishment and was inconsistent with Article 24 of the Constitution.

The petitioner also sought the following redresses;

1. An order to prohibit the continuation of the criminal proceedings in the criminal case against him.
2. An order quashing the proceedings in the said criminal case.
3. General damages for malicious prosecution to be assessed by the High Court
4. Costs of the petition to be paid by the respondent

At the scheduling conference in the Constitutional Court, the following issues werel

agreed upon by both parties, namely;

1. Whether the charging and continued prosecution of the petitioner for the offences above mentioned was inconsistent with Articles 28 (1), 28 (7), 28 (12) and 120(5) of the constitution
2. Whether the findings by the trial Chief Magistrate were inconsistent with Article 28 (1) of the Constitution
3. Whether the freezing of the petitioner’s assets pending completion of the trial was inconsistent with Article 24 of the Constitution
4. Whether the petitioner was entitled to the reliefs sought

**HELD:**

1. To determine whether a fair hearing has been conducted or that there was a violation of the right to a fair hearing, the proceedings must first be completed, that is to say; the prosecution and defense must conclude their cases and the Court makes a decision on the matter.
2. The matters complained of were neither determined nor sentences therefore prescribed by law. A finding by the trial Court of a case to answer can only be challenged in the appellate Court. It does not require constitutional interpretation. In this case, if the petitioner was aggrieved by the order, he was free to apply for its review. There was nothing unconstitutional in the Court making that order of restriction pending the completion of the petitioner's trial.

*Petition dismissed with costs.*

*Dated at Kampala this 31st day of October 2006*

*Mukasa- Kikonyogo ,DCJ*

*Okello ,JA*

*Twinomujuni JA*

*Kitumba,JA*

 *Byamugisha,JA*

**Legislation considered:**

The Constitution of the Republic of Uganda, 1995, Articles 24, 28 (1), 28 (7), 28 (12),

120 (5), 137 (3) (b)

Magistrates Court Act, Cap 16, Section 204 (a)

Penal Code Act, Cap 106, Sections 268 (b), 271

**Cases cited:**

Barbara and 2 Others Vs Spain, Application No. 10590/8311 - European

Macharia and Another Vs Attorney General (200) LLR 1883

**Other legal materials referred to:**

Criminal Procedure and Law in Uganda, by Francis Ayume

The European Convention for the Protection of Human Rights, article 6(1)