REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

***[CORAM: TUMWESIGYE; KISAAKYE; ARACH-AMOKO; NSHIMYE; MWANGUSYA; OPIO-AWERI; & TIBATEMWA-EKIRIKUBINZA, JJ.S.C.]***

**CONSTITUTIONAL APPEAL NO. 02 OF 2016**

**BETWEEN**

**THE ATTORNEY GENERAL:::::::::::::::::::] APPELLANT**

# AND

**GLADYS NAKIBUULE KISEKKA ::::::::::] RESPONDENT**

***[Appeal from the Judgment of Justices of the Constitutional Court (Kavuma, Ag. DCJ, Kasule, Mwondha, Bossa & Kakuru, JJA/JJC dated 22nd October 2014 in Constitutional Petition No. 55 of 2013]***

**JUDGMENT OF DR. KISAAKYE, JSC (DISSENTING)**

The Attorney General of Uganda filed this appeal against the Judgment of the Constitutional Court. The Court had declared as unconstitutional, the acts/conduct of the Judicial Service Commission of lifting judicial immunity and preferring charges for recalling a warrant of attachment against a Judicial Officer, Gladys Nakibuule, (hereinafter referred to as the respondent).

I have had the benefit of reading in draft the lead Judgment of my learned sister Tibatemwa-Ekirikubinza, JSC wherein she holds that this appeal should be allowed on ground that the Judicial Service Commission (hereinafter referred to as the Commission) had power to commence disciplinary proceedings against the respondent.

Other members on the Coram agree with her lead Judgment.

With all due respect to my learned colleagues, I am unable to concur with them. On the contrary, I find that the acts of the Commission of lifting the respondent’s immunity and preferring charges against her for a judicial act of recalling a warrant of attachment and sale contravened Article 128 (4) of the Constitution.

Before considering the submissions and merits of this appeal, it is necessary to provide a brief background to this appeal. On 29th May 2009, the respondent, who was working as Deputy Registrar of the Commercial Division of the High Court, issued a warrant of attachment and sale in *H.C.C.S No. 2006 of 2008: Asiimwe Diana Jackline v. Dr. Aggrey Kiyingi*.

On 27th August 2009, the respondent received a complaint from the law firm of MMAKS Advocates that some of the plots of land that she had included in the warrant of attachment belonged to their client and not to the judgment debtor. On the same day, the respondent recalled the warrant by letter as follows:

*“MMAKS Advocates*

*Masembe, Makubuya, Adriko*

*Karugaba, Ssekatawa.*

*KAMPALA*

*RE: KAMPALA HIGH COURT CIVIL SUIT NO. 266 OF 2008 ASIIMWE DIANA JACKLINE VS. AGGREY KIYINGI.*

1. *LRV 3931 FOLIO 24 PLOT 33 KYADONDO BLOCK 273 AT BUZIGA REG. PROP: AGGREY KIYINGI.*
2. *LRV 3931 FOLIO 24 PLOT 33 KYADONDO BLOCK 273 AT BUZIGA REG. PROP: AGGREY KIYINGI.*

*I refer to yours ref: 3948/VMS/908/2006 dated 27th August 2009.*

*I have noted the contents of your letter and to avoid unnecessary objector proceedings, given the developments, the Warrant of attachment and sale of the above property registered on the 25th June 2009 under instrument Nos. 414920 and 414921 is hereby recalled.*

*………………………………….*

*Gladys Nakibuule Kisekka*

*DEPUTY REGISTRAR”*

She copied the letter of recall to the Commissioner Land Registration; Makeera & Co. Advocates, and Quickway Auctioneers & Court Bailiffs.

On 31st May 2013, (after 3 years and 9 months), the judgment creditor filed a complaint against the respondent with the Commission. The complaint was in respect of the respondent’s decision to recall the warrant of attachment and sale. Upon receipt of the said complaint, the Commission notified the respondent and requested her to make a response, which she did. After examining the complaint and the response, the Commission determined that a prima facie case had been made against the respondent. On 13th September 2013, the Commission charged the respondent with three counts as per the following charge sheet.

*CHARGE SHEET*

*COUNT I*

*STATEMENT OF OFFENCE*

*Abusing Judicial Authority contrary to Regulation 23(m) of the Judicial Service Regulations 2005.*

*PARTICULARS OF OFFENCE.*

*Gladys Nakibuule Kiseka on the 17th day of August 2013 while working as a Deputy Registrar in the High Court (Commercial Division) you irregularly recalled an order of attachment and sale of some of Dr. Kiyingi’s properties in HCCS No. 266 of 2008 (Asiimwe Diana Jackline v. Dr. Aggrey Kiyingi) which you issued on 29th May 2009 which frustrated the execution process.*

*COUNT II*

*STATEMENT OF OFFENCE*

*Abusing Judicial Authority contrary to Regulation 23(m) of the Judicial Service Regulations 2005.*

*PARTICULARS OF OFFENCE.*

*Gladys Nakibuule Kiseka on the 17th day of August 2013 while working as a Deputy Registrar in the High Court (Commercial Division) you acted on a letter from MMAKS Advocates of 27th August 2009 (a third party) who had written to you to the effect that their client one Mohammed Sekatawa had bought the said properties on 3rd June 2006 and renewed the lease on 11th April 2008 which deprived the other party the right to be heard.*

*COUNT III*

*STATEMENT OF OFFENCE*

*Acting in contravention of the Code of Judicial Conduct, the Judicial Oath or any other oath taken by the judicial officer contrary to Regulation 23(j) of the Judicial Service Regulations 2005.*

*PARTICULARS OF OFFENCE.*

*Gladys Nakibuule Kiseka on the 17th day of August 2013 while working as a Deputy Registrar in the High Court (Commercial Division)* *you irregularly acted on claims of a third party when you investigated the objections contained in the letter instead of a proper application which act fell below the prerequisite to the performance of judicial office contrary to Principle 6.1 of the Uganda Code of Judicial Conduct.*

The Commission requested the respondent to take plea on the above charge sheet. It should be noted that while the charge sheet contains particulars indicating that the respondent recalled the warrant of Attachment on 17th August 2013, the Record of Appeal bears respondent’s letter of recall which has already been reproduced in this Judgment was actually dated 27th August 2009.

On 10th December 2013, the respondent filed Constitutional Petition No. 55 of 2013 under Article 137 of the Constitution. In her Petition, she alleged, among others, that several acts of the Commission contravened and/or were inconsistent with several cited Articles of the Constitution. The respondent prayed for eight declarations from the Constitutional Court. Out of these, only two of the declarations she sought are relevant to this appeal and were framed as follows:

1. *The act and/or conduct of the Commission of preferring charges against the petitioner in respect of acts/omissions involving the recall of a warrant, a common judicial practice which by itself does not constitute a criminal/disciplinary offence is inconsistent with and in contravention of Articles 2, 20, 28, 42, and 44 of the Constitution.*
2. *The act and/or conduct of the Commission of lifting the judicial immunity accorded to judicial officers and holding the Petitioner personally liable for judicial acts and/or omissions in the discharge of her judicial work is inconsistent with and in contravention of Articles 2, 20, 28, 42, 44, 128 (4), and 173 of the Constitution.*

The respondent also prayed for the following orders from the Constitutional Court.

1. *An order to quash and expunge from the public records the charges and Disciplinary Proceedings instituted by the Commission against the Petitioner;*
2. *An order staying the Commission’s interviews and recruitment process of judicial officers where your Petitioner is an eligible candidate until hearing and final determination of the Petition;*
3. *A permanent injunction against the Attorney General, the Commission, its Disciplinary Committee, agents or servants restraining them from continuing with the Disciplinary Proceedings against your Petitioner or at all;*
4. *General damages be ordered to be paid for inconvenience, mental anguish and injury occasioned to your Petitioner;*
5. *Costs of the Petition; and*
6. *Any other or further order as Court may deem fit.*

On 22nd October 2014, the Constitutional Court allowed the Petition and made two declarations as follows:

1. *The act and/or conduct of the Commission of preferring charges against the Petitioner in respect of acts/or omissions involving the recall of a warrant, which are judicial acts is inconsistent with and in contravention of Articles 2, 20, 28, 42, and 44 of the Constitution.*
2. *The act and/or conduct of the Commission of lifting judicial immunity accorded to the Petitioner and holding her personally liable for her judicial act of recalling the warrant in the discharge of her judicial work is inconsistent with and in contravention of Articles 2, 20, 28, 42, 44, 128(4) and 173 of the Constitution.*

The Constitutional Court declined to award the respondent damages but awarded her costs of the Petition.

Dissatisfied with the above two declarations made by the Constitutional Court, the Attorney General appealed to this Court on the following grounds:

1. ***The Justices of the Constitutional Court erred in law and in fact in declaring that the act and/or conduct of the Commission of preferring charges against the petitioner in respect of acts/or omissions involving the recall of a warrant, which are judicial acts, is inconsistent with and in contravention of Articles 2, 20, 28, 42 and 44 of the Constitution of the Republic of Uganda.***
2. ***The Justices of the Constitutional Court erred in law and in fact in declaring that the act and/or conduct of the Commission of lifting the judicial immunity accorded to the petitioner and holding her personally liable for her judicial act of recalling the warrant in the discharge of her judicial functions is inconsistent with and in contravention of Articles 2, 20, 28, 42, 44, 128(4) and 173 of the Constitution of the Republic of Uganda.***

The Attorney General prayed that the appeal be allowed and the declarations and orders of the Constitutional Court be set aside. The Attorney General also prayed for costs of the appeal.

Geofrey Madete represented the Attorney General at the hearing of this appeal, while Fred Muwema and Andrew Oluka represented the respondent. Counsel for both parties filed written submissions. At the commencement of hearing this appeal, Court consulted both parties as to whether any one of them had any objection to a previous and a current member of the Commission being on the Coram. Both parties indicated that they had no objection to either of the two members being on the Coram.

In considering this appeal, I will first handle and dispose of ground 2 of appeal.

**Parties’ submissions on Ground 2 of Appeal**

Submitting on this ground, the Attorney General faulted the Constitutional Court for failing to address itself to the mandate of the Commission as provided for under Article 148 of the Constitution. As a result, the Attorney General contended, the Constitutional Court reached an erroneous holding that the Commission’s actions were unconstitutional.

Submitting further on this ground, the Attorney General reiterated that the Commission was a constitutional organ, whose functions were clearly provided for under Articles 147 and 148 of the Constitution as well as under section 5 of the Judicial Service Act, Cap 14, Laws of Uganda. The Attorney General conceded that Article 128 (4) of the Constitution grants immunity to judicial officers from actions or suits while exercising judicial power and that this immunity was essential for the independence of judicial officers. However, the Attorney General contended that judicial independence also had the potential to conceal possible unethical behavior of Judges and all lower bench Judicial Officers.

Relying on the **Bangalore Principles of Judicial Conduct**, the Attorney General contended that it was for this reason that Judicial Officers were expected to follow ethical guidelines in their judicial conduct and behavior.

The Attorney General submitted that in spite of the protection afforded to judicial officers under Article 128(4) of the Constitution, the disciplinary proceedings of the Commission were a special procedure during which immunity could be lifted and the essence of accusations against a Judicial Officer examined by the Commission in line with the provisions of the Constitution.

Specifically citing Article 147 (1) (d) of the Constitution, the Attorney General submitted that the Commission was constitutionally enjoined to receive and process people’s recommendations and complaints. The Attorney General further submitted that the Commission was acting within its mandate, when it received a complaint against the respondent alleging unprofessional conduct in the course of her judicial duties, and when it informed her about the complaint on 25th June 2013 and requested her to submit a response.

Relying on Regulation 10(2) of the ***Judicial Service (Complaints and Disciplinary Proceedings) Regulations****,* ***S.I. No. 88 of 2005***, the Attorney General also contended that the Commission having determined that a prima facie case had been established against the respondent, it accordingly prepared a charge sheet and invited the respondent to appear before the Commission on 3rd October 2013 for plea taking.

The Attorney General faulted the holding of the Constitutional Court as being contrary to the principle of conclusiveness and exhaustiveness of the Constitution. The Attorney General contended that the Constitutional Court should have acted in consonance with the constitutional interpretation principles of completeness and exhaustiveness, and should not have read Article 128(4) of the Constitution in isolation of Article 147(d) of the same Constitution. The Attorney General submitted that if the learned Justices of the Constitutional Court had read Article 128(4) together with Articles 147 (d) and 148 of the Constitution, they would have been alive to the fact that judicial immunity is not absolute. He relied on this Court’s decision in ***P.K. Ssemogerere & 2 ors v. Attorney General, Constitutional Appeal No. 01 of 2002***.

The Attorney General prayed to this Court to allow Ground 2 of appeal.

**Respondent’s submissions on Ground 2 of Appeal**

Submitting on this ground, counsel for the respondent prayed to this Court to uphold the decision of the Constitutional Court that the Commission’s act and/or conduct amounted to lifting the respondent’s judicial immunity. Counsel for the respondent submitted that Article 128(2) of the Constitution clearly prohibited any person/authority from interfering with the Courts or Judicial Officers in the exercise of judicial authority. He further submitted that the same Article 128 of the Constitution guaranteed Judicial Officers immunity from any suit or action for anything done while they are exercising judicial power or performing their duties.

Counsel for the respondent contended that judicial immunity was an absolute right enjoyed by judicial officers for anything done, whether wrong or right, spiteful or envious, malicious or done with hatred, provided it was done in the exercise of judicial authority/power. Counsel for the respondent further submitted that this judicial immunity was firmly anchored in judicial independence. He argued that the only remedy available to a party aggrieved with a decision made by a Judicial Officer was to appeal against such a decision.

Relying on this Court’s decision in ***Aggrey Bwire vs Attorney General, Supreme Court Civil Appeal No. 08 of 2010***, counsel for the respondent submitted that judicial immunity encompasses the liberty of a judicial officer to adjudicate matters without interference from Government, outsiders or the fear of disciplinary proceedings. Counsel for the respondent further submitted that he was alive to the fact that in ***Aggrey Bwire*** (supra), judicial immunity offered by Article 128(4) of the Constitution was lifted because of the numerous complaints that had been lodged against Bwire which included being untrustworthy, lack of integrity, honor, dignity and conducting himself in a manner that was prejudicial to the good image of the judiciary. Counsel argued that the actions Bwire was accused of were clearly different from the actions leading to charges which had been preferred against the respondent, which related to conduct/acts done in the exercise of her judicial duties.

Counsel cited and relied on, among others, the definitions of judicial power and judicial immunity in***Black’s law Dictionary 9th Ed*** *at* ***pages 924 and 818***respectively and on the dictum of Lord Denning MR in the case of ***Sirros v. Moore & others [1975] Q.B. 118*** to support the respondent’s submissions.

Respondent’s counsel also contended that the conduct/actions of the respondent that the Commission sought to punish were actions done in the exercise of judicial authority and that these actions were shielded by the immunity conferred on the respondent under Article 128(4) of the Constitution.

Counsel for the respondent submitted that charging the respondent with the offences of **Abuse of Judicial Authority** and **Contravention of the Judicial Code of Conduct** for performing her judicial duty was a denial of her right to immunity. Counsel further contended that the particulars of the charges the Commission had preferred against the respondent revealed that the respondent was acting in her capacity as a Deputy Registrar of the High Court when she recalled the warrant.

Counsel for the respondent submitted that judicial immunity was among those other rights envisaged under Article 45 of the Constitution. He also contended that Article 20(2) of the Constitution enjoined all Government organs/agencies to promote this right in a manner similar to those rights under Chapter 4 of the Constitution.

Counsel for the respondent prayed that the Court dismiss this ground of appeal.

**Constitutional provisions governing this Appeal**

Before I proceed to consider the merits of this appeal, I have found it important to lay out the constitutional provisions at issue in this appeal.

This Petition was filed under Article 137 (3) of the Constitution. This article provides in the relevant part as follows:

***“A person who alleges that-***

***(a) …***

***(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.”***

Furthermore, Article 132(3) of the Constitution mandates this Court to hear appeals from the decision of the Constitutional Court.

Turning to the substantive provisions governing this appeal, it should be noted that the Constitution not only guarantees the independence of the Judiciary as a whole, but also grants immunity to persons exercising judicial authority from actions and/or suits for their acts and omissions committed while they are exercising judicial authority. These twin protections are firmly entrenched in Articles 128 (2) which provides as follows:

***“No person or authority shall interfere with the Courts or judicial officers in the exercise of their judicial functions.”***

Furthermore, Article 128 (4) of the Constitution provides for immunity to judicial officers from actions while exercising judicial power thus follows:

***“A person exercising judicial power shall not be liable to any action or suit for any act or omission by that person in the exercise of judicial power.”*** (underlining mine)

The other constitutional provisions which are central to the disposal of this appeal can be found in the provisions which established the Commission, and lay out its functions and mandate.

Article 146 (1) & (2) of the Constitution establishes the Commission while Article 147 of the Constitution provides for the functions of the Commission. Article 147 (d) in particular vests in the Commission the responsibility to receive and process people’s recommendations and complaints as follows:

**“R*eceive and process people’s recommendations and complaints concerning the judiciary and the administration of justice and, generally, to act as a link between the people and the judiciary”***

Furthermore, Article 148 of the Constitution gives the Commission powers to appoint and exercise disciplinary control over certain categories of judicial officers. It provides as follows:

***“Subject to the provisions of this Constitution, the Judicial Service Commission may appoint persons to hold or act in any judicial office other than the offices specified in Article 147 (3) of this Constitution and confirm appointments in and exercise disciplinary control over persons holding or acting in such offices and remove such persons from office.”***

As the above provisions clearly show, the Constitution, on the one hand, grants independence and protection on a person exercising judicial power from ‘*any action or suit for any act or omission by that person in the exercise of judicial power*’. At the same time, the same Constitution grants the Commission with the power to exercise disciplinary control over judicial officers. The question that therefore arises is how should these constitutional provisions be interpreted in relation to each other?

Overtime, Courts have developed principles which aid in the interpretation of the provisions of a Constitution. One of these principles which should guide this Court in consideration of this appeal is the rule of harmony which requires that constitutional provisions should not be looked at in isolation.

Another principle of constitutional interpretation that is relevant to this appeal requires that where several provisions of the Constitution have a bearing on the same subject, they should be read and considered together so as to bring out the full meaning and effect of their intent.None can be ignored or preferred over the other.

These principles were expounded on by this Court in ***Attorney General v. Susan Kigula & 417 others, Constitutional Appeal No. 3 of 2006*** as follows:

***“The Constitution should be looked at as a whole with no provision destroying another, but provisions sustaining each other. This has been said to be the rule of harmony or completeness. It has also been settled by this Court that provisions bearing on a particular issue should be considered together to give effect to the purpose of the Constitution.”***

Similarly, in ***David Tinyefuza v. Attorney General, Constitutional Petition No. 01 of 1996,*** *Manyindo, D.C.J*. (as he then was) expounded on these principles as follows:

***“The entire Constitution has to be read as an integrated whole, and no one particular provision destroying the other but each sustaining the other. This is the rule of harmony, rule of completeness and exhaustiveness and the rule of paramountcy of the written constitution.”***

In ***Paul Semogerere v. Attorney General, Constitutional Appeal No. 01 of 2002***, this Court cited with approval the decision of the US Supreme Court in ***South Dakota v. North Carolina, 192 US 268 (1940)*** where the learned Justices held as follows:

***"It is an elementary rule of constitutional construction that no one provision of the Constitution is to be segregated from the others and to be considered alone but that all the provisions bearing upon a particular subject are to be brought into view and to be interpreted as to effectuate the great purpose of the instrument."***

This appeal requires me to construe various articles of the Constitution with one another before I can confirm or reverse the findings and declarations of the Constitutional Court. It therefore follows that the principles cited above which have been previously followed by this Court also apply to this appeal.

**Court’s consideration of Ground 2 of Appeal**

With the above principles in my mind, I shall now proceed to consider ground 2 of appeal. In my view, a proper construction of Article 128 (4) of the Constitution raises four scenarios regarding judicial immunity.

The first scenario arises in respect of any judicial act or decision done when exercising judicial power. In this case, such Judicial Officer enjoys absolute judicial immunity from any action or suit and no personal liability can arise.

The second scenario is in respect of any omission made by a Judicial Officer during the exercise of judicial power. Again, under Article 128(4), a Judicial Officer is also not personally liable for his or her omissions and cannot be sued for such omissions. An omission is defined in Black’s Law Dictionary, 9th Ed. at page 1197 as ***“Something that is left out, left undone or otherwise neglected.”***

It therefore follows that the failure, by a Judicial Officer to act as he or she should have acted, is not a ground for holding him or her personally liable, provided the failure to act, however erroneous, was in the course of exercise of judicial power. The erroneous act or omission may be no more than a legal error or a bona fide error of judgment. The only time such action or omission can be faulted is in the course of review by another Court.

The third scenario under Article 128 (4) arises where the conduct or omission(s) of a Judicial Officer falls in the category of misconduct, even though it may occur in the course of exercise of judicial power. Such conduct which, on one hand, may lead to appellate review by a higher Court may also lead to institution of disciplinary proceedings against such a Judicial Officer. Such conduct or omission, in my view, is not protected by judicial immunity conferred by Article 128(4) of the Constitution. I find the words of the Michigan Supreme Court ***In the Matter of Laster, 404 Mich. 449 (1979) 274 N. W. 2d 742*** persuasive in this aspect. It was observed as follows:

***“Judicial conduct creating the need for disciplinary action can grow from the same root as judicial conduct creating potential appellate review, but one does not necessarily exclude the other. One path seeks to correct past prejudice to a particular party; the other seeks to prevent potential prejudice to future litigants and the judiciary in general.”***

However, the Commission should ensure that it is not investigating exercise of judicial power that is a preserve of an appellate Court.

Lastly, a proper construction of Article 128 (4) clearly shows that conduct which is outside the course of exercise of judicial power is not protected by immunity. Such conduct or omission includes conduct or omission that is contrary to the law or the terms and conditions of service for Judicial Officers such as reporting to work late or drunk, failure to write judgments, incompetence, among others.

In the first two instances I discussed, the immunity accorded to a Judicial Officer is absolute, whereas in the third category there is partial immunity, which can be lifted, provided the conduct complained of supports a charge of misconduct. In the fourth and last instance, it is clear that no immunity is available to the Judicial Officer.

In all these four instances described above, it is very important and necessary for the Commission to distinguish between the judicial decision itself and the conduct complained of, which supports a charge of misconduct.

The constitutional provisions on judicial immunity notwithstanding, it is also clear that the Constitution recognized that there was need for people to participate in the administration of Justice. The framers of our Constitution envisaged that the participation of people would include citizens making recommendations as well as complaints against the judiciary and the administration of justice.

Furthermore, although the same Constitution recognized the need to confer immunity to judicial officers while exercising judicial power, it also created a mechanism for dealing with judicial officers who were either incompetent or those who misconduct themselves while exercising their judicial functions.

The Constitution specifically entrusted the Commission to receive complaints (under Article 147 (1) (d) of the Constitution) and to exercise disciplinary control over those judicial officers below the rank of Registrar (under Article 148 of the Constitution), if the situation so warranted. It is thus clear that under Article 147 of the Constitution the Commission is given power to receive complaints and investigate them. Implied under this Article is also the power of the Commission to dismiss the complaint when the Commission has found no merit in it or when it falls outside the mandate of the Commission.

The power vested in the Commission to exercise disciplinary control over certain categories of Judicial Officers is directly provided for under Article 148 of the Constitution. The question that needs to be resolved in this appeal is when is the Commission permitted to institute disciplinary proceedings under Article 148 of the Constitution which would not contravene Article 128 (2) & (4) of the Constitution?

The answer to the above question lies in both Articles 148 and 128(4) of the Constitution. Article 148 which empowers the Commission to exercise disciplinary control over judicial officers below the rank of Registrar starts with the proviso *‘subject to the provisions of this Constitution.’* The significance of this proviso is that the Commission should exercise its power under Article 148 of the Constitution in such a way that it does not contravene other provisions of the Constitution. One such provision of the Constitution is Article 128(4) which I have already analyzed.

A proper construction of Article 128 (4) of the Constitution clearly shows that the Constitution prohibited any action or suit against any Judicial Officer for their judicial acts or bona fide omissions made when exercising judicial power. The language of the Constitution is unequivocal in this aspect: once a Judicial Officer is exercising judicial power, no one, be it the Commission, a Government department or an individual is allowed to institute any action or suit against that Judicial Officer arising from his or her exercise of judicial power to perform a judicial act.

The Commission would be contravening Article 128(4) if it initiates any disciplinary proceedings against a Judicial Officer based on: (a) a complaint on a judicial act or (b) a Judicial Officer’s judicial actions or bona fide omissions made during the exercise of a judicial power.

On the other hand, it is also clear that as long as the Commission is not investigating exercise of judicial power or a bona fide error or omission committed in the exercise of judicial power, the Commission will not be acting contrary to the provisions of the Constitution for it to open and conduct disciplinary proceedings against a judicial officer for inability to perform the functions of his or her office, misbehaviour/misconduct or incompetency.

It also follows that any proceedings that the Commission may bring against a Judicial Officer over whom it has a disciplinary mandate, which are based on a complaint not involving acts or omissions arising out of exercise of judicial power are permissible under Article 148 of the Constitution and would not contravene or be inconsistent with Article 128(4) of the Constitution.

I note that whereas the learned Justices of the Constitutional Court correctly held that the lifting of the respondent’s judicial immunity contravened Article 128 (4) of the Constitution, they failed, in my view, to elucidate on the powers of the Commission regarding its mandate to exercise disciplinary control over certain judicial officers. This could have gone a long way in addressing some of the issues raised by the Attorney General in this appeal.

As I observed earlier, the Constitution envisages the Commission to exercise disciplinary control over Judicial Officers for complaints based on either inability to perform the functions of the judicial office or misconduct by a judicial officer. Indeed for the higher bench, the Constitution provides in Article 144 (2) of the Constitution as follows:

*“A judicial officer may be removed from office only for-*

*(a) inability to perform the functions of his or her office arising from infirmity of body or mind;*

*(b) misbehaviour or misconduct; or*

*(c) incompetence,*

*but only in accordance with the provisions of this article.*

Although the Constitution does not have a similar provision for other Judicial Officers who are appointed by the Commission, it cannot be that such grounds as are mentioned in Article 144(2) would only be applicable to Judicial Officers sitting on the higher bench, but would not apply for those Judicial Officers sitting on the lower bench, such as the respondent in this appeal.

Note should be made of the fact that while inability to perform the functions of a judicial office, either from infirmity of mind or body would not be as difficult to prove, the Commission needs to take caution when it is proceeding on complaints based on alleged misconduct of a Judicial Officer in the course of exercise of judicial power. This is so because the line between judicial error and judicial misconduct is not always clearly drawn out. This may be more evident when a Judicial Officer has been charged with the offence of abuse of judicial authority. This point has been underscored in several persuasive authorities such as ***R. R. Parekh v. High Court of Gujrat & anor, Civil Appeal Nos. 6116-6117 of 2016*** where the Supreme Court of India held as follows:

“***A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. The legality of a judicial determination is subject to such remedies as are provided in law for testing the correctness of the determination. It is not the correctness of the verdict but the conduct of the officer which is in question. The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which forms the basis of the charge of misconduct was not an honest exercise of judicial power.***

Similarly, in ***Re Hon. Lisa O. Gorcyca, MSC Petition No. 152831*** ***of 2017***, the Supreme Court of Michigan rightly observed that:

***“Distinguishing judicial misconduct from legal error is not a simple endeavour.”***

Where the act or omission which supports the charge of misconduct is outrightly outside the exercise of judicial power, the Commission will not find it hard to proceed to investigate and prefer charges if the investigation warrants it. Regulation 23 of the Judicial Service Regulations, 2005 S.I. 87 of 2005 is quite insightful in this aspect. It lists instances where a judicial officer’s act or omission may lead to outright disciplinary action. These include practicing favoritism, nepotism, discrimination, corruption, habitual late coming, absconding from duty without reasonable excuse and insubordination.

However, while I appreciate that judicial conduct warranting disciplinary action may also emanate from the judicial decision making process, we should not lose site of the danger of subjecting such judicial errors of law before the Commission for purposes of determining whether misconduct existed. In my view, such action would inevitably lead to erosion of judicial independence of Judicial Officers in the course of making judicial decisions. Consequently, Judicial Officers will start treading carefully so as not to attract the wrath of the Commission’s Disciplinary Committee.

The initiation of such proceedings is likely to shake the confidence of such a Judicial Officer acting bona fide and may also affect his or her independence. I find the words of the Alaska Supreme Court ***In re Curda, 49 P. 3d 255, 261*** appropriate in this instance. It was stated therein as follows:

***“All Judges make legal errors. Sometimes this is because legal principles are unclear. Other times the principles are clear, but whether they apply to a particular situation may not be. Whether a Judge has made a legal error is frequently a question on which disinterested, legally trained people can reasonably disagree. And whether legal error has been committed is always a question that is determined after the fact, free from the exigencies present when the particular decision in question was made.***

***Further, Judges must be able to rule in accordance with the law which they believe applies to the case before them, free from extraneous considerations of punishment or reward. This is the central value of judicial independence. That value is threatened when a judge confronted with a choice of how to rule-and judges are confronted with scores of such choices every day-must ask not "which is the best choice under the law as I understand it," but "which is the choice least likely to result in judicial discipline?"***

Having stated as above, the Court concluded that *‘legal error that is neither willful nor part of a repeated pattern of misconduct is not an appropriate subject of discipline.’*

There is therefore need for extreme care and caution before initiation of disciplinary proceedings against a Judicial Officer for purposes of determining whether or not there was misconduct in a legal error arising out of exercising of judicial power.

Having laid out and analyzed the constitutional framework underlying this appeal, I will now proceed to consider the merits of ground 2 of appeal.

I have already highlighted the provisions of Articles 128 (2) & (4), 147 (d) and 148 of the Constitution and the relevant principles of constitutional interpretation. I had also earlier on in my analysis of Article 128 (4) stated that a judicial officer has absolute immunity with respect to any judicial act/decision and/or a bona fide omission arising out of the exercise of judicial power.

The pertinent question to therefore ask at this stage is whether the respondent, in recalling a warrant of attachment and sale was exercising judicial power and performing a judicial act. The learned Justices of the Constitutional Court answered this question in the affirmative.

Black’s Law Dictionary, 9th Ed at page 28 defines a judicial act as ***‘an act involving the exercise of judicial power.’***

Judicial power on the other hand, is defined by the same dictionary at page 924 as follows:

***“the authority vested in courts and judges to hear and decide cases and to make binding judgments on them; the power to construe and apply the law when controversies arise over what has been done or not done under it.”***

In this particular case, the respondent’s judicial power to make orders for attachment is provided for in Order 50 Rule 4 of the Civil Procedure Rulesas follows:

***“Formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court may be made by the registrar.”***

Although Order 50 Rule 4 only provides for power to issue formal orders, I note that a Judicial Officer exercising powers to issue warrants is vested with other judicial powers provided for under section 98 of the Civil Procedure Act, Cap 71, Laws of Uganda. This section provides for the inherent powers of the Court as follows:

***“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

Thus, if in the respondent’s view, the recall of the warrant of attachment and sale was necessary, section 98 above gave her that mandate.

The Constitutional Court found that the respondent’s acts were judicial acts and held as follows:

***“The Petitioner carried out a judicial act of recalling the warrant of attachment…After carefully examining the circumstances under which the Petitioner exercised her discretion to recall the warrant, we consider that her being charged with disciplinary offences in the circumstances went against the spirit and letter of the Constitution, particularly Articles … 128(4) of the Constitution…It is important to note that the words used in the article are ‘any act or omission’. No distinction is made between administrative and non-administrative actions. Therefore holding the Petitioner personally liable for the judicial act of recall of a warrant of attachment contravened the above Article.”***

It should be noted that the Constitution did not make a distinction between administrative and non-administrative decisions. The respondent still enjoyed the immunity granted to her by Article 128(4) of the Constitution.

From the above holding of the Constitutional Court, it is also evident that the Constitutional Court found that (a) the respondent was exercising judicial power, (b) that the act of recalling a warrant of attachment was a judicial act, (c) that she was therefore entitled to the protection accorded to judicial officers under Article 128 (4) of the Constitution.

Whether or not the respondent followed the proper procedure in recalling the warrant is a different matter. What is important is that she exercised judicial power to do so. I therefore agree with the learned Justices of the Constitutional Court that the respondent’s recall of a warrant amounted to a judicial act. In the circumstances the provisions of Article 128 (4) would be applicable to the respondent.

I further note that Black’s Law Dictionary 9th Edn at page 818 defines judicial immunity as follows:

***“The immunity of a judge from civil liability arising from the performance of judicial duties.”***

In ***Sirros v. Moore, [1974] 3 All ER 776, 781-782***, Lord Denning expounded on the meaning of immunity as follows:

***“…it has been accepted in our law that no action is maintainable against a Judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the Judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a court or appeal or to apply for harbeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. Of course, if the Judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable to an action for damages. The reason is not because the judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear.”***

I note that the Constitution does not define what amounts to a suit or action under Article 128 (4) of the Constitution. I also note that the majority have found that disciplinary proceedings do not fit within an ‘action or suit’ envisaged under Article 128 (4) of the Constitution.

The question that I need to resolve is whether disciplinary proceedings by the Commission arising out of a complaint against a Judicial Officer in the course of exercising judicial power can amount to an ‘action or suit’ as envisaged under Article 128(4) of the Constitution.

Black’s Law Dictionary 9th Edn. at page 32 defines one of the meanings of the word ‘action’ as follows:

***“...4. A civil or criminal judicial proceeding- Also termed action at law.***

Black’s Law Dictionary then cites with approval ***Estee’s Pleadings, Practice, and Forms*** to expound on this definition as follows:

***‘An action has been defined to be an ordinary proceeding in a Court of Justice, by which one party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. But in some sense this definition is equally applicable to special proceedings. More accurately, it is defined to be any judicial proceedings, which, if conducted to a determination, will result in a Judgment or decree. The action is said to terminate at Judgment.”*** Emphasis mine.

It is also important to note that Black’s Law Dictionary (supra) at page 531 defines ‘Disciplinary Proceedings’ as follows:

***“An action brought to reprimand, suspend, or expel a licensed professional or other person from a profession or other group because of unprofessional, unethical, improper, or illegal conduct.”*** Emphasis Mine

In ***Australia Apple & Pear Marketing Board v. Tonking (1942) 66 CLR 77*** at page ***83***, cited in ***Words & Phrases Legally Defined Vol 2: D-J at page 496***, which I find persuasive, it was held that:

***“The term ‘judicial’ does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by a competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others.”***

On the other hand, the term suit is defined by the same dictionary at page 1572 as follows:

***“Any proceedings by a party or parties against another in a court of law.”***

I also wish to state that in determining whether proceedings before the Disciplinary Committee of the Commission amount to an action, the basis of such determination should not only be on the statutory character of the Disciplinary Committee. Rather the character of the functions of conducting a hearing and proceedings before it should also be considered.

In light of the persuasive authorities above, it is my view that proceedings before the Commission’s Disciplinary Committee have all the features/hallmarks of an action envisaged before a judicial body, namely: a complaint culminating into a charge (evidenced by a charge sheet) against a Judicial Officer (the respondent) and a prosecutor to prosecute the charges against a Judicial Officer. All this adjudication takes place before a body empowered to determine such matters-the Disciplinary Committee and eventually, the Commission itself. Furthermore in the process of conducting the hearings up to making a finding, the Disciplinary Committee has all the powers of a quasi judicial body which are similar to those of a Court.

Black’s Law Dictionary (supra) at page 1364 defines the term ‘quasi-judicial’ as follows:

***“Of, relating to, or involving an executive or administrative official’s adjudicative acts. Quasi-judicial acts, which are valid if there is no abuse of discretion, often determine the fundamental rights of citizens. They are subject to review by Courts.”***

Black’s Law Dictionary then cites with approval ***A Text of Jurisprudence 4th Edn*** to expound on this definition as follows:

***‘Quasi-judicial is a term that is…not easily definable. In the United States, the phrase covers judicial decisions taken by an administrative agency-the test is the nature of the tribunal rather than what it is doing. In England quasi-judicial belongs to the administrative category and is used to cover situations where the administrator is bound by the law to observe certain forms and possibly hold a public hearing but where he is a free agent in reaching the final decision. If the rules are broken, the determination may be set aside, ...”***

The Citizens’ Handbook which was compiled by the Commission is also quite insightful on what quasi-judicial bodies are. At page 11 of ***‘A Citizen’s Hand Book on Law & Administration of Justice in Uganda’, 3rd Edn. (A publication of the JSC)***,it is stated as follows:

***“Quasi-judicial bodies are administrative or official bodies or persons that have powers to make judicial decisions that affect the rights of others. For instance, disciplinary committees, such as that of the Law Council, the Police Disciplinary Committee, the Public Service Commission, Judicial Service Commission, and the Medical & Dental Practitioners Board have quasi-judicial powers.”*** Emphasis mine.

Because the disciplinary Committee of the Commission is a quasi-judicial body having and exercising quasi judicial powers, I find that the charges (based on a complaint the Commission receives) against a party before the disciplinary committee and the proceedings that follow qualify as actions envisaged under Article 128 (4) of the Constitution.

I also wish to note that the Attorney General in his submissions also acknowledges that the Commission’s disciplinary proceedings are ‘a special procedure.’ As I stated earlier, this special procedure falls under the definition of ‘action’ as expounded in Black’s Law Dictionary.

In light of my analysis above I find that in making a determination, the disciplinary committee of the Commission is exercising a quasi-judicial function. It therefore follows that the procedure before the Disciplinary Committee is a quasi judicial process. This inevitably leads me to the conclusion that the Disciplinary Committee has all the hallmarks of a quasi-judicial body.

It is therefore correct to argue that Disciplinary Proceedings before the Commission amount to an action envisaged under Article 128(4) of our Constitution. As such, it follows that the action which has the effect of reviewing legal errors for purposes of finding misconduct fall within actions that are prohibited under Article 128 (4) of the Constitution.

I therefore respectfully disagree from the finding of the majority that disciplinary proceedings do not amount to an action envisaged under Article 128(4) of the Constitution.

As I noted earlier, the Commission charged the respondent on the basis of a complaint which was lodged by Asiimwe Diana Jackline. Ms. Asiimwe alleged that the respondent fraudulently frustrated her execution process by irregularly recalling a warrant of attachment and sale of property. According to the complainant, the irregularity was manifested by among others (i) recalling a warrant of attachment and sale of some properties of the judgment debtor by letter and not another Court Order, (ii) failure to give the complainant or her lawyers a hearing on grounds that she was avoiding unnecessary objector proceedings, which the complainant would have preferred.

In my view, a review of the charge sheet would also go a long way in helping this Court to determine whether or not the Commission’s preference of charges against the respondent in the circumstances lifted the respondent’s judicial immunity.

Under count 1 of the charge, the particulars of the charge of Abuse of Judicial authority was that the respondent irregularly recalled an order of attachment and sale of property which frustrated the execution process. I note that the Commission did not specify the respondent’s acts or omissions which constituted the ‘irregular recall’ to support the charge of misconduct. In the absence of the acts or omission that would constitute an irregular recall that could warrant a charge of misconduct, the Commission, in my view, was doing what an appellate Court was supposed to do-that is, examine whether the recall was proper or not.

With regard to count 2 which still related to the charge of abuse of judicial authority, the particulars of the charge are that the respondent acted on a letter from a third party to recall the warrant without according the complainant the right to be heard. Just like in the preceding count 1, the Commission did not specify in the particulars of the charge how the respondent’s reliance on a letter to recall a warrant amounted to misconduct warranting disciplinary action.

In my view, the particulars as they stand show that the Commission was reviewing the legal process taken by the respondent to recall the warrant. This review process fell under the docket of an appellate Court and not the Commission.

Lastly under count 3, the respondent was faulted for ‘irregularly acting on claims of a third party’ to investigate an objection contained in a letter instead of a proper application. Just like in count 1, the Commission did not specify the respondent’s acts or omissions that constituted ‘irregularly acting’ on the claims of a third party that would warrant a charge of misconduct. In the absence of these acts and/or omissions, the proper entity to do this review process was an appellate Court.

Before I take leave of count 3, I note that the Commission was faulting the respondent for recalling a warrant of attachment administratively. Even if it is argued that the recall was an administrative process, it was still a judicial decision since it involved exercise of judicial power. My view is fortified by interpretation of the term ‘judicial duties’ in ***‘Words and Phrases Judicially Defines (I-N) vol 3 at page 181*** which defines the term as follows:

***“The word ‘judicial’ has two meanings. It may refer to the discharge of duties exercisable by a judge or justices in Court, or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind-that is, a mind to determine what is fair and just in respect of the matters under consideration.”***

I also note that under the above 3 counts, the Commission acknowledged that the respondent acted in the course of working as a *‘Deputy Registrar in the High Court (Commercial Division)’*. It can therefore be argued that that the Commission preferred charges of misconduct against the respondent which were in respect of her exercise of judicial power to recall a warrant of attachment and sale of property.

A further review of the charge sheet clearly shows that the Commission did not distinguish between the judicial act and the non judicial acts that constituted a disciplinary offence. As I held earlier, clearly, the preferring of charges in respect of the judicial act for the recall of a warrant was unconstitutional.

Thus, from the way all the 3 counts were framed, the Commission was set to review the process of recall of a warrant (a judicial act) by the respondent, which review amounted to a judicial process that was a preserve of a higher Court.

Furthermore, the respondent’s acts being judicial acts, they fell squarely under my first interpretation of Article 128 (4) of the Constitution. The question whether the recall was right or wrong could not and cannot be answered by the Commission, through its exercise of its disciplinary control over the respondent. This is because the Commission did not have the mandate to question a judicial act carried out by the respondent. In the circumstances, it is my finding that by preferring charges against the respondent, the Commission lifted the respondent’s judicial immunity. Furthermore, I also find that the lifting of the respondent’s judicial immunity was inconsistent with Article 128 (2) & (4) of the Constitution.

In conclusion on this ground, I have found that: (a) the charges preferred against the respondent emanated from her recall of a warrant of attachment and sale of property, (b) the respondent’s actions of recall of a warrant amounted to a judicial act, (c) the respondent carried out this judicial act in the course of exercising her judicial power, and (d) the charge sheet did not show the irregular conduct that amounted to misconduct.

In light of the provisions of Article 128(4) of the Constitution already cited and discussed in this Judgment, the respondent was immune from any action or suit in respect of the recall of this warrant. It therefore follows that by preferring charges against the respondent in respect of a judicial act, the Commission was doing exactly what the Constitution prohibited under Article 128(4). The charging of the respondent therefore went against the letter and spirit of the Article.

It is my finding that the Commission unjustifiably lifted the respondent’s judicial immunity when it preferred charges against her for her performance of a judicial act. I therefore agree with the conclusion reached by the learned justices of the Constitutional Court that the act and/or conduct of the Commission of lifting the judicial immunity accorded to the respondent with respect to her judicial act of recalling a warrant of attachment in the discharge of her judicial work, contravened Article 128(4) of the Constitution. Ground 2 of this appeal fails in as far as it faults the findings and declaration of the Constitutional Court on the lifting of the respondent’s immunity.

Before I take leave of this ground, I need to address myself to a submission made by the Attorney General regarding the need for a Judicial Officer facing disciplinary proceedings to appear and raise the defence of judicial immunity.

The Attorney General submitted that the respondent was entitled to raise the protection accorded to her under Article 128(4) of the Constitution in her own defence. As I noted earlier, although the Constitution vests the Commission with powers to take disciplinary action against judicial officers, it is also incumbent on the Commission to adhere to the Constitution in the course of executing its mandate. It therefore follows that the Commission should at all times ensure that it does not initiate disciplinary proceedings against any Judicial Officers which contravene or are inconsistent with Article 128 of the Constitution. The Commission only has powers to handle complaints against Judicial Officers which pass Article 128 (4) test.

A question that arises from this is whether a Judicial Officer who believes that his or her actions are protected by judicial immunity should decline to appear before the Commission when called upon to do so? My view is that where the Commission has reviewed the complaint and seen it fit to charge a Judicial Officer for a disciplinary offence, it is incumbent on such Judicial Officer to appear before the Commission and raise the defence of judicial immunity.

**Ground 1 of Appeal**

This ground was framed as follows:

***The Justices of the Constitutional Court erred in law and in fact in declaring that the act and/or conduct of the Commission of preferring charges against the petitioner in respect of acts/or omissions involving the recall of a warrant, which are judicial acts, is inconsistent with and in contravention of Articles 2, 20, 28, 42 and 44 of the Constitution of the Republic of Uganda.***

**The Attorney General’s submissions**

Some of the submissions the Attorney General argued under this ground have already been canvassed in Ground 2. I only wish to recap that the Attorney General contended that the act of the Commission’s Disciplinary Committee of preferring charges against the respondent was not inconsistent with Articles 2, 20, 28, 42, and 44 of the Constitution.

The Attorney General submitted that the Commission having perused both the complaint and the response from the respondent and having determined that a prima facie case had been established against her, accordingly prepared a charge sheet and invited her to appear before the Commission for plea taking.

The Attorney General also contended that the Commission’s act of preferring charges against the respondent was consistent with the functions the Commission is enjoined to perform under Article 147 (d) of the Constitution and that no immunity was lifted by the Commission in the respondent’s case.

The Attorney General further contended that the respondent was at all times lawfully before the Disciplinary Committee of the Commission and that she was entitled to raise the protection accorded to her under Article 128(4) of the Constitution in her own defence. The Attorney General conceded that the provisions of Article 128(4) of the Constitution granted a judicial officer immunity. However, the Attorney General submitted that, in consonance with the constitutional interpretation rule of completeness and exhaustiveness, Article 128 (4) of the Constitution which guarantees judicial immunity should not be read in isolation of Article 147 (d) of the same Constitution.

The Attorney General further contended that in any event, the defence of judicial immunity and independence was available to the respondent to invoke in the disciplinary proceedings instituted by the Commission, an option the respondent ignored. Lastly, the Attorney General argued that by holding that the act of preferring charges was inconsistent with the provisions of the Constitution, the Constitutional Court was flouting Article 147(d) of the Constitution.

**Respondent’s Submissions**

Counsel for the respondent defended the findings and declarations of the Constitutional Court. He reiterated his earlier submissions and conceded that the Commission has power to exercise judicial control over judicial officers like the respondent. Counsel conceded that the Commission can handle peoples’ complaints in this regard under Article 147(1) (d) of the Constitution.

He however contended that Article 147 of the Constitution should not be invoked to undermine Article 128 of the Constitution, which guarantees independence of the judiciary and protects the right of immunity of Judicial Officers for actions done in the exercise of their judicial duty. He further contended that judicial independence/immunity was the substratum upon which any judicial system was built.

Counsel for the respondent further contented that whereas it was not refuted that charges against the respondent emanated from her recall of a warrant of attachment, the Attorney General had failed to demonstrate to this Court or the Constitutional Court that the recall was irregular or that it warranted disciplinary action.

Counsel for the respondent further submitted that the act of recalling warrants was widely practiced in our judicial system and that the respondent had demonstrated this by attaching to her Affidavit in Support of the Petition several letters recalling warrants of attachment from different Judicial Officers. These letters appear at pages 38-55 of the Record of Appeal.

Counsel for the respondent also submitted that the Constitutional Court confirmed this practice (of recalling warrants of attachment) in its Judgment and held that it was a common judicial practice performed by judicial officers such as Registrars, in the exercise of their duties. Counsel further contended that this did not amount to abuse of judicial authority or a contravention of the Judicial Oath.

**Consideration of Ground 1 of appeal.**

In holding that the Commission contravened the Constitution when it preferred charges against the respondent for her recall of a warrant of attachment, the Constitutional Court held as follows:

***“The petitioner carried out a judicial act of recalling the warrant of attachment. It has not been demonstrated that what she did was not a judicial act. After carefully examining the circumstances under which the Petitioner exercised her discretion to recall the warrant, we consider that her being charged with disciplinary offences in the circumstances went against the spirit and letter of the Constitution, particularly Articles 2, 20, 28, 42, 44, 128 (4) and 173.”***

In my consideration of ground 2 of appeal, I concurred with the findings of the learned Justices of the Constitutional Court that the respondent’s action of recall of the warrant of attachment was a judicial act and that the Commission contravened the Constitution when it lifted her judicial immunity which is protected by Article 128 (4) of the Constitution.

Given my finding above, it also follows that the Commission contravened the provisions of Article 128 (4) of the Constitution, when it preferred charges against the respondent for recalling a warrant of attachment and sale. I therefore find that the Constitutional Court did not err when it so held.

Court’s consideration of other findings of the Constitutional Court

I note that under both Ground 1 and Ground 2 of this appeal, the Attorney General also challenged the holding of the Constitutional Court that the acts of the Commission also contravened Articles 2, 20, 28, 42, 44 and 173 of the Constitution.

None of the parties canvassed these provisions at the Constitutional Court. I however note that despite this omission by the parties, the learned Justices of the Constitutional Court made a finding on them by holding that the Commission’s acts violated Articles 2, 20, 28, 44 and 173 of the Constitution. The learned Justices of the Constitutional Court did not show how they came to the conclusion that the Commission’s acts violated Articles 2, 20, 28, 44 and 173 like they did in respect of Article 128 of the Constitution.

Furthermore, in arguing both grounds of appeal in this Court, the Attorney General did not canvass how the Constitutional Court erred in holding that the above provisions were violated by the Commission’s actions. The respondent in turn did not canvass them as well. In my view, it was incumbent on the Attorney General to present arguments in this Court why the learned Justices of the Constitutional Court erred in holding that the Commission’s acts contravened the above Articles.

Be that as it may, I find that there was no basis for the learned Justices of the Constitutional Court to hold that the Commission’s acts of preferring charges against the respondent and of lifting her judicial immunity contravened any of the cited Articles, with the exception of Article 128 (4). To this extent, I therefore agree with the Attorney General that the Constitutional Court erred when it held that the Commission’s acts contravened Articles 2, 20, 28, 44 and 173 of the Constitution.

Orders and Declarations.

The Attorney General prayed that the appeal be allowed with costs. On the other hand, the respondent only prayed to this Court to dismiss this appeal with costs.

The appellant’s grounds of appeal have majorly failed. I would accordingly dismiss this appeal with costs to the respondent.

I would modify the Declarations and orders of the Constitutional Court as follows:

(a) The act and/or conduct of the Commission of preferring charges against the respondent in respect of a judicial act of recalling a Warrant of Attachment contravened and was inconsistent with Article 128 (2) & (4) of the Constitution.

(b) The act and/or conduct of Commission of lifting the judicial immunity accorded to the respondent and charging her in respect of her judicial act of recall of a warrant of attachment contravened and was inconsistent with Articles 128(2) & (4) of the Constitution.

(c) The order of costs made by the Constitutional Court is hereby confirmed.

I would also make the following additional orders:

(a) The Constitutional Court erred in holding that the Commission’s acts/conduct of lifting the respondent’s judicial immunity for the judicial act of recalling a warrant of attachment and sale contravened Articles 2, 20, 28, 44 and 173 of the Constitution when these allegations had not been canvassed by the parties.

(b) The Constitutional Court erred in holding that the Commission’s acts/conduct of preferring charges against the respondent for the judicial act of recalling a warrant of attachment and sale contravened Articles 2, 20, 28, 44 and 173 of the Constitution when these allegations had not been canvassed by the parties.

(c) The respondent is hereby awarded the costs of this appeal.

Dated at Kampala this ..11th.. day of ....July..... 2018.

**.......................................................**

**JUSTICE DR. ESTHER KISAAKYE**

**JUSTICE OF THE SUPREME COURT.**