

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 0028 OF 2012
MBABALI JUDE.....PETITIONER
VERSUS
EDWARD KIWANUKA SEKANDI.....RESPONDENT

Coram: Hon. Mr. Justice Remmy Kasule, JA/JCC
Hon. Mr. Justice Eldad Mwangusya, JA/JCC
Hon. Mr. Justice Rubby Aweri-Opio, JA/JCC
Hon. Lady Justice Solomy Balungi Bossa, JA/JCC
Hon. Mr. Justice Kenneth Kakuru, JA/JCC

JUDGMENT OF HON. JUSTICE REMMY KASULE, JA/CC

I have had the benefit of going through the lead Judgment prepared by my brother Hon. Justice Kenneth Kakuru, JA. I too agree with him that the petition does not raise any matter for constitutional interpretation, and, as such, the same ought to be dismissed.

The jurisdiction of the Constitutional Court is derived from **Article 137** of the Constitution. It provides:

(1) Any question as to the interpretation of this constitution shall be determined by the Court of Appeal sitting as the constitutional court.

(2) When sitting as a constitutional court, the Court of Appeal shall consist of five members of that court.

(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.

(4) Where upon determination of the petition under clause (3) of this article the constitutional court considers that there is need for redress in addition to the declaration sought, the constitutional court may-

(a) grant an order of redress; or

(b) refer the matter to the High court to investigate and determine the appropriate redress.

(5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the court-

(a) may, if it is of the opinion that the question involves a substantial question of law; and

(b) shall, if any party to the proceedings requests it to do so, refer the question to the Constitutional Court for decision in accordance with clause (1) of this article.

(6) Where any question is referred to the Constitutional Court under clause ((5) of this article, the constitutional court shall give its decision on the question, and the court in which the

question arises shall dispose of the case in accordance with that decision.

(7) Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.

Wambuzi CJ, with the concurrence of the rest of the court, expounded on the above Article when he stated in **ISMAIL SRRUGO V KAMPALA CITY COUNCIL and THE Attorney General, Constitutional Appeal No.2 of 1998 (SC)** that:-

“the petition (read reference) must show on the face of it, that interpretation of a provision of the constitution is required. It is not enough to allege merely that a constitutional provision has been violated. The applicant must go further to show prima facie, the violation alleged and its effect before a question could be referred to the constitutional court.”

See also: **Constitutional Court Reference No.31 of 2010 Uganda V Francis Atugonza.**

It follows therefore that the jurisdiction conferred upon the Constitutional court by Article 137 is to ascertain whether or not the subject of the constitutional litigation, be it an Act of Parliament, or other law or act or omission done under the authority of any law, or by any person or authority, is or is not in violation of the constitution. This is in contrast with the other jurisdictions that are not of a constitutional nature, whereby the courts of law, vested with such jurisdictions, determine whether the claims before them are in contravention of some other laws,

customs, practices and other value norms of society, other than the Constitution.

Thus the Constitutional Court adjudicates matters requiring interpretation of the Constitution, and not necessarily, enforcement of the Constitution, except where upon determination of the issue of interpretation of the Constitution, the said court considers, on its own, that there is need to grant additional redress. In such a case, the Constitutional Court may grant other redress in addition to having interpreted the constitution or it may refer the matter to the High Court to investigate and determine the appropriate redress: See: **Article 137(4) (a) and (b)** of the Constitution.

A constitutional question that has to be interpreted by the Constitutional Court arises when there is an issue, legal or otherwise, requiring an interpretation of the Constitution for the resolution of the cause out of which that issue arises from.

This issue may be raised either through lodgment of a constitutional petition in the Constitutional Court by a Petitioner; or through a reference to the Constitutional Court by the court that is determining the cause from which such an issue requiring constitutional interpretation arises or where a party to the proceedings of that cause requests that the court refers the issue to the Constitutional Court for interpretation.

Interpretation of the constitution is the ascertaining of the meaning of specific constitutional provisions and how they should be applied in a particular context.

Meanings are assigned to words of the constitution so as to enable legal decisions to be made by the court vested with competent jurisdiction to

interpret the constitution determine whether or not the matter before it is in compliance and or consistent with the constitution or not.

Interpretation of the constitution also embraces the term “construction” that is inferring the meaning of the provision(s) of the constitution from a broader set of evidence, such as considering the whole structure of the constitution as well as its legislative history. See: **Principles of Constitutional construction:** <http://www.constitution.org/cons/princons.htm>, John Roland of the constitution society.

See also: **Pepper (Inspector of Texas) V Hart [1993]AC 593.**

Justice D.M. Dharmadhikari of the Constitutional Court of India in his **Principle of Constitutional Interpretation: Some Reflections (2004) 4 SCC (Jour) 1**, has contextualised that phrase “interpreted the constitution” thus:

“[A] Constitution is thus, a permanent document to endure for ages. The words and expressions in the Constitution have to be construed by not only understanding the mind of the framers but on the basis of each generation’s experience in relation to current issues and topics. A Constitution as the Indian Constitution, cannot comprehend, at the time of its framing, all issues and problems that might arise in its working in the times ahead. The Constitution, therefore, contains only basic democratic principles. It contains habits and aspirations of people of that generation, but it is drafted in a way to realize those objectives for future generations”.

In South Africa the Constitution expressly provides that its interpretation must promote the values underlying an open and democratic society and consider international public law and foreign law.

In Uganda Article 2 makes the Constitution the Supreme law of Uganda with binding for one on every one and all authorities in Uganda in case of any other law or custom that is in consistent with any provision of the constitution, the constitution shall prevail and that other law or custom shall, to the extent of the inconsistency, be void.

It follows therefore that the jurisdiction to interpret the constitution is of critical importance the world over, Uganda inclusive, and as such, the same must be exercised correctly and appropriately, as the consequences of its exercise are of a fundamental nature in the governance of society. Therefore while a court vested with the jurisdiction to interpret the constitution must, in the exercise of that jurisdiction, allow and avail itself to be accessed by anyone with a genuine constitutional cause deserving interpretation of the Constitution, such a Court, given the critical nature of its jurisdiction, must see to it that the exercise of its such jurisdiction, is not abused and misapplied by litigants who may access the Court not genuinely seeking constitutional interpretation, but rather to pursue their personal causes that they can legitimately pursue elsewhere in other Courts of Law.

The issue that calls for interpretation of the Constitution by the Constitutional Court must involve and show that there is an apparent conflict with the constitution by an Act of Parliament or some other law, or an act or omission done or failed to be done by some person or authority. Further, the dispute where the apparent conflict exists must be such that its resolution must be only when and after the Constitutional Court has interpreted the Constitution. The constitutionality of statute or same law, or the act or omission of a person or authority must be brought

forth for determination. See: **Hassan Ali Joho and Another V Suleiman Shahbal and 2 others (2013) eKLR (Court of Appeal, Kenya)**.

Interpretation of the Constitution also arises if a given aspect of a case that is the subject of litigation in a court of law or quasi tribunal or body is not explicitly provided for in the law and its constitutionality has not been determined. See: the Constitutional Court of Canada case of **Edwards V Canada [1930] AC 124**: See: also Black's Law Dictionary 6th Edition, pp 8178-818.

There is however, a difference between the Constitutional Court interpreting a provision of the Constitution as stated above and any other court of law applying a particular provision of the Constitution to a particular set of facts of a case that is being determined by that court.

To apply the Constitution or its provision, in my considered view, is for the court concerned, to operate or effect a particular provision of the Constitution to the facts of a particular case that court is determining. It is the process by which that court makes use of the constitution. In such a case the dispute before the court is capable of being resolved without the Constitution first being interpreted by the Constitutional Court.

A competent court determining a cause is at liberty to find and pronounce itself as to whether or not, in its finding, a particular set of facts of the case, are contrary to or are in compliance with the Constitution. By doing so, such a court is not interpreting the Constitution. The said court is just applying the constitution to the facts of the case before the Court.

Likewise, one seeking enforcement of a right or freedom guaranteed under the Constitution by claiming redress for its infringement may apply

to any other competent court for such redress under **Article 50** of the Constitution. Such a one does not necessarily apply to the constitutional court because, in order to get such redress there is no need for the Constitutional Court to first interpret the Constitution. All that is needed is the court adjudicating the matter to apply the Constitution to the proved set of facts and/or law and proceed to grant or not to grant the redress sought.

Having analyzed the law as to the issue of the interpretation of the constitution as contrasted with applying the Constitution, and also having considered in detail the petitioner's petition, the submissions of counsel for the petitioner and those for the respondent, I note that what the petitioner seeks from this court is not interpretation of any provision of the Constitution, but rather a number of redresses that the Petitioner ought to have pursued through an Election Petition under **Sections 60-67 of the Parliamentary Elections Act [17 of 2005]**.

In essence, what the Petitioner sets out in the Petition is that the respondent, contrary to the Constitution, **The Parliamentary Elections Act [17 of 2005]** and **The Leadership Code Act**, used Government vehicles, personnel and other facilities that he enjoyed as Speaker of Parliament at the material time, to campaign for himself as a parliamentary candidate for the 18.02.2011 parliamentary elections in Bukoto Central, Masaka. He is also said to have used the same facilities to harass, beat and imprison the petitioner and his supporters during the said campaigns.

By reason of the above grounds the petitioner who is a registered voter in the said constituency and was also a candidate who lost to the respondent in this election, prays the Constitutional Court to declare the acts of the

respondent unconstitutional, order removal of the respondent from Parliament for breach of the Leadership code Act, have the respondent dismissed from the office of the Vice President of Uganda, and he be ordered to make good the loss occasioned to Government as well as pay general damages and costs of the petition.

It is apparent that, all the petition does, is to set out acts that the respondent is stated to have carried out during the campaigns for Parliament in Bukoto Central Constituency preceding the election of 18.02.2011, which acts, according to the petitioner, were contrary to the Constitution, the Parliamentary Elections Act and the Leadership Code Act. The petitioner on the basis of those acts prays for the reliefs that have been stated above.

I see no facts in the petition that set out circumstances that constitute any issues to necessitate the Constitutional Court to interpret the Constitution before resolving what in essence is an election dispute between the petitioner and the respondent. All that the petition discloses is that a number of acts that, according to the petitioner, were contrary to the Constitution, the Parliamentary Elections Act and the Leadership Code Act were committed by the respondent, in the course of campaigning for the Parliamentary Seat in Bukoto Central, Masaka, for the Parliamentary Elections held on 18.02.2011, and by reason of this, the petitioner should be granted the redresses he prays for in the petition.

These redresses, in my considered Judgment, are grantable by a court of competent jurisdiction, without the Constitutional Court, first having interpreted the Constitution.

Section 60(2) and (b) of The Parliamentary Elections Act [17 of 2005] provides the way and manner as to how a candidate who loses an election or a registered voter in a Constituency, who wants to question the results of a parliamentary election in that constituency, must follow to question that election in a court of law. A petition must be filed in the High Court within thirty (30) days after the day on which the result of the election is published by the Electoral Commission in the Gazette. The election must be questioned on the grounds set out in **Section 61** of the **Parliamentary Elections Act**. Jurisdiction to question an election petition therefore does not lie with the Constitutional Court. Such jurisdiction is vested in the High Court.

Indeed, it appears from the evidence adduced before the court in this petition, that the petitioner first lodged in the High Court at Masaka, **Election Petition No.19 of 2011** against the respondent in respect of the very election the subject matter of this Constitutional Petition.

The petitioner for some reasons, that are of no concern to this Constitutional Court, did not pursue the said election petition to its logical conclusion by being tried and decided on its merits. The same was terminated by being withdrawn from the High Court, Masaka with the consent of the petitioner. It is after that termination that the petitioner resorted to this Constitutional Petition.

Therefore in conclusion, and in agreement with the lead judgment of my brother Honourable Justice Kenneth Kakuru, I find that there is nothing for Constitutional Interpretation in this petition. I too agree that the same be dismissed with costs to the respondent.

Accordingly the final decision of this Court is that the petition is dismissed with costs to the respondent.

Dated at Kampala thisday of September 2014.

Hon. Mr. Justice Remmy Kasule,
Justice of Court of Appeal/Constitutional Court
THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 0028 OF 2012

MBABAALI JUDEPETITIONER

VERSUS

EDWARD KIWANUKA SEKANDI.....RESPONDENT

CORAM:

HON. JUSTICE REMMY KASULE, JA/JCC

HON. JUSTICE ELDAD MWANGUSYA, JA/JCC

HON. JUSTICE RUBBY AWERI OPIO, JA/JCC

HON. LADY JUSTICE SOLOME BALUNGI BOSSA, JA/JCC

HON. MR. JUSTICE KENNETH KAKURU, JA/JCC

JUDGMENT OF HON. JUSTICE ELDAD MWANGUSYA, JA/JCC

I have had the benefit of reading in draft the judgment of the Hon. Justice Kenneth Kakuru, JA and I concur with him that the petition does not raise any matter for constitutional interpretation and should be dismissed with costs. I only have a brief comment as to the jurisdiction of the constitutional court on matters that would ordinarily be resolved by Court other than the Constitutional Court as opposed to those that require Constitutional interpretation. This petition seems to be a typical example of a case which would have been resolved in an Electoral Petition that the petitioner had filed against the Respondent and need not have resorted to the Constitutional Court.

The facts giving rise to the petition were well set out by the petitioner and are reproduced in the Judgment of Hon. Justice Kenneth Kakuru. I do not need to reproduce them. I will only set out those salient ones that will enable me illustrate the elements required for this Court to entertain a matter under Article 137 of the Constitution that comes to this by Court way of a petition as opposed to a reference.

The petitioner was a Candidate for the 2011 Parliamentary Elections for Bukoto East Constituency where he stood against the Respondent. He lost the election. He petitioned the High Court for nullification of the elections on grounds similar to those raised in this petition. He however, withdrew the petition before it could be heard.

In paragraph 2 of the petition the petitioner stated that he has a civic duty to defend and uphold the Constitution of Uganda and prevent wastage of Public resources. This to me is an attempt to circumvent the requirement of the Law as regards nullification of Elections for commission of alleged electoral offences which this petition seeks to achieve after withdrawal of the Election petition filed in the High Court. But his identity as the losing candidate for the Parliamentary Elections does not change and neither do the principles on which this court entertains matters that fall within its jurisdiction in terms of Article 137 of the Constitution which litigants are persistently misconstruing despite the numerous decisions of the Court and the Supreme Court which the judgment of Justice Kakuru so ably expounds.

From the Petition this Court is required to make findings of fact as to whether or not there was misuse of Government resources in contravention of the Electoral Law and the Constitution. It is also required to make findings as to the consequences of the infringement on the Law and the Constitution. After making findings on the facts and the Law the Court is required to make findings on remedies including nullification of the Elections and damages. None of the above raises any matter for Constitutional interpretation because after making a finding of fact the Legal position as regards misuse of Government resources would not pose any problem let alone a Constitutional one. It would follow from the finding on the facts that whoever has infringed on the Law and the Constitution would suffer the consequences including but not limited to nullification of the Elections. The consequences are well covered in

the Parliamentary Elections Act and the Constitution. So the question is what would be there for this Court to interpret? None in my view.

Black's Law Dictionary, 9th Edition page 894, defines 'interpretation' as the process of determining what something especially the Law of legal document means; the ascertainment of meaning to be given to words or other manifestations of intention. Further "Interpretation; as applied to written Law, is the art or process of discovering and expounding the intended signification of the language used, that is, the meaning which the authors of the Law designed it to convey to the others. " *Henry Campbell Black, Hand Book on the Constitution and Interpretation of the Laws 1 (1896).*

The most recent decisions of this Court following on the earlier ones by the Supreme Court all of which are well applied in the Judgment of Justice Kakuru emphasise the principle that unless there is a matter for Constitutional interpretation this Court has no jurisdiction. I will only cite the judgment of Justice Wambuzi C.J. as he then was in the case of **Attorney general Vs Major General David Tinyefunza** cited in the judgment of Justice Kakuru to conclude this point .

"In my view jurisdiction of the Constitutional Court is limited in Article 137 (1) of the Constitution to interpretation of the Constitution. Put in a different way no other jurisdiction apart from interpretation of the Constitution is given. In these circumstances I would hold that unless the question before the Constitutional Court

depends for its determination on the interpretation or construction of a provision of the Constitution, the Constitutional Court has no jurisdiction.”

There is no element of interpretation as defined by Black’s Law Dictionary in this case. I agree with Mr. Kiryowa Kiwanuka Counsel for the Respondent that this is an Electoral Petition disguised as a Constitutional Petition. The position is exacerbated by the fact that the petitioner had gone to the High Court where all the matters raised herein would have been competently resolved but instead withdrew the petition. So if the petitioner had taken the right course of action to have his grievances addressed by a court with jurisdiction I do not see how it now turns into a Constitutional matter. This Court should not be turned into a Court for hearing cases where it is merely required to make findings of fact and legal positions that are obvious and straight forward as opposed to those that require constitutional interpretation. This Court should not condone the practice of litigants jumping from courts with jurisdiction to try matters within their jurisdiction to seek reliefs in the Constitutional Court whose jurisdiction according to the numerous decisions explained by Justice Kakuru is limited.

On costs I agree that the petitioner meets the costs of this petition on the consideration that he had withdrawn the matter from a Court with competent jurisdiction and re introduced it in a Court with no jurisdiction as decided in this Court. This is in addition to the factors considered in Justice Kakuru’s judgment.

Dated at Kampala this day of 2014.

HON. JUSTICE MWANGUSYA ELDAD, JA/CC

THE REPUBLIC OF UGANDA

**IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

CONSTITUTIONAL PETITION NO. 0028 OF 2012

MBABAALI JUDE:::::::::::::::::::::::::::::::::::::PETITIONER

=VERSUS=

EDWARD KIWANUKA SEKANDI:::::::::::::::::::::RESPONDENT

Coram:

Hon. Justice Remmy Kasule, JA/JCC

Hon. Justice Eldad Mwangusya, JA/JCC

Hon. Justice Rubby Aweri Opio, JA/JCC

Hon. Lady Justice Solome Balungi Bossa, JA/JCC

Hon. Justice Kenneth Kakuru, JA/JCC

JUDGMENT OF HON. JUSTICE R.A OPIO, JA/JCC

I have had the benefit of reading in draft the judgment of the Hon. Justice Kenneth Kakuru, JA/JCC and I entirely concur with him that the petition does not raise any issues for Constitutional Interpretation and should be dismissed with costs. I have nothing more useful to add.

Dated at Kampala this.....day of.....2014

Hon. Justice Rubby Aweri Opio, JA/JCC

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 0028 OF 2012

MBABAALI JUDE.....PETITIONER

VERSUS

HON. EDWARD KIWANUKA SSEKANDI.....RESPONDENT

CORAM:

HON. MR. JUSTICE REMMY KASULE, JA/JCC

HON. MR. JUSTICE ELDAD MWANGUSYA, JA/JCC

HON. MR. JUSTICE RUBBY AWERI-OPIO, JA/JCC

HON. LADY. JUSTICE SOLOMY BALUNGI BOSSA, JA/JCC

HON. MR. JUSTICE KENNETH KAKURU, JA/JCC

JUDGMENT OF HON. MR. JUSTICE KENNETH KAKURU, JA/JCC

The petitioner brings this petition under **Article 137 (3) b** of the Constitution and Statutory Instrument No. 91 of 2005.

He seeks to the following orders from this court;-

- (a) A declaration that the action of the Respondent of diverting 5 Government Vehicles, Government fuel estimated to be worthy Ug. Shs. 120,000,000/=, 16 Government employees and other Government facilities that he was entitled to in his capacity as Speaker of Parliament of Uganda to his personal campaign activities/programs is**

inconsistent with and or in contravention of Article 233 (2)(b)(i)(ii)(iii) and (e), Article 17(d)(i), Article 21(1), Article 61 (a), Article 164(2) and the Oath of the Speaker provided under Article 82(10) of the Constitution of the Republic of Uganda.

- (b) A declaration that the action of the Respondent in refusing to hand over to Parliament vehicle Reg. No. UG. 0069H on the false claim that it was donated to him by the Parliamentary Commission is inconsistent with and or in contravention of Articles 17(d) (i), 164(2) and the Oath of the Speaker provided under Article 82(10) of the Constitution of the Republic of Uganda.*
- (c) An order that the respondent be removed from parliament for breach of the Leadership Code of Conduct as provided under Article 83(1) (e) of the constitution.*
- (d) An order dismissing or directing the President to dismiss the respondent from the Office of Vice Presidency of the Republic of Uganda for breach of the Leadership Code of Conduct.*
- (e) An order that the respondent makes good the loss occasioned to the Government of Uganda as provided under Article 164(2) of the Constitution and Sections 13(3) and 15(7) of the Leadership Code Act.*
- (f) An order for General damages.*
- (g) Costs of the Petition.*

At the hearing of this petition learned counsel **Alex Chandia**, and **Oundo David Wanjara** appeared for the petitioner while **Mr. Kiryowa – Kiwanuka** appeared for the respondent.

The petitioner was present while the respondent was absent.

Both parties had earlier filed in this court written conferencing notes which they adopted as part of their respective submissions.

The petitioner in his conferencing notes, sets out the brief facts of this petition as follows;-

“The petitioner was a parliamentary candidate for Bukoto Central Constituency in the February 18, 2011, general elections where the Electoral Commission returned the respondent the winner. Dissatisfied with the results, the petitioner filed Election Petition No. 19 of 2011 at the High Court of Uganda in Masaka seeking to annul the results on grounds, inter alia the respondent committed illegal practices / electoral offences including use of public resources during elections for private campaigns. The petition was withdrawn. The petitioner now brings this petition as a concerned citizen with civic and constitutional duty challenging as unconstitutional the impugned acts of the respondent in using government resources during his personal campaigns and withholding government vehicle formerly belonging to the office of the Speaker of Parliament.”

The respondent’s brief facts as set out in his conferencing notes do not differ much from the above. At the scheduling conference the following issues were agreed and framed.

- (1) Whether the petition discloses any matter for constitutional interpretation.**
- (2) If the first issue is answered in the affirmative whether the Acts of the respondent namely the use of Government vehicles, personnel and fuel among others were inconsistent with and in contravention of Articles 233(2) (b) (iii) and (e), 17 (d) (i), 21(1), 61(a), 164(2) and 82(10) of the Constitution.**

Ordinarily since the first issue is capable of disposing of this petition it ought to have been raised as a preliminary matter or objection and determined before

proceeding to hear and determine the second issue. However, in the interest of time, this court allowed counsel to argue both grounds without first determining ground one alone.

On issue one, learned counsel Mr. Chandia contended that under **Article 137** of the Constitution this Court has jurisdiction to interpret the Constitution. He contended further that this petition satisfied the requirement of Article **137 (3)**. All that is required, he stated, was for the petitioner to allege in the petition that a commission of an act or omission contravenes and or is inconsistent with the Constitution.

He referred this court to the authority of ***Nakacwa vs The Attorney General and 2 others Constitution Petition No. 2 of 2001***(unreported). Learned counsel also relied on the decision of ***Darlington Sakwa & Another versus Electoral Commission and 44 others (Constitution Petition No. 8 of 2006)*** for his proposition.

He submitted that from the decision of **Joyce Nakacwa** (Supra) it is immaterial in determining jurisdiction of this court, whether the petitioner would have other remedies in other courts.

Learned counsel further cited the in case of ***Paul Semwogere and two others vs Attorney General (Constitutional petition No. 1 of 2002)*** in support of his proposition that this court has exclusive jurisdiction to interpret the Constitution where an allegation is made that certain acts or omissions contravene the constitution.

In reply Mr. Kiryowa-Kiwanuka for the respondent submitted that not every violation of the Constitution requires Constitutional Interpretation. That it is not enough to show that there was a violation of a provision of the Constitution. He cited the case of ***Charles Kabagambe versus Uganda Electricity Board (Constitution Petition No.2 of 1999)***.

He submitted that in this particular case the respondent does not deny using the Government Motor vehicles and other Government facilities he was entitled, to at the time, as speaker of Parliament.

However, the respondent contends that he did not violate any law or any provision of the Constitution in so doing.

He also cited the decision of the court in ***Herman Semujju versus Attorney General (Constitution Petition NO. 1 of 1998)***.

He submitted that the issues raised in this petition were the same issues which the petitioner had raised in ***Election Petition No. 19 of 2011 at Masaka High Court*** which the Petitioner withdrew.

He contended that this petition was brought to achieve what the petitioner had failed to achieve in ***Election Petition No. 19 of 2011***.

He submitted that such a petition ought to be dismissed on the authority of ***Charles Kabagambe*** (Supra) in which this court while dismissing that petition observed that it was a disguised employment dispute.

He submitted further that this particular petition was a disguised election petition and therefore an abuse of court process.

He cited the case of ***The Attorney General and Uganda Land Commission vs James Mark Kamoga (Supreme Court Civil Application No 8 of 2004)*** (Unreported).

The first issue as framed has become almost a permanent feature in every constitutional petition.

This court and the Supreme Court have pronounced themselves on this matter in a number of Constitutional Petitions and Constitutional Appeals. Most recently this Court in ***Uganda Network On Toxic Free Malaria Control Limited vs The Attorney General (Constitutional Petition No. 14***

of 2009) and Asimwe Gilbert vs Barclays Bank Uganda Ltd and 2 Others (Constitutional Petition No. 22 Of 2010) (Unreported), this Court endeavored to trace the Jurisprudence as it relates to the jurisdiction of this court. At the cost and pain of repeating ourselves we shall reiterate again retrace this jurisprudence.

In the case of *Serugo vs KCC and Attorney General* (Supra) Justice Kanyeihamba JSC (as then he was) referring to the case of *Attorney General versus Major General David Tinyenfuza* (Supra) had this to say:-

“As far as the case of Major General David Tinyefuza Constitutional Petition No. 1 of 1997 is concerned . There is a number of facts to the decision of the Supreme Court in that case.

Nevertheless, when it comes to that Court’s view of the jurisdiction of the Court of Appeal as a Constitutional Court, its decision in that case is that the Constitutional Court had no original jurisdiction merely to enforce rights and freedoms enshrined in the Constitution in isolation to interpreting the Constitution and resolving any dispute as to the meaning of its provisions. The Judgment of the majority in that case (Wambuzi, C.J, Tsekooko JSC, Karokora JSC, and Kanyeihamba JSC), is that to be clothed with jurisdiction at all, the Constitutional Court must be petitioned to determine the meaning of any part of the Constitution in addition to whatever remedies are sought from it in the same petition.”

Hon. Justice Mulenga JSC who wrote the lead Judgment in the *Serugo Case* (Supra) settled this issue as follows:-

“I shall start by clearing the apparent dispute on the import of the decision of this Court in Attorney General v. David Tinyefuza (supra). Although there are a number of issues in that case decided on 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 Constitution Court was exclusively derived from Article 137 of the Constitution. It was not a holding in any of the Judgment that Article 50 of the Constitution confers, on the Constitution 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, variously expressed in several of the Judgments, that the Constitution Court was “a competent Court” for purposes of Article 50 to which an application (for redress) may be made when such right or freedom is infringed or threatened. It must be noted however that this holding is subject to a rider, again variously expressed in the several Judgments, 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. It is the provisions in clauses (3) and (4) of Articles 137 that empower the Constitutional Court,when adjudicating on a petition for interpretation of the Constitution, to grant redress where appropriate. Clause (3) provides in effect, that when a person petitions for a declaration on interpretation of the Constitution, he may also petition for redress where appropriate. Clause (4) then provides:

(4) “Where upon determination of the petition under clause (3) of this Article the Constitutional Court considers that there is need for redress in addition to the declaration sought, the Constitution Court may-

- a) grant an order of redress; or**
- b) refer the matter to the High Court.....”**

It follows that a person who seeks to enforce a right or freedom guaranteed under the Constitution, by claiming redress for its infringement or threatened infringement, but whose claim does not call for an 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).”

On his part WW Wambuzi CJ in ***Attorney General versus Major General David Tinyefuza*** (Supra) had this to say at Page 24 of the Judgment.

“In my view, jurisdiction of the Constitutional Court is limited in Article 137(1) of the Constitution to interpretation of the Constitution. Put in a different way no other jurisdiction apart from interpretation of the Constitution is given. In these circumstances I would hold that unless the question before the Constitutional Court depends for its determination on the interpretation or construction of a provision of the Constitution, the Constitutional Court has no jurisdiction.”
(Emphasis added)

In the ***Alenyo Petition*** (Supra) Justice Mpagi -Bahigeine JA (as she then was) wrote a dissenting Judgment . She state as follows at page 2 of her Judgment.

“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:

" 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.”

The above proposition of the law is in tandem with the decision of the Supreme Court in both the ***Tinyefuza*** and the ***Serugo*** cases (Supra).

In the ***Tinyefuza case*** Justice Kanyeihamba made a very important and pertinent clarification that, not every violation of the Constitution or a validity of a claim must end up at the Constitutional Court. We are constrained to

quote him in *extenso*. He clarified and stated as follows at pages 24-26 of his Judgment:-

“I do believe that the jurisdiction of the Constitutional Court as derived from Article 137(3) is concurrent with the jurisdiction of those other Courts which may apply and enforce the articles enumerated above, but there is an important distinction that I see, and that is, that for the Constitutional Court to claim and exercise the concurrent jurisdiction, the validity of that claim and the exercise of the jurisdiction must be derived from either a petition or reference to have the Constitution or one of its provisions interpreted or construed by the Constitutional Court. In other words, the concurrent original jurisdiction of the Court of Appeal sitting as a Constitutional Court can only arise and be exercised if the petition also raises questions as to the interpretation or construction of the Constitution as the primary objection or objectives of the petition. To hold otherwise might lead to injustice and, in some situation, manifest absurdity.”

Take the case of a pupil who comes late in a primary school. The teacher imposes a punishment upon the pupil who is required to clean the classroom after school hours. Can it have been the intention of the framers of the Constitution that as an alternative to the pupil’s right to complain and seek redress from the headteacher or the school board of governors, the pupil would be entitled to petition the Constitutional Court under Article 137(3) (b) on the grounds that his or her rights under Article 25 (3) have been violated in that he or she has been compelled to do “forced

labour?” A prison officer opens and reads a sealed letter addressed to one of the inmates suspecting that the letter contains secret information advising the prisoner how to escape from jail. Would it be reasonable for the prisoner to petition the Constitutional Court on the grounds that the opening of his mail was inconsistent with Article 27(2) of the Uganda Constitution which provides that no person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property or should the prisoner’s only resort be to the Board of Governors of the institution concerned or should the prisoner complain to the Minister of State responsible for prisons?

A resident in suburb is constantly awakened from sleep by the loud noise from a disco nearby. Should the resident petition the Constitutional Court under Article 43(1) on the ground that the enjoyment of music by musicians and dancers has directly interfered with the right of quiet and peaceful enjoyment of property or, should the resident be advised to go to the local government council for possible reconciliation and redress? In my opinion, it could not have been the intention of the framers of the Uganda Constitution that such matters, inconsistent as they may appear to be with the provisions of the Constitution, would have direct access to the Court of Appeal which happens to be one of the busiest Courts in the land, entertaining appeals from other diverse Courts and Judges. This Court must give guidelines on those matters by construing the Constitution, so as to avoid these absurdities and so direct such suits and claims to lower tribunals, Magistrates’ Courts and, where appropriate to the High Court.

The same opinion was expressed by Justice Mulenga and Odoki CJ in both cases of ***Tinyefuza*** and ***Serugo***. Excerpts from those decisions have already been set out earlier in this Judgment.

The petitioner sets out 27 paragraphs in his petition. Paragraph 25, 26, and 27 are in respect of reliefs and remedies.

The rest of the 24 paragraphs reference is made to the Constitution in only two namely paragraph 19 and paragraph 22.

Paragraph 19 is set out as follows;-

19 ***“THAT in the instant case the respondent used Government facilities not for official use but to bolster his personal campaign a conduct that amounts to breach of the Leadership Code of Conduct and inconsistent with and or in contravention of Article 233(2)(b)(i)(ii)(iii), (c), (d) and (e) of the Constitution of the Republic of Uganda.”***

And paragraph 22 is set out as follows:-

22 ***“(a) The act of the Respondent to divert 5 Government Vehicles, Government fuel estimated to be worthy Ug. Shs. 120,000,000/=, 36 Government employees and other Government facilities that he was entitled to in his capacity as Speaker of Parliament of Uganda to his private campaign activities/programs is inconsistent with and or in contravention of Article 233 (2)(b)(i)(ii)(iii) and (e), Article 17(d) (i), Article 21(1), Article 61 (0), Article 164 (2) and the Oath of the Speaker provided under Article 82(10) of the Constitution of the Republic of Uganda***

(b) The act of the Respondent in refusing to hand over to parliament vehicle Reg. No. UG. 0069H on the false claim that it was donated to him by the Parliamentary Commission is inconsistent with and or in contravention of Articles 17(d)(i), 164(2) and the Oath of the Speaker provided under Article 82(10) of the Constitution of the Republic of Uganda.

In paragraph 19 reproduced above we find nothing that requires Constitutional interpretation. The petitioner asserts that the respondent violated the provisions of the **Leadership Code**. In paragraphs 17 and 18 he asserts that the petitioner violated the provisions of the **Parliamentary Elections Act, 2008**.

All laws in this country emanate from the Constitution. Violation of any law by any act or omission directly or by implication is also a violation of the Constitution. The violation of any law must be addressed to and settled by an appropriate court or tribunal and not by this court, unless there is an issue for Constitutional interpretation. This Court may however, having resolved the issue requiring constitutional interpretation, grant any appropriate remedy.

The acts complained of in paragraph 22 of the petition relate to the conduct of elections under the **Parliamentary Elections Act**. When proved those acts would constitute a violation of the Electoral Law with resultant consequences provided for in that law.

The declarations sought in paragraph 25 (a) and 25 (b) cannot be granted unless and until the issues of fact complained of which are denied by the respondent have been proved. Proof of such allegations requires a trial in absence of an admission by the respondent of those facts, which is the case.

The order sought in paragraph 25(c) *to wit:-* Removal of the petitioner from Parliament for breach of the leadership code has no relation to the interpretation of the Constitution. This is an electoral matter.

We have already observed above that the petitioner filed an election petition at the High Court and then withdrew it. That petition was seeking the order set out in paragraph 25(c) of the petition.

He now seeks to obtain from this court what he failed to obtain in the election petition. In his brief facts of the case already set out above the petitioner states as follows:-

“the petitioner filed Election Petition No. 19 of 2011 at the High Court of Uganda in Masaka seeking to annul the results on grounds, inter alia the respondent committed illegal practices / electoral offences including use of public resources during elections for private campaigns. The petition was withdrawn.” Emphasis added.

I agree with Mr. Kiryowa-Kiwanuka that this Constitutional Petition is a disguised election petition.

Similarly paragraph 25(d) in which the petitioner seeks this court to make an order directing the President to dismiss the respondent from the office of the Vice President is not tenable. It does not result from the interpretation the Constitution, in any event it relates only to the Leadership Code Act and not to the Constitution.

Paragraph 25(e) is also untenable for the same reasons.

In case of Charles ***Kabagambe vs Uganda Electricity Board*** (Supra). This Court held as follows at page 11 of the Judgment of Court.

“It is therefore now settled once and for all that if the matter does not require an interpretation of a provision of the

Constitution, then there is no juristic scope for the invocation of the jurisdiction of this court.

Here the petitioner alleges that his rights were violated and claims declaration and redress. On the facts available one cannot rule out wrongful dismissal. This is a matter dealt with by specific laws. They can be enforced by a competent court and

should a question of interpretation of the Constitution arises, that question can always be referred to this court.”

I therefore find that the petition does not raise issues for Constitutional Interpretation under **Article 137 (3)**. The petition ought to have brought his action in another competent court under an appropriate law.

This court has no jurisdiction to entertain this petition as it raises no issues for Constitutional Interpretation at all.

The first issue is therefore resolved in the negative.

The first issue disposes of this petition and I have no reason to consider the second issue.

This petition therefore fails.

This petition was not brought in the public interest but in the interest of the petitioner. It appears to be frivolous and vexatious.

I accordingly order that the petitioner pays costs of this petition.

Dated at Kampala this 19TH day of September 2014.

HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL

