

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**

*[Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi & Gashirabake,  
JJCC]*

Constitutional Petition No. 12 of 2019

**BETWEEN**

Eddie Kwizera=====Petitioner

**AND**

Attorney General=====Respondent

**JUDGMENT OF FREDRICK EGONDA-NTENDE, JCC**

**Introduction**

[1] This petition was brought under Article 137 of the Constitution. The petitioner is seeking the following declarations:

‘That:

- a. The directive and letter of the president dated 18<sup>th</sup> January, 2017 addressed to the Minister of Public Service is inconsistent with and contravene articles 8A, 147(1)(b), 154, 155(1) and 156(1) of the Constitution.
- b. The letter and directive of the President dated 8<sup>th</sup> January, 2017 addressed to the Minister of Public Service contravene articles 8A, 147(1) (b), 126(4) read together with article 154 of the Constitution.
- c. The omission of the Chief Justice to prepare the estimates of expenditure of the Judiciary in line with the recommendation of the Judicial Service Commission as to terms and conditions of service of members of the Judiciary is inconsistent with article 8A and articles 147(1)(b) and 155 of the Constitution.
- d. The salaries and allowances (Specified Offices) Act is inconsistent with article 158(2) of the Constitution.

[2] The petitioner is seeking the following orders:

- a. Judicial, Public, Education and Health Service Commissions make recommendations in respect of salaries, allowances and other benefits to the Government within 3 months. That the Judicial Service Commission makes similar recommendations to the Chief Justice for incorporation in Judiciary's budgetary proposal.
- b. The Government introduces in Parliament a Bill providing salaries, allowances and other benefits for the entire Public Service within 3 months after receipt of recommendations from the Service Commissions.
- c. The provisions of the Salaries and Allowances [Specified Officers] Act are applicable to the Judiciary.
- d. Prohibiting any further direct negotiations between the President and public officers seeking salary increment out of the confines of law which provides for salaries, allowances and other benefits.
- e. The Chief Justice after due consideration incorporates the recommendation of the Judicial Service Commission as to the salary, allowance and benefits of persons employed in the Judiciary in the 2020/2021 budget for submission to the President.
- f. The President submits to Parliament the budget of the Judiciary without revision but with comments as required by article 155(3) of the Constitution.
- g. The Government establishes by law salary board to determine salary and other emoluments payable to public officers within 6 months.
- h. A permanent injunction restraining the Chief Justice, and the Secretary/ Commission to the Judiciary from submitting the budget for the Judiciary to the Minister of Finance.
- i. The Government introduces in Parliament a Bill to operationalise article 150 (1) of the Constitution within 2 months.
- j. Costs of the petition.'

[3] This petition is supported by an affidavit sworn by the petitioner.

- [4] The respondent filed an answer to the petition which is supported by the affidavits of Mr. Richard Adrole Senior State Attorney in the Attorney General's Chambers, Mr. Ronald Sekagya Acting Secretary/Permanent Secretary to the Judicial Service Commission, Ms. Mary Theopista Wenne Permanent Secretary/ Secretary to the Health Service Commission and Mr. Lukwago Asuman Secretary of the Education Service Commission.
- [5] The answer to the petition denies that the Judicial Service Commission, Public Service Commission, Education Service Commission and Health Service Commission have abdicated their role to review and make recommendations on the terms and conditions of service of public servants. The respondent contended that the President did not enter into direct negotiations with sectors of public service in regard to the enhancement of salaries. The President's directive and approval of enhancement of remuneration of the Chief Justice and the Deputy Chief Justice, Head of Public Service, Deputy Head of Public Service and Permanent Secretaries are neither inconsistent with nor in contravention of articles 8A, 21, 155(1), 156(1), 154, 147(1) (b) and 166 (1) (c) of the Constitution. He refuted the allegation that the impugned salaries were arrived at without the involvement or recommendations of the Judicial Service Commission and the fact that the Chief Justice prepares annual estimates of expenditures under article 155 of the Constitution without seeking recommendations of the Judicial Service Commission. The respondent further contended that the Salaries and Allowances [Specified Officers] Act is not inconsistent with articles 79(1) and 158(2), 66(2) and (3) of the Constitution. The Government has neither failed to develop a holistic and coherent policy nor to introduce a bill of Parliament on terms and conditions of service of public officers based on recommendations of Public Service, Health Service Commission and Education Service Commission. He averred that the Constitution does not empower Parliament to prescribe the terms and conditions of service of the Judiciary since it's an arm of Government. He further averred that the Government adopted a procedure to address the salary disparities through the Equal Opportunities Commission and Salary Review Commission as prescribed by the Constitution and prayed that this court dismisses the petition.

[6] The petitioner raised six issues to be determined by this court which I set out below as follows; -

1. Whether the alleged omission of the Judicial, Public, Education and Health Service Commissions to review and make recommendations on the terms and conditions of service of public servants contravenes articles 147(1) (b), 166 (1) (c) 168 (1) (c) and 170(1) (c) of the Constitution.
2. Whether the Salaries and Allowances (Specified Officers) Act contravenes articles 158 (2), 79, 66 and 155 of the Constitution.
3. Whether the President's directives to the Minister of Public Service and approval of enhancements of emoluments for the Chief Justice, Deputy Chief Justice, Head of Civil Service and Permanent Secretaries is in contravention of articles 158(2) of the Constitution.
4. Whether the omission of the Chief Justice in preparing the estimates of expenditure of the Judiciary without the recommendation of the Judicial Service Commission as to the terms and conditions of service of members of the Judiciary is inconsistent with articles 8A and 147(1) (b), 155, 166 (1) (b), 168 (1) (b) and 170 (1) (b) of the Constitution.
5. Whether the omission of the Government to develop a coherent and holistic policy and to enact a law on terms and conditions of service of Public Servants is inconsistent with and contravenes articles 8A of the Constitution.
6. Whether the act of the President negotiating directly with sectors of the public service seeking better terms and conditions of service is inconsistent with articles 166 (1) (c), 168(1) (c), 147 (1) (c), 170 (1) (c) and 8A of the Constitution.

### **Submissions**

[7] At hearing, the petitioners were represented by Mr. Wandera Ogalo and the respondent by Mr. Madete Geoffrey. Counsel for both parties filed written submissions.

[8] Counsel for the Petitioner contended that the Service Commissions have a role under the Constitution to review the terms and conditions, standing orders, training and qualifications of public officers and matters concerned with the



management and development of the service and make recommendations to the Government on them. That, however, they have abdicated their responsibilities from the time the Constitution was promulgated. Counsel for the Petitioner argued that the Respondent did not dispute the Petitioner's evidence in paragraphs 7, 8, 12, 13 and 14 of his affidavit in support of the petition and prayed that this Court finds that the Service Commissions have not carried out any review of the terms and conditions of public officers and recommendations on the same. He relied on Article 128 (7) of the Constitution and Justice Asaph Ruhinda Ntegye and Justice Linda Mugisha V Attorney General Constitutional Petition No. 33 of 2016 (unreported) for the proposition that 'terms and conditions mean salary, allowances, privileges and retirement benefits and other conditions.

- [9] He stated that the 'terms and conditions of service' include subjects for negotiations and consultations as set out in Appendix 2 of the Public service (Negotiating Consultative and Dispute Settlement Machinery Act 10 of 2008 and include salaries, allowances, hours of work, health and safety at work, leave principles, expenses, retirement benefits, disciplinary procedure, welfare, promotion, method of salary payment and policy, aspects that affect employment and submitted the service Commission ought to have reviewed the terms and conditions of service immediately after 1995.
- [10] Counsel for the petitioner further argued that the salaries and allowances of [Specified Officers] Act enacted by Parliament excluded the offices of Speaker and Deputy Speaker of Parliament, Prime Minister, and persons serving in the Judiciary save for Chef Justice, Deputy Chief Justice and all Justices of the Courts of Judicature and omitted the salaries and allowances of the Speaker, Deputy Prime Minister, Registrars, Chief Magistrates, Magistrate Grade 1 and II, Court Clerks and Secretary to the Judiciary which contravenes Article 158(2) of the Constitution which imposes a duty on Parliament to prescribe the offices, salaries and allowances of the offices which are charged on the Consolidated Fund. Counsel for the petitioner submitted that Parliament further contravened the said Article when it prescribed the salaries and allowances of the Inspector General of Police, Deputy Inspector General of Police,

Commissioner of Prisons and Deputy Commissioner of Prisons which are not chargeable from Consolidated Funds.

- [11] Counsel for the petitioner further submitted that the rationale for the provision under Article 158(2) of the Constitution was to ensure financial security to the holders of those offices. He relied on the report of Odoki's Commission on page 623 para 22.62 where it was stated that the 1967 Constitution provides for payment of the emoluments of holders of certain offices, from the Consolidated Fund without prior approval of Parliament.
- [12] With regard to issues 3 and 4 Counsel for the petitioner stated that the President's directive to the Minister of Public Service to enhance the remuneration of the Chief Justice, Deputy Chief Justice, Head of Civil Service and Permanent Secretaries is inconsistent with and in contravention of articles 158(2) 147(1)(b) 166(1)(c) and 8A of the Constitution. Counsel for the petitioner argued that Parliament carried out its Constitutional duty by enacting the Salaries and Allowances [Specified Officers] Act which provides for the salaries of the Chief Justice and Deputy Chief Justice. However, the President increased the salary of the Chief Justice to UGX 20,000,000 and the Deputy Chief Justice to UGX 18,000,000 contrary to Article 158 (2) of the Constitution. Counsel for the Petitioner contended that the process of increasing the salaries of the Chief Justice and Deputy Chief Justice was initiated by the Minister of Public Service upon making recommendations to the President to enhance the emoluments of above mentioned offices instead of the Judicial Service Commission making recommendations to the Government.
- [13] Counsel for the petitioner further argued that the act of the Minister of Public service is in contravention of the Constitution. Counsel for the petitioner also submitted that Parliament enacted the Salaries and Allowances [Specified Officers] Act fixing the salaries of the Judicial Officers without recommendations from the Judicial Service Commission on the terms and conditions of Judicial Officers. He relied on the case of Gerald Karuhanga Vs Attorney General of Uganda Constitutional Petition No. 39 of 2013 for the submission that Parliament undermined the independence of the Judicial



Service Commission when it fixed the salaries and allowances of Judicial Officers without recommendations from the Judicial Service Commission.

[14] In respect to issues 5 and 6 Counsel for the Petitioner submitted that the Government has failed to develop a coherent policy and enactment of the law as to terms and conditions of service of public servants as a result the President and sectors of Public Service have directly engaged into negotiations for enhancement of the terms and services without involving the Service Commissions which resulted into industrial action. Counsel for the petitioner contended that the failure by Service Commissions to review the terms and conditions of service of Public Servants and Cabinet to formulate and implement policy as Article 111(2) of the Constitution has caused chaos in Public Service in regards to terms and conditions of service and there is no justification as to why the executive and legislature have abdicated the function imposed by the Constitution. Counsel for the petitioner argued that the Constitution distributed powers between the Service Commissions, Executive and Parliament, whereby the Commissions are charged with the responsibility to review and make recommendations to the Government, the minister has a role to come up with specifics of the policy and submit the same to the Cabinet for adoption, that the failure to adhere is a contravention to the democratic principles of rule of law. Counsel relied on the case of James Katabazi V Secretary General of East African Community & Attorney General where it was held that the principle of rule of law entails division of power and its strict observation.

[15] In reply, Counsel for the respondent argued that the petitioner did not adduce evidence to show the respective Service Commissions which abdicated their responsibility. Counsel for the respondent argued that the Affidavits of Richard Adrole, Dr. Asuman Lukwago and Dr. May Theopista reveal that the Judicial Service Commission prepared a concept note and proposals for review of the terms and conditions of service of Judicial Officers which proposal was submitted to the Ministry of Justice and Constitutional Affairs on 28<sup>th</sup> August, 2017 resulting from the meeting convened with the Executive Committee of the Judicial Officers Association (UJOA) and eventually, in June, 2019 the Judicial Service Commission wrote to the Minister of Justice and Constitutional

Affairs and Minister of Public Service forwarding the proposals for consideration by the Judiciary Salary Enhancement Committee. Counsel for the respondent submitted that as a result of the efforts of the Judicial Service Commission and other Commissions the salaries of the Judicial Officers were enhanced in the FY 2019 out of UGX 13.69Bn appropriated in the budget and supplementary salary structure in FY 2019/2020 additional UX 158.7Bn.

- [16] Counsel for the respondent contended that the offices which are not provided for under the Salaries and Allowances (Specified Officers) Act are provided for under the Constitution and other Acts of Parliament. Counsel for the Respondent argued that the petitioner's contention that Parliament prescribed salaries and allowances of the Inspector General of Police, the Deputy Inspector General of Police, the Commissioner of Prisons and the Deputy Commissioner of Prisons which is not charged on the Consolidated Fund is unfounded since the charge of the salaries and allowance of those offices was through an Act of Parliament pursuant to Article 154(1) of the Constitution which provides that funds can be withdrawn from the Consolidated Fund if it is charged under the Constitution or an Act of Parliament.
- [17] Counsel for the Respondent submitted that the Constitution charges the emoluments of the Speaker and Deputy Speaker of Parliament, Vice President, Prime Minister, all persons serving in the Judiciary, Education Service Commission, Health Service Commissions, Local Government Commission, Inspector General of Government, Uganda Land Commission, Human Rights Commission and Electoral Commission on the Consolidated Fund and the only issue is how the quantum and the items of expenditure to be charged on the Consolidated Fund are determined and the effect. Counsel for the Respondent argued that the Parliamentary Commission is mandated to provide budget estimates for purposes of Article 155 and to make recommendations to Parliament on allowances payable and privileges available to the Speaker and Deputy of Parliament and Members of Parliament, and the expenses of Parliament are charged on the Consolidated Fund pursuant to Section 20 of the Administration of Parliament Act, Cap 257. Counsel relied on the case of Krispus Ayena Odongo V Attorney General and Parliamentary Commissions Constitution Petition No. 30 of 2017, [2020] UGCA 31 for the proposition that



the administrative expenses of Parliament and the Judiciary are charged on the Consolidated Fund and it's a requirement to present the estimates via an Appropriation Bill for Parliamentary approval before the funds are withdrawn.

[18] Counsel for the respondent argued that in June, 2020 Parliament passed the Administration of the Judiciary Act which provides for the expenses of persons serving in the Judiciary to be charged on the Consolidated Fund. The same with Education Service Commission, Auditor General, Local Government Commission, Land Commission and Electoral Commission.

[19] In response to issues 3 and 4 Counsel for the respondent argued that the President's letter to the Minister of Public Service was in conformity with Article 99 of the Constitution which vests executive authority of Uganda in the President who exercises it in accordance with the Constitution and laws of Uganda. Counsel for the respondent submitted that the motion to increase the emoluments of the Chief Justice, Deputy Chief Justice, Head Civil Service and Permanent Secretaries was brought by the Government (the Executive arm of Government) which is headed by the President. He was of the view that much as Article 159(2) of the Constitution empowers Parliament to determine the emoluments of the Chief Justice, Deputy Chief and Head of Civil Service, however, the motions and resolutions have to originate from the Government and Parliament only determines the emoluments of the Chief Justice, Deputy Chief Justice, Head of Civil Service and Permanent Secretaries after the Executive has initiated the process as it was in Annexure 'A and B'. He relied on the Parliamentary Commission v Mwesigye Wilson Constitutional Petition No. 08 of 2016 [2019] UGSC 11, for this averment.

[20] Counsel for the respondent further submitted that according to the provisions of section 7(1) (b) of the Public Service Act, 2008 the Minister of Public Service receives and considers on behalf of the Government proposals for the remuneration and benefits of persons whose emoluments are payable directly from the Consolidated Fund or out of the money provided for by Parliament. That Hon Muruli Mukasa, the Minister of Public Service received and submitted to the Head of Government the proposal to enhance emoluments.

- [21] It was the submission of Counsel for the respondent that the Constitution provides a system of checks and balances between the separate arms of Government in the management of public resources and every organ has a role to ensure that there is accountability and transparency.
- [22] Counsel for the respondent argued that with respect to emoluments of specified officers whose salaries and allowances are charged on the Consolidated Fund, it is the responsibility of the relevant Service Commission to make recommendations to the Executive which is charged with the responsibility of preparing or causing to be prepared estimates of revenue and expenditure of Government to be laid before Parliament in line with Article 155(1) of the Constitution. He relied on the case of Parliamentary Commission v Mwesigye Wilson (supra) for the proposition that the Government has to be informed whenever a charge is created on the Consolidated Fund. Counsel for the Respondent submitted that the President's approval of the enhancement of salaries in annexure A and B was subjected to Parliamentary approval and a resolution was subsequently made.
- [23] Counsel for the respondent further submitted that the Government and Service Commissions have consistently developed policies to enhance the terms and conditions of public servants. Counsel for the respondent further argued that the cabinet under Minute No. 52 of (CT 2017) and 509 (CT 2017) approved the pay policy principles and five-year pay target for the public service to be implemented in a phased manner which plan is aimed at enhancing the terms and conditions of public servants.
- [24] In rejoinder Counsel for the petitioner contended that the evidence adduced by the respondent, specifically annexures AL1, AL2, and AL3 attached to the Affidavit of Dr. Lukwago Asuman are not recommendations to the Government. That annexure AL1 is a response to the President's letter in Annexure B and, in his view, the President made recommendations to the Service Commissions instead. In regards to the attachments on the Affidavit of Ronald Sekagya, Counsel for the Petitioner submitted that save for Annexure B1 and E1 the rest of the documents are not recommendations by Judicial Service Commissions to the Government. That annexure B1 was a result of a

threat of industrial action by the UJOA in case the terms and conditions were not improved. Counsel for the petitioner further contended that there is no evidence to show that annexures B1 and E1 were received by the Minister of Justice and Constitutional Affairs and so the letters dated 4<sup>th</sup> September, 2003 and 15<sup>th</sup> November, 2010 attached to the affidavit of Mary Theopista Wanene forwarding the two concept papers to the President.

[25] Counsel for the petitioner argued that Parliament ought to have prescribed salaries and allowances and benefits of the offices the remuneration of which is charged on the Consolidated Fund and that by adding other offices, Parliament contravened Article 158 of the Constitution. Counsel for the petitioner submitted that there is no conflict between Articles 158(2) and 98, 99, 152 and 156 of the Constitution requiring application of the rule of harmony and completeness.

## **Analysis**

[26] I will proceed to determine this petition by determining the issues in the manner set forth by the petitioner's counsel in their written submissions.

### **Issue 1**

**Whether the alleged omission of the Judicial, Public, Education and Health Service Commissions to review and make recommendations on the terms and conditions of service of public servants contravenes articles 147(1) (b), 166(1) (c), 168(1)(c) and 170(1)(c) of the Constitution.**

[27] If, as contended by the Petitioner it is shown that the Service Commissions have omitted to carry out their constitutional duty under the above provisions of the Constitution it would appear to me that this is a matter for enforcement of the Constitution rather than interpretation of the Constitution. What the petitioner needs to do is bring an action before a competent court seeking enforcement of those constitutional provisions which the Service Commissions have omitted to carry out.

[28] There is no question or matter in controversy for constitutional interpretation.



## Issue 2

### **Whether the salaries and allowances (Specified Officers) Act contravene articles 158 (2), 79, 66 and 155 of the Constitution.**

[29] Article 158(2) of the Constitution provides:

‘Subject to the provisions of this Constitution, Parliament shall prescribe the offices, salaries and allowances in respect of which are charged on the Consolidated Fund by this Constitution.’

[30] Parliament enacted the Salaries and Allowances (Specified Officer) Act Cap 291 on 1<sup>st</sup> July, 1999 pursuant to the provision under Article 158(2) of the Constitution. However, the petitioner contended that the Act omits the offices of Speaker and Deputy Speaker under Article 82(9), Prime Minister under Article 108 (6) and all persons serving in the judiciary including the Registrars, Chief Magistrates, Magistrate Grade, Court Clerks and Secretary to Judiciary and their salaries and allowances. Further that Parliament prescribed salaries and allowances for the offices of the Inspector General of Police, Deputy Inspector General of Police, Commissioner of Prisons and Deputy Commissioner of Prisons whose salaries and allowances are not charged on the Consolidated Fund by the Constitution.

[31] Counsel for the respondent submitted that the offices which are not provided for under the Salaries and Allowances (Specified Officer) Act are provided for under the Constitution and other Acts of Parliament. That Article 154(1) of the Constitution allows funds to be withdrawn from the Consolidated Fund if charged by the Constitution or Act of Parliament and not in all instances must there be an Act of Parliament. On the other hand, Counsel for the petitioner contended that the Parliament was required to prescribe the offices and their salaries and allowances charged on Consolidated Funds. Instead Parliament was choosy.



- [32] In determining the constitutionality of legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining the constitutionality of either effect animated by the object of the legislation intend to achieve. See Attorney General V. S Abuki Constitutional Appeal No. 1988 (SC) [1999] UGSC 7.
- [33] The respondent has put no extrinsic materials before this Court to ascertain the object and intent of the impugned Act. However, the legislative objective of the impugned Act can be established from the title of the impugned act, text, preamble, punctuation, heading, schedules as well as interpretation clauses.
- [34] The long title of the Salaries and Allowances (Specified Officer) Act Cap 291 states:
- ‘An Act to provide in pursuance of article 158 of the Constitution for the salaries and allowances to be paid to the holders of certain offices, the salaries and allowances attached to which are charged on the Consolidated Fund, and for related matters.’
- [35] The first thrust of attack on this Act is that Parliament did not include all offices whose salaries and allowances were charged on the Consolidated Fund, including Speaker, Deputy Speaker and other Officers of the Judiciary. In my view this omission does not render the impugned Act unconstitutional. Rather it is simply to the effect that in its wisdom Parliament has in this particular law set out a limited number of offices for which it has prescribed salaries and allowances as required by law and when such terms would take effect. Whether this is actuated by availability of resources or other policy reasons is not for me at this stage to determine.
- [36] Article 158 (2) set out above grants Parliament the authority and duty to prescribe the offices in respect of which salaries and allowances are to be charged upon the Consolidated Fund. The contention that offices, which the Constitution has not provided that their salaries and allowances be paid from the Consolidated Fund, cannot have their salaries and allowances charged on the Consolidated Fund is erroneous. Such authority is available to Parliament under article 158 (2) of the Constitution.
- [37] I would answer this issue in the negative.

### Issues 3

**Whether the President's directives to the Minister of Public Service and approval of enhancements of emoluments for the Chief Justice, Deputy Chief Justice, Head of Civil Service and Permanent Secretaries is in contravention of article 158(2) of the Constitution.**

[38] The petitioner challenged the constitutionality of the President's directive to the Minister of Public Service to enhance the remuneration of the Chief Justice, Deputy Justice, Head Civil Service and Permanent Secretaries. Attached to the affidavit deposed by the petitioner, are Annexures A and B letters from the President to the Minister of Public Service dated 6<sup>th</sup> January 2017 directing him to increase the emoluments of the Chief Justice to 20,000,000/=, Deputy Chief Justicen18,000,000/=, Head of Public Service 17,600,000/=, Deputy Head of Public Service 15,500,000/= and Permanent Secretaries. 15,400,000/= and the letter dated 18<sup>th</sup> January, 2017 directing the Minister of Public Service to consider enhancing the remuneration of the rest of the members of the bench and civil service. The petitioner contended that the power to determine the salaries and allowances of the Chief Justice lies with Parliament, not the President.

[39] It is not in question that Parliament holds the keys to the purse of Uganda. I have read the President's letters of 6<sup>th</sup> January 2017 and 18<sup>th</sup> January 2017. No doubt the President directs his Minister for Public Service to enhance the salaries of particular officers as set out in those letters. In order to effect this decision the responsible Minister in Government, in this case, the Minister of Public Service, would have liaise with the relevant agencies of Government to bring this to fruition. Ultimately the necessary papers must be laid before Parliament which would decide to accept the legislative proposals or not.

[40] The Minister of Public Service does not use his own purse from which to implement the President's directive. He must turn to Parliament in accordance with the law.

[41] I would answer this issue in the negative.

#### Issue No.4

**Whether the omission of the Chief Justice in preparing the estimates of expenditure of the Judiciary without the recommendation of the Judicial Service Commission as to the terms and conditions of service of members of the Judiciary is inconsistent with articles 8A and 147(1) (b), 155, 166 (1) (b), 168 (1) (b) and 170 (1) (b) of the Constitution.**

[42] The petitioner in the petition set out this matter as follows:

‘The act of the Chief Justice in preparing annual estimates of expenditure under article 155 of the Constitution without demanding / seeking recommendations of the Judicial Service Commission as to terms and conditions of service of persons serving in the Judiciary is inconsistent with Article 8A and 147 (1) (b), 166 (1) (b), 168 (1) (b) and 170 (1) (b) of the Constitution.’

[43] There is nothing in the petition, prior to this paragraph or thereafter, on any matter in connection with the matters set out in the above paragraph. Neither are there any factual allegations with regard to this claim that I can glean from the petition or supporting affidavit. We are not told which financial years are being referred to. We are not told what happens after the Chief Justice prepares ‘annual estimates of expenditure’ under Article 155 of the Constitution. There is simply no cause of action made out with regard to the interpretation of the Constitution with regard to the grievance expressed under this head / issue.

[44] Article 8A of the Constitution has no bearing on the grievance in the aforesaid paragraph. Neither do Articles 166, 168 and 170 which deal with the functions of the Public Service Commission, Education Service Commission and Health Service Commission respectively. There is no obligation arising from Article 147 (1) (b) of the Constitution upon the Chief Justice to seek recommendations from the Judicial Service Commission in relation to the terms and conditions of service of the officers employed or serving in the Judiciary as the Chief Justice prepares each year’s annual estimates.

[45] Article 155 (2) of the Constitution provides that;

‘The head of any self-accounting department, Commission or organisation set up under this Constitution shall cause to be submitted to the President at least two months before the



end of each financial year estimates of administrative and development expenditure and estimates of revenues of the respective department, Commission or organisation for the following year.’

[46] From the foregoing, reading Articles 155(2) and 147(1) (b) of the Constitution together it is clear that it is not the duty of the Chief Justice to seek the recommendations of the Judicial Service Commission prior to the preparation of the annual estimates of expenditure of the Judiciary.

[47] This issue is accordingly answered in the negative.

#### **Issues 5**

**Whether the omission of the Government to develop a coherent and holistic policy and to enact a law on terms and conditions of service of Public Servants is inconsistent with and contravenes article 8A of the Constitution.**

[48] It appears to me that the matters arising under this issue have nothing to do with the jurisdiction of this court as no provision of the Constitution is required to be interpreted. What is required, should it be the case that the Government has failed to implement the provisions of the Constitution, is for the petitioner to bring an action for enforcement of the Constitution before a competent court rather than an action for interpretation of the Constitution. There is no question or controversy that this court should answer.

[49] I would answer this issue in the negative.

#### **Issue No. 6**

**Whether the act of the President in negotiating directly with sectors of the public service seeking better terms and conditions of service is inconsistent with articles 166 (1) (c), 168(1) (c), 147 (1) (c), 170 (1) (c) and 8A of The Constitution.**

[50] There is no bar at law, whether in the provisions of the Constitution referred to above or any other part of the Constitution that prohibits members of the Public Service from engaging directly with the President in relation to their terms and conditions of service. The Constitution has set up bodies with regard to particular sectors of the Public Service which have amongst their functions the



duty to review and make recommendations in relation to the terms and conditions of service of public servants. Their function is advisory. Those provisions do not bar petitions of such particular sectors of public servants to engage the Chief Executive of this nation on such matters too.

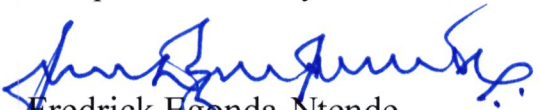
[51] I would answer this issue in the negative.

[52] I would dismiss this Petition for lack of merit. As the matters involved are no doubt matters of public interest I would not apply the normal rule of costs follow the event and award costs against the petitioner.

### **Decision**

[53] As Musoke, Madrama, Mugenyi and Gashirabake, JJCC, agree this petition is dismissed with no order as to costs.

Signed, dated, and delivered at Kampala this <sup>20<sup>th</sup></sup> day of <sup>Feb</sup> 2023

  
Fredrick Egonda-Ntende  
**Justice of the Constitutional Court**

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA,  
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA  
(CORAM; EGONDA NTENDE, MUSOKE, MADRAMA, MUGENYI,  
GASHIRABAKE, JJCC/JJCA)

CONSTITUTIONAL PETITION NO. 12 OF 2019

EDDIE KWIZERA} ..... PETITIONER

VERSUS

ATTORNEY GENERAL} ..... RESPONDENT

JUDGMENT OF JUSTICE CHRISTOPHER MADRAMA IZAMA, JCC

I have read in draft the Judgment of my learned brother Hon. Mr. Justice Fredrick Egonda – Ntende JCC.

I concur with the Judgment and the proposed orders in the judgment and I have nothing useful to add.

Dated at Kampala the 20<sup>th</sup> day of Feb 2023



Christopher Madrama Izama

Justice Constitutional Court



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA  
AT KAMPALA**

*(Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi & Gashirabake, JJCC)*

**CONSTITUTIONAL PETITION NO. 12 OF 2019**

**BETWEEN**

**EDDIE KWIZERA ..... PETITIONER**

**AND**

**THE ATTORNEY GENERAL ..... RESPONDENT**



**JUDGMENT OF MONICA K. MUGENYI, JCC**

1. I have had the benefit of reading in draft the judgment of my brother, Hon. Justice Fredrick Egonda-Ntende, JCC in respect of this Petition
2. I agree with his findings, conclusions and the orders issued, and have nothing useful to add.

Dated and delivered at Kampala this 20<sup>th</sup> day of Feb, 2023.

*Monica K. Mugenyi*

**Monica K. Mugenyi**

**Justice of the Constitutional Court**

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**

*[Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi &  
Gashirabake, JJCC]*

**CONSTITUTIONAL PETITION NO. 12 OF 2019**

**EDDIE KWIZERA:.....PETITIONER**

**VERSUS**

**THE ATTORNEY GENERAL:.....RESPONDENT**

**JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA/JCC.**

I have had the benefit of reading in draft the judgment prepared by my learned brother, Hon. Justice Egonda-Ntende, JA/JCC. I concur with the judgment and have nothing useful to add.

Dated at Kampala this .....<sup>20<sup>th</sup></sup> Day of .....<sup>Feb</sup>.....2023.



.....  
Christopher Gashirabake  
**JUSTICE OF THE CONSTITUTIONAL COURT**