

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Kiryabwire, Obura, Mulyagonja, Mugenyi and Gashirabake JJCC)

CONSTITUTIONAL PETITION NO. 42 OF 2015

1. MUZANYI YUSUF

10 **2. BASALIRWA JAMAL alias KABANGO**

3. SEMBATYA HAMIDU

4. KIPARA JAFARI **PETITIONERS**

VERSUS

ATTORNEY GENERAL RESPONDENT

15

JUDGMENT OF HELLEN OBURA, JA/JCC

The Petitioners brought this petition under Articles 137 (3), 50 and 120 (3) (d), (4) (b), (5) and (6) of the Constitution.

The background facts to this Petition as ascertained from the court record are that the
20 Petitioners and other people acquired land from Kakira Town Council at Kakira but Kakira
Sugar Limited, a Madhvani Company filed a land case in the Magistrate's Court at Kakira
in respect of the land utilized by the Petitioners. However, before the case was settled by
court, agents of Kakira Sugar Limited demolished the developments on the disputed land
and in the process, some sugarcane caught fire. Subsequently, the Petitioners were
25 arrested as suspects by the police and they were charged with offences relating to setting
fire on sugarcane vide Kakira Police CRB 43 of 2015-**Criminal Case No. 81 of 2015 at
Kakira Court, Uganda vs Muzanyi Yusuf and 4 others**; Kakira Police CRB 189/2015-
Criminal Case No. 80 of 2015 at Kakira Court, Uganda vs Muzanyi Yusuf and Kakira
Police CRB 190 of 2015-**Criminal Case No. 79 of 2015** at Kakira Court. The Petitioners
30 appeared in the Magistrate's Court at Kakira on 13/3/2015 and were granted bail with

5 conditions that they continue reporting to Court. On the 13th July, 2015 the State presented
to Court Instrument Nos. 1136 and 1177 under the hand of the Director Public
Prosecutions (DPP) discontinuing the proceedings. However, in November 2015, the
Petitioners were called by the police and informed that the State had decided to reinstate
the cases against them and that they had to appear in Court on the same charges. It is
10 upon this background that the Petitioners filed this Petition in which they contended inter
alia as follows;

“

13. *That your petitioners state that a case in a Magistrate's Court can be withdrawn and later
reinstated under Section 121 MCA.*

15 14. *That the petitioners state that where the DPP himself signs an instrument discontinuing a
case in a Magistrate's Court, he is exercising his Constitutional Powers under Article 120 (3) (d)
of the Constitution to discontinue a case from a Magistrate's Court, the case cannot be reinstated.*

15. *That the petitioners state that the act of the Senior State Attorney reinstating in the
Magistrate's Court cases which were discontinued by the DPP himself against the petitioners is
20 a violation of the petitioner's Constitutional rights.”*

The Petitioners concluded by seeking the following declarations and orders;

a) *A declaration that the reinstatement of charges which were discontinued by the DPP
exercising his Constitutional powers, contravened Article 120 (3) (d) of the Constitution of
Uganda.*

25 b) *A Court declaration that the letter dated 23rd October 2015 reinstating the same criminal
cases against the petitioners on the same facts contravened Article 20 of the Constitution
of Uganda.*

30 c) *A Court declaration that the act of reinstating the same criminal charges against the
petitioners on the same facts contravenes Article 28 of the Constitution of Uganda.*

d) *That the petitioners shall not be arrested, charged and prosecuted in a court of law on the
same facts in criminal cases which were discontinued by the DPP.*

e) *That costs of the petition be provided for.*

The Petition was supported by the affidavit of the 1st Petitioner affirmed on 11/12/2015 and the relevant parts of his affidavit are contained in paragraphs 3-9 as follows;

- 10 3. *"THAT I with the other co-petitioners namely Basalirwa Jamal alias Kabango, Sembatya Hamidu and Kipara Jafari were charged in the Magistrate's Court of Jinja Magisterial Area at Bugembe in:-*
 - *Kakira CRB 190/2015 (Court Criminal Case No. 79 Of 2015)*
 - *Kakira CRB 189/2015 (Court Criminal Case No. 80 of 2015)*
 - *Kakira CRB 43/2015 (Court Criminal Case No. 81 of 2015)*
 - 15 - *Kakira CRB 04/2015*
4. *THAT I and my co-petitioners first appeared in Court on 13/03/2015 and Court read to us charges relating to setting fire to sugarcanes but we denied the charges.*
5. *THAT on 13/07/2015 the state presented to Court Instrument No. 1136 Instrument No. 1138 and Instrument No. 1177 signed by the DPP himself discontinuing the Criminal proceedings in Court*
20 *against us. The forms duly signed and stamped by the DPP himself are annexed hereof and marked "A", "B" and "C" respectively.*
6. *THAT we were advised by our lawyers M/s. Bamwire & Co. Advocates and we verily believe them that the discontinuance of the criminal proceedings in Court by the DPP himself exercising his Constitutional powers was a final termination of the cases against us.*
- 25 7. *THAT in November 2015 we were summoned by the Police who showed us a letter written by Kyomuhendo Joseph, Ag. Senior State Attorney to the Resident Principal State Attorney Jinja re-instating the charges which were discontinued by the DPP, the letter dated 23rd October 2015 re-instating the charges is annexed and marked "D".*
8. *THAT I and my co-petitioners have been informed by our lawyers M/s. Bamwire & Kakuba*
30 *Advocates that the action of the Ag. Senior State Attorney re-instating cases which were discontinued by the DPP himself contravened the powers of the DPP under the Constitution.*
9. *THAT I swear this affidavit in support of the Constitutional Petition and state that what appears herein is true to the best of my knowledge save for paragraphs 6 and 8 which is based on information."*

5 The Respondent filed an answer to the Petition which was accompanied by an affidavit sworn on 21/12/2015 by Kukunda Clare a State Attorney in the Respondent's Chambers in which she averred in paragraphs 3-7 as follows;

3. *"That I know that the Petition is misconceived and does not call for interpretation of the Constitution.*

10 4. *That I know that the Respondent's acts are within their mandate to perform their duties and are not in contravention with the Constitution of the Republic of Uganda.*

5. *That I know that the reinstatement of charges which were discontinued by the DPP exercising his powers under Article 129(3)(d) of the Constitution do not violate the Petitioners' Constitutional rights.*

15 6. *That I know that the Petitioners' have never been tried before the courts of law and the act of reinstating the same criminal charges does not contravene Article 28 of the Constitution of Uganda.*

7. *That I know that the actions of the Respondent are not inconsistent with Constitution of the Republic of Uganda."*

20 **Representation**

At the hearing of this petition, Ms. Jackline Amusugut, State Attorney holding brief for Ms. Charity Nabasa appeared for the Respondent while Mr. Edward Bamwite represented the Petitioners.

25 On the request of counsel for the Petitioners, the court directed the parties to file written submissions on specific dates but by the time this judgment was prepared, no written submissions had been filed by either party as directed by court. However, they had filed conferencing notes which I have considered together with the petition, the answer to the petition and their respective supporting affidavits in this judgment.

Issues to be resolved

30 The following 4 issues were raised by the Petitioners in their conferencing notes for determination by this Court;

1. *Whether or not the act of Ag. Senior State Attorney Kyomuhendo Joseph issuing in a letter dated 23rd October 2015 with directives to reinstate and to commence prosecution of criminal proceedings against the Petitioners, criminal cases which were discontinued by the DPP himself, contravened Article 120 (3) (d) and 4 (b) of the Uganda Constitution.*
2. *Whether or not the act of re-instating criminal cases discontinued by the DPP himself contravened Articles 28 (9) and (10) of the Constitution.*
3. *Whether or not the powers to re-instate the said criminal cases under S.121 (a) of the MCA in the Magistrate's Court are inconsistent with Article 120 (3) (d) and (b) of the Uganda Constitution.*
4. *Whether or not any relief should be granted.*

Arguments for the Petitioners

In the conferencing notes, counsel for the Petitioners submitted on all the four issues concurrently. He contended that the petition requires interpretation of the powers that are exercised by the DPP himself and powers exercised by officers authorised by the DPP namely; the State Attorneys and Court Prosecutors. He pointed out that the powers of the DPP are found under Article 120 (2) (4) (5) and (6) of the Constitution of Uganda 1995 and they include; to direct Police to investigate criminal matters, to institute criminal proceedings, to take over criminal proceedings instituted by any other person and to discontinue criminal proceedings. Counsel further contended that the power to discontinue criminal proceedings can only be exercised exclusively by the DPP himself and that in the instant petition, the DPP exercised these powers when he himself executed Instruments Nos.1136, 1138 and 1178 discontinuing the criminal proceedings. He therefore submitted that the act of Kyomuhendo Joseph Ag. Senior State Attorney instructing for the reinstatement and commencement of the criminal cases against the Petitioners contravened the Constitution and was null and void.

Counsel also submitted that the Constitution did not provide powers for the DPP to reinstate a case discontinued by him. He argued that the inclusion of Article 120 (3) (d) in the Constitution was not superfluous and the makers wanted DPP to help court fight backlog of cases. Further, that if the DPP wanted to withdraw criminal proceedings and reserve the right to re-instate in a Magistrate's Court, he should have instructed a court

5 Prosecutor to withdraw the case under section 121 (a) of the Magistrates Court Act. In conclusion, the counsel contended that by the DPP himself discontinuing the criminal proceedings against the Petitioners, he exercised his powers under Article 120 (3) (d) and 4 (b) of the Constitution and the subsequent criminal proceedings violate the Constitution.

Counsel prayed that court grants them a declaration that the re-instatement of criminal proceedings discontinued by the DPP himself contravened Article 129 (3) (d) 4 (b) of the
10 Constitution, a declaration that the act of re-instating the same criminal charges against the Petitioners on the same facts contravened Article 28 (9) and 10 of the Constitution, an order that the Petitioners ought not to be arrested or charged or prosecuted pursuant to instructions from the Ag. Principal State Attorney for criminal cases which were
15 discontinued by the DPP himself and costs.

Arguments for the Respondent

In reply to issue 1, counsel for the Respondent contended that Article 120 of the Constitution confers powers on the DPP and clause 3(d) gives powers to the DPP to discontinue criminal proceedings at any stage instituted by himself except for those
20 commenced by any other person. She argued that according to the discontinuance attached to the petition the DPP himself discontinued the proceedings. However, that the letter dated 23/10/2015 which was reinstating the criminal proceedings against the Petitioners was within the mandate of the Ag. Senior State Attorney, Kyomuhendo Joseph. She further argued that the law as stated above does not necessitate the DPP himself to
25 reinstate a case but rather gives powers to others working in his name to do so. Counsel prayed that this issue be found in the negative.

In response to issue 2, counsel argued that Article 28(9) and (10) of the Constitution bars subsequent prosecution of a person who has been tried by a competent court for a criminal offence and has been convicted, acquitted or pardoned. Further, that the Petitioners had
30 not been convicted or sentenced since the proceedings indicate that the matter was in the preliminary stages of investigations and no witnesses had been called to testify. She

5 therefore contended that Article 28(9) and (10) of the Constitution do not apply to the Petitioner since they were never tried and a pardon which is a prerogative of mercy by the President was never given to them. Counsel further contended that the act of the DPP reinstating the criminal offences against the Petitioners does not in any way contravene Article 28(9) and (10) of the Constitution.

10 On issue 3, counsel pointed out that section 121 (1) of the Magistrates Court Act gives the DPP the discretion to direct withdrawal of any prosecution before judgment is pronounced but it is not a bar to prosecution of the accused on the same facts. She submitted that based on this section and the Petitioner's facts, the power of the DPP to withdraw does not bar him from reinstating the case on the same facts. She prayed that the said issue
15 be resolved in the negative.

On issue 4, counsel urged this Court to disregard the prayers of the Petitioners since from the facts of the petition, the above sections are not in contravention of the Constitution, arguing that the powers, roles, functions of the DPP are laid out clearly. She prayed that the said petition be dismissed with costs to the Respondents.

20 **Resolution of Issues**

This Court has a duty as a Constitutional Court under Article 137 (1) of the Constitution of Uganda to determine Constitutional Petitions that raise questions as to interpretation of the Constitution. It also has power under Article 137 (3) to hear allegations by any person that an Act of Parliament or any other law or anything in or done under the authority of any
25 law; or any act or omission by any person or authority, is inconsistent with or in contravention of a provision of the Constitution.

Article 137 (1), (3) and (4) provide as follows;

“(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.

(3) A person who alleges that—

5 (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.

10 (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.”

15 I have found it imperative to first of all determine whether this petition raises issues that this Court can determine pursuant to Article 137 (3) under which the petition was brought. The parameters for determining whether a petition raises a cause of action has been succinctly stated by the Supreme Court in a number of Constitutional Appeals.

In **Ismail Serugo vs Kampala City Council & The Attorney General, Constitutional Appeal No. 2 of 1998 (SC)** Mulenga, JSC observed as follows in regard to Article 137 (3) of the Constitution;

20 “The petition brought under this provision, in my opinion, sufficiently discloses a cause of action, if it describes the act of omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent or which is alleged to have been
25 contravened by the act or omission, and pray for a declaration to that effect”.

A cause of action was defined by Oder, JSC (RIP) in **Major General Tinyefuza vs Attorney General Constitutional Appeal No. 1 of 1997 (SC) (unreported)** as follows;-

“A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment in court....”

30 In **Baku Raphael Obudra vs Attorney General, Constitutional Petition No. 1 of 2003** and **Anifa Kawooya vs Attorney General and Another, Constitutional Petition No. 42 of 2010** it was held that, where a petition challenges the constitutionality of an Act of Parliament, it sufficiently discloses a cause of action if it specifies the Act or its provision

5 complained of and identifies the provision of the Constitution with which the act or its provision is inconsistent or in contravention, and seeks a declaration to that effect. A liberal and a broader interpretation should be given to the Constitutional Petition than a plaint in an ordinary civil suit when determining whether a cause of action has been disclosed.

10 In **Center for Health, Human Rights and Development (CEHURD) and 3 others vs Attorney General, Constitutional Appeal No. 01 of 2013** Kitumba JSC (as she then was) observed that;

"Whatever is done in Uganda by anybody or authority if it does not conform to the provisions of the Constitution it can be challenged in the Constitutional Court".

15 In the instant petition, the Petitioners allege that the acts of the Ag. Senior State Attorney in reinstating the criminal proceedings that had been discontinued by the DPP contravened Articles 120 (3) (d) & 4 (b) and 28 (9) & (10) of the Constitution. Further, that the powers to re-instate the criminal cases against them under section 121 (a) of the Magistrates Court Act in the Magistrate's Court are inconsistent with Article 120 (3) (b) and (d) of the Constitution. They prayed for declarations to that effect.

20 Guided by the above authorities that expound on the need for a petition to raise a cause of action for this Court to determine under Article 137 (3) of the Constitution, and having carefully studied the averments made in the instant petition and the supporting affidavit, I am persuaded that the petition sufficiently discloses a cause of action against the Respondent. This is so because the petition alleges that some acts of the Respondent
25 contravene some specific constitutional provisions and seeks declarations to that effect. I therefore, find that this petition raises issues that fall within the ambit of what this Court can handle under Article 137 (3) (a) & (b).

Having so found, I shall proceed to consider each of the issues raised by the Petitioners. I have duly perused the court record and considered the arguments of the parties in their
30 respective conferencing notes.

5 For a proper appreciation of the arguments in this petition, I find it pertinent to reproduce the DPP's functions and the scope of his authority as provided for under Article 120 (3) and (4) of the Constitution which is alleged to have been contravened by the act of reinstating the criminal proceedings against the Petitioners. It provides as follows;

"120. Director of Public Prosecutions.

10 (3) *The functions of the Director of Public Prosecutions are the following—*

(a) to direct the police to investigate any information of a criminal nature and to report to him or her expeditiously;

(b) to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial;

15 *(c) to take over and continue any criminal proceedings instituted by any other person or authority;*

(d) to discontinue at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court.

20 (4) *The functions conferred on the Director of Public Prosecutions under clause (3) of this article—*

25 *(a) may, in the case of the functions under clause (3)(a), (b) and (c) of this article, be exercised by him or her in person or by officers authorised by him or her in accordance with general or specified instructions; and*

(b) shall, in the case of the functions under paragraph (d) of that clause, be exercised by him or her exclusively."

30 On issue 1, the Petitioners allege that the act of Ag. Senior State Attorney Kyomuhendo Joseph of issuing a letter dated 23rd October, 2015 with directives to reinstate and to commence prosecution of criminal proceedings against the Petitioners which were

5 discontinued by the DPP himself, contravened Article 120 (3) (d) and 4 (b) of the Constitution.

It was argued for the Petitioners that the Constitution did not provide powers for the DPP to reinstate a case discontinued by him and that the inclusion of Article 120 (3) (d) in the Constitution was not superfluous and the makers wanted DPP to help court fight backlog
10 of cases. Further, that if the DPP wanted to withdraw criminal proceedings and reserve the right to reinstate in a Magistrate's Court, he should have instructed a court Prosecutor to withdraw the case under section 121 (a) of the Magistrates Court Act.

Conversely, it was argued for the Respondent that the letter dated 23rd October, 2015 which was reinstating the criminal proceedings against the Petitioners was within the
15 mandate of the Ag. Senior State Attorney, Kyomuhendo Joseph and that the law does not necessitate the DPP himself to reinstate a case but rather gives powers to others working in his name to do so.

Article 120 (3) (d) and (4) (b) of the Constitution is in regard to the exercise of the DPP's power to discontinue criminal proceedings at any stage before judgment and such a
20 function is exercised by him or her exclusively.

In the instant petition, the DPP himself discontinued the criminal proceedings against the Petitioners by issuing Instruments Nos. 1136, 1138 and 1178. It should be noted that Article 120 (3) (d) and (4) (b) only deals with discontinuance which I find was done rightly since the DPP is possessed with the power to do so.

25 The Petitioners' complaint under this issue is that the Ag. Senior State Attorney Kyomuhendo Joseph, reinstated the discontinued criminal proceedings against the Petitioners. They also argued that the Constitution did not provide powers for the DPP to reinstate a case discontinued by him. Contrary to this argument on the power of the DPP to reinstate a case he or she discontinued, there are court decisions to the effect that he
30 has power to do so. In ***Kaitale Julius and 3 ors vs Uganda, Constitutional Reference No. 11 of 2014***, this Court found that when the DPP exercised his right to enter a Nolle

5 Prosequi and then later reinstated the charges against the Petitioners, he was within his powers to do so. In fact, the decision in that reference largely addresses the issues in this petition.

Secondly, Article 120(4) (a) of the Constitution provides that the DPP or any officers authorised by him or her in accordance with general or specified instructions can carry out
10 the functions specified under clause (3) (a) (b) and (c). The function in clause 3(b) which is relevant to the issue at hand is to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial. My interpretation of clause (4) (a) is that the functions specified under clause (3) (b)-(c) is not necessarily performed by the DPP exclusively but may be carried out by any other officer
15 authorised by him or her.

In the instant petition, the Ag. Senior State Attorney being an authorised officer from the office of the DPP with the powers to institute proceedings, reinstated the criminal proceedings against the Petitioners. In my view, by so doing, he was simply carrying out his functions as provided for under Article 120(3) (b) of the Constitution. In **Prof Gilbert**
20 **Baliseka Bukenya vs Attorney General, Constitutional Petition, No. 30 of 2011**, this Court stated that;

"Preferring charges is a matter for the prosecutor who makes the decision to prosecute anybody depending on the facts of the case before him or her as to whom to criminally charge in a court of law."

25 I therefore do not find that the act of the Ag. Senior State Attorney contravened Article 120 (3) (d) and (4) (b) of the Constitution. Issue 1 is answered in the negative.

In regard to issue 2, I observe that the DPP discontinued the criminal charges against the Petitioners before they were called upon to make their defence which implies that they were just discharged by court.

30 Article 28 (9) and (10) which is alleged to be contravened under this issue provides as follows;

5 **"28. Right to a fair hearing.**

(9) *A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.*

(10) *No person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence."*

Article 28 (9) only applies in situations where a person has been tried and convicted or acquitted by a competent court of a criminal offence. In ***Attorney General vs Uganda Law Society SCCA No. 1 of 2006*** Mulenga, JSC had this to say in regard to Article 28 (9) of the Constitution;

" In effect that provision is an aspect of the protection of the right to fair hearing, namely the right not to be tried more than once on the same facts or for the same actus reus. The principle behind that right originates from an old English common law maxim that "no man is to be brought in jeopardy of life or limb more than once for the same offence". I agree with the proposition invoked by Okello J.A. (as he then was) that a constitutional provision which relates to a fundamental right must be given an interpretation that realises the full benefit of the guaranteed right. Article 28(9) is such a provision that must be given such interpretation, and not the narrow interpretation urged by the appellant."

Guided by the above decision, my interpretation of this provision is that where an accused person has been tried by a competent court for a criminal offence and is convicted or acquitted of that offence, he or she cannot subsequently be prosecuted for the same offence. From the facts of this petition, it is clear that the Petitioners' trial had not yet commenced when the criminal proceedings were discontinued against them. This implies that they were neither convicted nor acquitted and therefore Article 28 (9) does not apply to them.

5 On the other hand, Article 28(10) applies in situations where a person was pardoned in respect of a criminal offence. Under Article 121 (4) of the Constitution, the President has power to grant a pardon, respite, substitution or remission of any sentence or punishment imposed on any person. For Article 121 to apply, there must be a conviction or an imposition of punishment. In the instant case, the Petitioners had neither been tried nor
10 convicted nor sentenced and therefore Article 121 of the Constitution would not apply to them. The discharge of the Petitioners upon the discontinuation of criminal proceedings against them was not a pardon.

In the premises, I find that the act of the Ag. Senior State Attorney reinstating the criminal proceedings against the Petitioners did not violate the said Constitutional provisions. Issue
15 2 is therefore resolved in the negative.

On issue 3, the Petitioners contend that the powers to re-instate the said criminal cases under S.121 (a) of the MCA in the Magistrate's Court are inconsistent with Article 120 (3) (d) and (b) of the Uganda Constitution. Section 121 (a) of the MCA provides as follows;

"121. Withdrawal from prosecution in trials before Magistrates courts.

20 *In any proceeding before a magistrate's court the prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person; and upon that withdrawal—*

*(a) if it is made before the accused person is called upon to make his or her defence, he or she shall be discharged, but the discharge of an accused person shall not operate as a bar to
25 subsequent proceedings against him or her on account of the same facts."*

The above provision gives the DPP or his authorized officer power to withdraw from prosecuting an accused person before he or she makes a defence which amounts to a discharge, like in the instant petition, but the DPP or his authorised officer reserves the right to reinstate the same criminal proceedings against the discharged accused person
30 at any time after the discharge.

5 The Petitioners allege that this provision is inconsistent with Article 120 (3) (d) and (b) of the Constitution which provides for institution and discontinuance of criminal proceedings by the DPP or his authorised officer.

In my view, section 121 of the MCA is clear that the discharge of the accused person does not bar subsequent proceedings against the accused person on the same facts. In
10 ***Kasande Sylvia and another vs Uganda, Constitutional Reference No. 52 of 2010***, this Court found that the DPP has power to withdraw any criminal proceedings before judgment is entered but this does not operate as a bar to any subsequent proceeding on the same facts against the accused person if the discharge is made before the accused is called upon to make his or her defence.

15 The implication of section 121 of the MCA is that at the point of being discharged, the accused person has neither been tried nor been called upon to make his defence. However, should new evidence emerge regarding the same charges, the discontinued criminal proceedings can be re-instated against the accused persons.

Article 120(3) (b) and (d) of the Constitution simply outlines the functions to be performed
20 by the DPP and his authorised officer whereas section 121 (a) of the MCA just like section 134 (1) of the Trial on Indictments Act (TIA) was enacted with more details of putting into effect the function under Article 120 (3) (b). It cannot therefore be said to contravene that Article.

It is therefore my finding that the powers to reinstate criminal proceedings under section
25 121 of the MCA are not inconsistent with Article 120 (3) (b) and (d) of the Constitution.

In regard to the 4th issue, counsel for the Petitioner prayed that court grants them a declaration that the reinstatement of criminal proceedings discontinued by the DPP himself contravened Article 120 (3)(d) and (4)(b) of the Constitution, a declaration that the act of re-instating the same criminal charges against the Petitioners on the same facts
30 contravened Article 28 (9) and (10) of the Constitution, an order that the Petitioners ought

5 not to be arrested or charged or prosecuted pursuant to instructions from the Ag. Principal
State Attorney for criminal cases which were discontinued by the DPP himself and costs.

Having answered all the issues raised by the Petitioner in the negative, I decline to grant
all the declarations sought as the acts complained of by the Petitioners do not contravene
the Constitution as alleged. In the result, I would propose the following declarations and
10 orders;

- a) The act of the Ag. Senior State Attorney Kyomuhendo Joseph issuing in a letter
dated 23rd October 2015 with directives to reinstate and to commence prosecution
of criminal proceedings against the Petitioners, criminal cases which were
discontinued by the DPP himself did not contravene Article 120 (3) (d) and 4 (b)
15 of the Constitution.
- b) The act of reinstating criminal cases discontinued by the DPP himself did not
contravene Articles 28 (9) and (10) of the Constitution.
- c) The powers to reinstate the said criminal cases under section 121 (a) of the MCA
in the Magistrate's Court are not inconsistent with Article 120 (3) (d) and (b) of the
20 Constitution.

On the whole, I would propose that this Petition be dismissed with no order as to costs.

Dated at Kampala this.....21ST.....day of.....FEB.....2024.

25 

Hellen Obura

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 42 OF 2015

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2. BASALIRWA JAMAL alias KABANGO

3. SEMBATYA HAMIDU

4. KIPARA JAFARI

=====PETITIONERS

VERSUS

ATTORNEY GENERAL=====RESPONDENT

CORAM: Hon. Mr. Justice Geoffrey Kiryabwire, JA/JCC

Hon. Lady. Justice Hellen Obura, JA/JCC

Hon. Lady. Justice Irene Mulyagonja, JA/JCC

Hon. Lady. Justice Monica K. Mugenyi, JA/JCC

Hon. Mr. Justice Christopher Gashirabake, JA/JCC

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

I have had the opportunity of reading the lead Judgment of the Hon. Lady. Justice Hellen Obura, JA/JCC in draft.

I agree with it and I have nothing more useful to add.

Final Orders

1. The Petition is hereby dismissed with no Order as to costs.

• Dated at Kampala this.....^{21ST} day of^{FEB}.....2024.

.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Kiryabwire, Obura, Mulyagonja, Mugenyi & Gashirabake, JJCC

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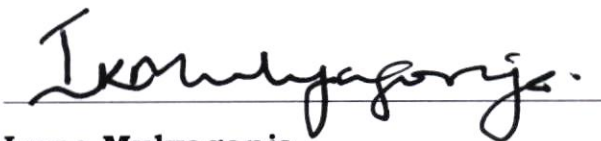
VERSUS

ATTORNEY GENERAL:.....RESPONDENT

JUDGMENT OF IRENE MULYAGONJA, JCC

I have had the benefit of reading in draft the judgment of my sister Hellen Obura, JCC. I agree that the petition ought to be dismissed with the declarations that she has proposed and with no order as to costs.

Dated at Kampala this 21ST day of FEB 2024.



Irene Mulyagonja

JUSTICE OF THE CONSTITUTIONAL COURT



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA**

(Coram: Kiryabwire, Obura, Mulyagonja, Mugenyi & Gashirabake, JJCC)

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4. KIPARA JAFARI PETITIONERS

VERSUS

ATTORNEY GENERAL RESPONDENT

JUDGMENT OF MONICA K. MUGENYI, JCC

I have had the benefit of reading in draft the lead Judgment of my sister, Hellen Obura, JCC in this matter.

I agree with the decision therein that the Petition be dismissed for the reasons advanced.

Dated and delivered at Kampala this^{21ST} day of^{FEB}....., 2024.



Monica K. Mugenyi

Justice of the Constitutional Court

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

*(CORAM: G. Kiryabwire, H. Obura, I. Mulyagonja, M. K. Mugenyi,
C. Gashirabake, JJCC)*

CONSTITUTIONAL PETITION NO. 42 OF 2015

MUZANYI YUSUF AND 3 OTHERS :::::::::::::::::::::::::::::::::::PETITIONERS

VERSUS

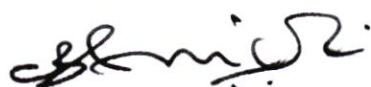
ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::RESPONDENT

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JCC.

I have read in draft the judgment of Hon. Lady Justice Hellen Obura, JCC.

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

Dated at Kampala the^{21ST} day of^{FEB}.....2024.



Christopher Gashirabake

JUSTICE OF THE CONSTITUTIONAL COURT