

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NUMBER 0035 OF 2009
AMERICAN PROCUREMENT COMPANY
5 **LTD.....APPELLANT**

VERSUS

1. ATTORNEY GENERAL

2. INSPECTORATE OF GOVERNMENT

RESPONDENTS

10 *(Appeal from the Judgment and Orders of the High Court at Kampala
Before Honourable Justice Geoffrey Kiryabwire dated the 2nd day of
December 2008 in Commercial Division Suit No. 735 Of 2006)*

CORAM:

HON. MR. JUSTICE A.S NSHIMYE, JA

15 **HON. MR. JUSTICE RICHARD BUTEERA, JA**

HON. MR. JUSTICE KENNETH KAKURU, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

This is an appeal from the Judgment and decree of the High Court
at Kampala before Hon. Justice Geoffrey Kiryabwire J (as he then
20 was) dated 2nd December 2008 in High Court Commercial Division
Civil Suit No. 735 of 2006.

At the hearing of this appeal **Mr. Wandera Ogala** and **Peter Nkuririza** learned counsel represented the appellant, **Mr. Martin Mwambutsya** State Attorney represented the 1st respondent the Attorney General while **Mr. Kasujja** represented the 2nd respondent the Inspectorate of Government.

Mr. Wandera Ogala, at the commencement of the hearing of this appeal informed Court that all the parties to this appeal had agreed that the appeal be allowed.

This Court was reluctant to allow the appeal without hearing the parties. This in our view would have had the effect of reversing or varying the Judgment of the High Court without this Court having heard the appeal on merit. The effect of allowing parties to enter into a consent judgment on appeal has been discussed by this Court recently in the case of **Edith Natumbwe and others versus Miriam Kuteesa, Court of Appeal Civil Application No. 294 of 2013** (Unreported).

This Court therefore ruled that the parties to this appeal proceed with the appeal and declined to have a consent judgment entered into at the request of parties.

Mr. Martin Mwambutsya the learned State Attorney then addressed Court to the effect that the Hon. The Attorney General on the authority of the Supreme Court in the case of **Gordon Sentiba & 2 others versus the Inspectorate of Government, Supreme Court Civil Appeal No.6 of 2006**, it

was held that the Inspectorate of Government is not a body corporate and as such it had no capacity to sue or be sued. And that the Inspectorate of Government is absolutely barred by law from questioning or seeking to review Judgment of the Courts of law in civil matters.

He submitted that it was the view of the Attorney General that all actions of the Inspectorate of Government in this matter were null and void. That the 2nd respondent's application to be joined as a party to the suit at the High Court and the subsequent order setting aside of the *ex parte* Judgment of the Registrar dated February 8th 2007 were therefore null and void.

Mr. Nkuririza then prayed that in the circumstances the appeal be allowed and the decree of the High Court be set aside and the orders just set out in the *ex parte* Judgment be reinstated.

He specifically prayed for the following orders:-

"1. That the 1st respondent pays to the appellant Uganda shillings four billion one hundred and sixty three million five hundred and ninety thousand six hundred and thirteen Uganda shillings 4,163,593,613/-.

2. Pray that interest at 18% per annum which translates into the sum of Uganda shillings effective date will be 8th February 2007 up to today which is 26th February 2014 that

translates into annual interest of one hundred and fifty six million forty nine thousand two hundred and seven 156,049,207.

5 ***3. Prays that you be pleased to order that each party bears its costs of this appeal and the costs in the High Court.***

Mr. Kasujja also seemed to concede that the decision of the Supreme Court in the ***Gordon Sentiba case*** (supra) determined
10 that the Inspectorate of Government had no corporate capacity and as such the Inspectorate of Government (IGG) could neither sue or be sued. He then produced in Court a letter written by the Inspector General of Government to the Attorney General which
15 seemed to concede that the Inspector General of Government had no legal capacity to sue or be sued in civil matters.

The matter was left to this Court apparently to give effect to the declarations and prayers sought.

The issues raised in this appeal can only be appreciated upon setting out its long and checkered history.

20 As far as we could ascertain from the Court records the facts giving rise to this appeal may be summarized as follows.

The appellant is a limited liability Company incorporated under the laws of Uganda. Its Managing Director is one Robert Mwesigwa.

The appellant is stated to have entered into a contract with
5 Government of Uganda on 27th January 2006, in which the Ministry of works, Housing and Communication agreed to provide an **“ex-post facto auditing of procurement for all the works, goods and services procured by said Ministry and the Roads Agency Formation.”** That the total contract value
10 was shs. 6,172,925,967.

The appellant is said to have performed part of the contract to which he was entitled to a payment of shs. 4,163,593, 613.

That the appellant submitted invoices to the Government, but the Government failed to pay. The dates upon which the invoices
15 were submitted is not ascertainable from the Court record, as neither the contract itself nor the invoices were annexed to any of the pleadings.

The appellant then prepared and served upon the Attorney General a statutory notice of intention to sue as provided for
20 under the Government Proceedings Act giving the Attorney General notice that the appellant would sue the Attorney General if payment was not made within 45 days of the notice. I was unable to find the notice itself, however on 4th July 2006, the Attorney General wrote to the Director, Roads Agency Formation

Unit notifying them that a statutory notice of intention to sue had been served upon him on 29th June 2006 by the appellant.

The Attorney General in that letter was requesting for full details of the fact giving raise to the appellant's claim.

- 5 On 31st July 2006, Mr. C. Muganzi the Permanent Secretary Ministry of works and Transport wrote to the Solicitor General in reference to the said notice of intention to sue.

The pertinent part of that letter reads as follows:-

10 ***“In July 2005 the Ministry obtained a proposal from M/S AMPROC INC. to carry out Ex- Post - Facto audits on the Ministry’s procurements carried out since 2003. The Ministry badly needed an authoritative audit to help us identify weaknesses, omissions, bad or archaic practices and snags as well as commendable aspects, with the overall objective to use the findings to verify performance and make improvements. This was especially so given the fact that the procurement law and regulations were new and it was clear that applying them was having mixed successes.***

15

20

On consultations with UPPDA, it was discovered that AMPROC INC was one of the

companies already pre-qualified by UPPDA to carry out such third procurement audits and UPPDA gave a waiver to the Ministry to go ahead and utilize the services of AMPROC since it was already pre-qualified and therefore we would not loose time (see letter from UPPDA attached).

With the waiver from UPPDA, AMPROC INC was contracted to commence work with both the Road Agency Formation Unit (RAFU) and the mainstream Ministry of Works, Housing and Communications to audit Procurements since 2003, and later the contract was extended to cover procurements that were carried out before the year 2003 (see contract and relevant letters attached). A form of contract agreement was signed between the Ministry and M/S AMPROC INC. after obtaining the Solicitor General's clearance of the contract agreement.

However, the contract halfway through its implementation was queried by the Inspector General of Government (IGG). Payments were stopped pending investigations by the IGG through her letter

ADM/7/784/01 of 11th April 2006 a copy of which is attached. Payments were stopped till the IGG completes investigations. Up to now the investigations have never been completed and as a result M/S AMPROC INC. have never been paid for the work done. With the payment (which is a life blood of the contract stopped), the contract has had to suffer slowing down and suspension of work.

The facts stated in the Notice of the intended Suit are therefore correct. My Ministry could and cannot up to now pay the fee notes of AMPROC due to the investigations and blockade by the IGG”

From the above letter it can be ascertained clearly that the Inspector General of Government stopped payment in respect of the contract on 11th April 2006 only about 2 months from the date of the contract which had been signed on 27th January 2006 as already stated.

On 27th November 2006 the appellant filed a suit at the Commercial Court Division of the High Court, Civil Suit No. 735 of 2006 against the Attorney General.

The appellant's claim was based on a contract with Government dated 27th January 2006 and the claim was for unpaid contract sum of shs. 4,163,593,613. This was for work the appellant is said to have carried out in the two and a half months of the contract
5 period.

The contract is not attached to the plaint. In fact there is no single annexure attached to the plaint and as such I was unable to ascertain the details of the contract.

In an affidavit deponed to by one Geoffrey Komakech, it is
10 deponed that summons to file a defence were served upon the Attorney General on 30th November 2006. The Attorney General apparently did not file a defence within the time prescribed by law although it is clear he was duly served within the time prescribed by law.

15 However, on 11th of December 2006 instead of filing a written statement of defence, one Mr. Joseph Matsiko on behalf of the Solicitor General wrote a letter to the Inspector General of Government.

The pertinent part of which reads as follows;-

20 ***“When we contacted the Ministry of works and transport over this matter, the accounting officer of the said Ministry stated that they could not pay the plaintiff's fee notes because of the blockade by your selves. I am therefore directed***

to forward this matter to you so that you handle it in Court.”

The above letter was copied to the appellant’s lawyers.

On 16th of January 2007 the 2nd respondent herein the
5 Inspectorate of Government filed a notice of motion under **Order
1 Rule 10 (2)** and **13** of Civil Procedure Rules seeking to be
joined as a party to the suit. This application was opposed by both
the appellant and the Attorney General although the Attorney
General had not filed a written statement of defence. However on
10 31st January 2007 Hon. Justice Geoffrey Kiryabwire granted the
order allowing the 2nd respondent herein, the Inspectorate of
Government to be added as a second defendant to the suit.

On 7th February 2007 the Registrar at the High Court Commercial
Division His worship John Keitirima (as he then was) heard and
15 allowed an application by the appellant and entered a judgment
in default against the Attorney General, the order of Justice
Kiryabwire dated 31st January 2007 notwithstanding .

Apparently the chamber summons in respect of this application
had been filed in December 2006 and signed by the Registrar on
20 22nd December 2006. A decree to that effect was extracted on the
8th of February 2007, directing therein the Attorney General to
pay to the appellant shs. 4,163, 593, 613 with interest at 18%
per annum from date of filling the suit until date of Judgment and
thereafter to pay interest at 6% per annum until payment in full.

On 19th April 2007 the 2nd respondent herein the Inspector General of Government (IGG) applied to the High Court Commercial Division to have the *exparte* decree entered into by the Registrar set aside.

- 5 This *exparte* decree was subsequently set aside by Hon. Justice Geoffrey Kiryabwire on 30th August 2007.

In the meantime the appellant had on 10th April sued the Privatisation Unit and Uganda Railways Corporation (URC) claiming to have purchased a number of prime real property in
10 Kampala using the proceeds of the *exparte* decree *vide* High Court Civil Suit No. 205 of 2007. It was claimed in that plaint that the decretal sums had been assigned by the appellant and its Chief Executive Officer Mr. Mwesigwa to pay for the said properties.

- 15 The deeds of assignment in this matter are dated 29th March 2007. Apparently on 7th March 2007 Mr. Mwesigwa and the appellant had sought to purchase properties formally belonging to URC, which were being sold by the Privatization Unit. They did not have the money required to complete the purchase whose
20 deadline to pay was 3rd April 2007. They both sought to use deeds of assignment to pay off the purchase price. Mr. Joseph Matsiko for Solicitor General assisted the appellants and its Chief Executive Officer to push Privatization Unit to pay by letter dated 2nd August 2007 copied to the Secretary to the Treasury.

They both sought the assistance of Mr. Keith Muhakanizi Permanent Secretary of Ministry of Finance who wrote to the Auditor General requesting him to issue **“a letter of no objection”** allowing the payment in form of assignment.

5 The pertinent part of that letter reads as follows;-

“Reference is made to the Solicitor General’s letter HC 735/06 dated 2nd April 2007 regarding Decree in Civil Suit No. 735 of 2006.

10 ***Since the Ministry of Justice and Constitutional Affairs has no funds to immediately clear this payment, and instead of Government losing money in accrued interest out of the Decree, this Ministry would recommend that payment be effected through a Deed of Assignment. However, we would require a no objection from you in order to take the necessary action.***

15

The purpose of this letter is, therefore, to request for a no objection from your office.”

20

However, the 2nd respondent herein got wind of this transaction and on 4th April she wrote to the Auditor General directing him not to issue the **“No objection letter”**. The letter reads in part as follows:-

“This office under Article 225 (2) of the Constitution is investigating the manner in which the Deed of f Assignment was executed by the parties therein.

5 ***The purpose of this letter is to direct that no NO OBJECTION should be given by your office to effect payment through the deed of assignment until this office concluded the investigations.***

10 ***Please adhere to the directive until you are advised otherwise by this office.”***

The Auditor General then on 4th April 2007 wrote to the Inspector General of Government (IGG) confirming that he would not issue the **“letter of no objection”** as requested by Mr. Keith Muhakanizi the Secretary to the Treasury.

15 The appellant and its Chief Executive Officer Mr. Mwesigwa then moved fast and on 10th April 2007, instituted a suit against the Privatization Unit and Uganda Railways Corporation seeking to block both of them from selling off the properties earlier offered to them which both failed to pay for.

20 On the same day 10th April 2007 the appellant and Mr. Mwesigwa also filed an application for an interim order of injunction restraining the Privatization Unit and Uganda Railways Corporation from selling the said properties.

The amounts required for the purchase of these properties was shs. 2,525,625,000 for the appellant and shs, 521,100,000 for Mr. Robert Mwesigwa.

5 The *ex parte* application was filed on 10th April 2007, was signed and sealed on the same day and on that same day the application was heard *ex parte* by the same Registrar Masalu Musene (as he was then) and an interim order was granted again on that very day.

10 On 18th April 2007 Uganda Railways Corporation filed its written statement of defence stating that the suit filed against it in HCCS NO. 205 of 2007 by the appellant and Mr. Mwesigwa was frivolous and vexatious and that at the trial it would move Court to have it struck out with costs.

15 It appears that the Privatization Unit did not file a written statement of defence.

In that suit the appellant and Mr. Mwesigwa claim that they had paid for the properties stated therein by way of assignment deeds executed in favour of the Privatization Unit.

20 The money that was assigned in the deeds of assignment was stated to be owed to the appellant and Mr. Mwesigwa by Government following a decree of the High Court in Civil Suit No. 735 of 2006, the subject of this appeal. Mr. Mwesigwa was not a party to that suit and was therefore not a decree holder. It appears that the appellant had assigned part of the decretal sum

to its Managing Director to enable him purchase the said properties. The Managing Director then re-assigned the money to Privatisation Unit.

5 On 27th March 2007 the appellant through its Managing Director had written to the Solicitor General requesting him to pay from the decretal sum of shs. 4,163, 593, 643 in H.C.C.S No. 735 of 2006 shs. 2,525,000 to the Privatization Unit of the Ministry of Finance stating in that letter that the payment was needed before 3rd April 2007.

10 On the same day 27th March 2007, the appellant's Managing Director Mr. Mwesigwa wrote to the Solicitor General a letter on the same subject as follows;-

"March 27, 2007

15 ***The Solicitor General***
Ministry of Justice
Kampala,

20 ***RE: DEED ASSIGNMENT BETWEEN AMPROC INC***
AND ROBERT MWESIGWA OF SHS 521,
100,000/=

Reference is made to the above deed of assignment (copy attached).

This is to request that from my deed of assignment you clear my outstanding debt with the PRIVATISATION UNIT of shs. 521, 100,000/= (Five hundred twenty one million one hundred thousand shillings only.) The payment I needed on or before 3rd April 2007

Sincerely,

Robert Mwesigwa

C.C Permanent Secretary/Secretary to the Treasury,

Ministry of Finance

C.C. Auditor General

C.C. Director Privatisation Unit

15 The deed of assignment referred to in the above letter is
annexture 'F' to the affidavit of the then the Inspectorate of
Government Faith Mwendha dated 20th April 2007, in
Miscellaneous Application No. 248 of 2009 which was seeking to
set aside the *ex parte* decree entered into by the Registrar of the
20 High Court on 8th February 2007.

That deed of assignment is in fact dated **29th March 2007**
although it was being referred to in a letter to the Solicitor
General above dated **27th March 2007** two days before it was
written. On 2nd of April 2007 Joseph Matsiko for the Solicitor
25 General well aware that the *ex parte* decree in HCCS No. 735 of
2006 had effectively been set aside by the order of Justice

Kiryabwire which allowed the 2nd respondent (IGG) to be added as the 2nd defendant dated 31st January 2007. The second defendant having filed a written statement of defence 21st February 2007 The Attorney General himself having filed a written statement
5 on 18th February 2007 effectively acknowledging that the *exparte* decree had abated, went ahead to write to the Privatization Unit of the Ministry of Finance as follows;-

"2nd April 2007

The Director

10

Privatisation Unit

Ministry of finance, planning and

Economic Development

KAMPALA.

15

***RE: DEED OF ASSIGNMENT IN RESPECT OF
PROPERTIES PURCHASED BY M/S AMPROC
INC.***

20

***By letter dated 27th March 2007, Amproc have
requested that out of the payment of shs.
4,346,092,831/- owed to them by Government by
virtue of a Decree in Civil Suit No. 735 of 2006, a
sum of shs. 2,525,625,000/- be paid (assigned) to
you. Amproc's letter is copied to you.***

25

Please find attached herewith a duly executed Deed of Assignment for your action.

Joseph Matsiko

For: SOLICITOR GENERAL

C.C The Auditor General

Ministry of Finance, Planning &

Economic Development

KAMPALA

C.C. The Permanent Secretary/

Secretary to the Treasury

Ministry of Finance, Planning &

Economic Development

KAMPALA

C.C. A/s Amproc Inc”

20 A similar letter was written by the same Joseph Matsiko to the Privatization Unit, the pertinent part reads as follows;-

“By letter dated 27th March 2007, Robert Mwesigwa has requested that out of shs. 4,346,092,831/- owed by Government to Amproc by virtue of a Decree in Civil Suit No. 735 of

2006, a sum of shs. 521,100,000/- assigned to Mr. Mwesigwa by Amproc be paid (assigned) to you. Mr. Mwesigwa's letter is copied to you.

5 **Please find attached herewith a duly executed Deed of Assignment for your action."**

As already noted above the payment could not be effected because the Auditor General acting on instructions of the Inspector General of Government (IGG). declined to grant a letter
10 of no objection.

Subsequently the main suit itself HCCS No. 735 of 2006 came before Hon. Justice Kiryabwire for hearing on 11th March 2008 when it was heard inter parties. On 2/12/2008 Hon. Justice Kiryabwire J (as he then was) delivered his Judgment and
15 dismissed the suit.

The appellant then appealed to this Court.

I now proceed to resolve the issues raised on appeal.

The issues framed by the parties in HCCS No. 735 of 2006 from which this appeal arises were set out by the parties with the
20 consent of Court as follows;-

1. Whether or not the matter is properly before the Court and or premature.

2. Whether the conduct of investigation by the 2nd defendant is a defence to the plaintiff's claim which entitles Court to dismiss the suit.

5 **3. Whether receipt of the complaint alleging fraud this disentitles the plaintiff of judgment against the 1st defendant.**

4. Remedies available.

The Court then noted that by the very nature of the above issues, their resolution would dispose of the whole suit by way of
10 submissions without any need of calling oral evidence. All the parties were in agreement with above proposition.

The learned Judge then proceeded to hear the case and subsequently dismissed it as already noted earlier in this Judgment.

15 A decree was extracted in the following terms:-

“It is hereby decreed that the second defendant has a valid defence to the suit as it is still investigating the matter, the claim does not disclose a cause of action against the second defendant which also enjoys immunity from being sued. Accordingly the suit is dismissed with costs to the second defendant each party to

20

bear its own costs as between the plaintiff and the first defendant”

On appeal however, as already noted above none of the issues raised in the lower were raised or argued.

5 The appellant’s memorandum of appeal had raised the following grounds:-

10 ***1. That the learned trial Judge erred in law in holding that the second respondent which successfully applied to be joined as a defendant had immunity to the suit and thereby occasioned a failure of justice.***

15 ***2. That the learned trial Judge erred in law in holding that the conduct of investigations by the second respondent is a defence to the plaintiff’s claim against the second respondent and so occasioned a miscarriage of justice.***

20 ***3. That the learned trial Judge erred in law in holding that the failure to amend the pleadings by appellant is suspect and therefore no cause of action against the second respondent was disclosed.***

4. That the learned trial Judge erred in law in considering extraneous matters, reached a

wrong conclusion and thereby occasioned grave failure of justice.

The above grounds were not argued on appeal. Instead all the parties sought to rely on the authority of the Supreme Court in the ***Gordon Sentiba case*** (Supra).

The appellant's counsel submitted that the proposition of the law in the above authority is that;-

(1) The Inspector General of Government is barred by section 19(1) (a), (b), (c) of the Act from questioning or on any judicial officer in exercise of his or her judicial functions.

(2) That the Inspectorate of Government has no corporate status and as such can neither sue nor be sued.

The effect of the above submissions is that the order of Justice Kiryabwire allowing the 2nd respondent to be added as a party in HCCS No. 735 of 2006 is a nullity and so are all the subsequent proceedings as they relate to the 2nd respondent including the orders set out in the Judgment and decree of Court.

However, in my view the above does not in any way affect the suit between the appellant and the Attorney General. The Attorney General had filed a written statement of defence, the

matter was heard inter parties and a judgment delivered, dismissing the suit against the Attorney General on account that it was premature, as the contract, the subject matter of the suit was still under investigation by the 2nd respondent.

- 5 The ***Gordon Sentiba case*** (Supra) was an appeal to the Supreme Court from this Court. The proposition that the Inspector General of Government has corporate status was set out by the Constitutional Court in the ***Constitutional petition No. 14 of 2007 Inspectorate of Government versus Kikondwa Butema Farms Ltd and the Attorney General.***
10

The Supreme Court cannot set aside a decision of the Constitutional Court. It is only the Constitutional Appeal Court that has the power to set side such a decision. The learned Chief Justice **B. Odoki CJ** rightly in my view did not set aside the
15 decision of the Constitutional Court in the ***Kikondwa Butema Farms case*** (Supra) but rather refused to follow it. At page 19 of his Judgment he states as follows:-

20 ***“For these reasons, I am of the view that Kikondwa Butema case regarding the legal capacity of the respondent was arrived at in error and I would decline to follow it”***

I do not agree therefore with the submissions of both Mr. Wandera Ogala and Mr. Martin Mwambutsya that the issue of legal capacity of the Inspector General of Government has been

finally settled. The only Court that can settle this issue is the Supreme Court sitting as Constitutional Appeal Court.

I am therefore unable to hold or find that the Inspector General of Government has no corporate status on account of the conflicting
5 decisions in both cases cited above. I also find that the **Sentiba case** (Supra) the decision in respect of the capacity of IGG was made **obiter** as it was not one of the grounds of appeal. This conflict in my opinion can only be settled by the Constitutional Appeal Court, when the opportunity arises.

10 Be that as it may, it is clear from the record that the Inspector General of Government wrote a letter to Ministry of works and transport Ref. ADM/ 7/784/01 on 11th April 2006 stopping the payment to the appellants in respect of the said contracts.

The Inspector General of Government therefore started
15 investigating the matter long before the appellant instituted any matter in any Court of law. Section 19 (1) of the Inspectorate of Government Act is therefore not applicable. The **Gordon Sentiba** authority is therefore not applicable to this case in that regard.

The issue then to be determined here is the effect of such
20 investigations on suits filed subsequent to commencement of investigations by the Inspectorate of Government.

I agree with the learned trial Judge that the effect of the investigations by the Inspector General of Government into the

legality of the contract vitiates the contract and renders it nonjusticiable.

This is because in my view a contract whose legality is under investigation by the Inspector General of Government has not
5 matured into a contract in which parties can have their rights determined. That contract is a contract **“subject to the investigations”**. In this particular case the contract is subject to investigations relating to fraud which goes to the legality of such a contract. The order of the Inspector General of Government is
10 still valid and legal. It is still in force and ought to be complied with.

An order of the Inspector General of Government stopping payment is a valid defence to the suit because its disobedience attracts criminal sanctions. The parties to such a contract have to
15 wait until the contract matures or crystallises upon the completion of investigations. By the time **HCCS No. 735 of 2006** the subject of this appeal was filed, the investigations were on going and as such the 1st respondent had a valid defence to the suit. There was no contract upon which the action could be founded. An order of
20 Government had made it impossible for one party to perform its obligations under the contract.

A contract will be dissolved when legislative or administrative intervention has so directly operated upon the fulfillment of the contract for specific work as to transform the contemplated
25 conditions of performance. **Metropolitan Water Board versus**

Dick Kerr and Co. Ltd (1918) AC 119. The learned trial Judge was justified in finding that the 1st respondent had a valid defence to the suit and he dismissed it justifiably.

I would also like to comment on ***HCCS No. 208 of 2007*** between
5 the appellant, Robert Mwesigwa and Privatisation Unit and Uganda Railways Corporation. I am inclined to think that this suit was brought in bad faith to defeat and or circumvent the order of Justice Kiryabwire in ***HCCS No. 735 of 2006.***

The whole suit is raddled with falsehoods, as already set in the
10 background to this appeal. The Privatisation Unit is not a body corporate as far as I could ascertain from Section 4 of the Public Enterprises Reform and Diversiture Act (Cap 98). The plaint itself discloses no cause of action against any of the defendants. The whole suit appears to be frivolous and vexatious.

15 I agree with the observations made by the trial Judge that the conduct of the Attorney General's chambers through this case is suspect.

In any matter in which fraud is alleged Court in my view must take all necessary precaution to ensure that it is not used as an
20 instrument of perpetuating fraud or illegalities.

Since the Inspector General of Government alleges fraud in this contract, it is proper and just that she be granted opportunity to investigate the fraud without undue hindrance.

Accordingly I would dismiss this appeal.

Since the respondents had not opposed it, I would order that each party bears its own costs.

5 **Dated at Kampala** this**04th** ...day of**April**...2014.

.....

HON. MR. JUSTICE KENNETH KAKURU, JA

10

JUDGMENT OF JUSTICE A.S.NSHIMYE, JA

I have read the lead judgment in draft prepared by my brother Justice K.Kakuru, JA.

15

I concur with his reasoning and conclusion that the appeal lacks merit and ought to be dismissed.

I also agree with the order regarding costs.

20

Dated at Kampala this **04th** day of **April, 2014**

.....

HON JUSTICE A.S.NSHIMYE

25

JUSTICE OF APPEAL

JUDGMENT OF JUSTICE RICHARD BUTEERA, JA

30

I have had the benefit of reading the judgment prepared by my learned brother Hon Justice Kenneth Kakuru in draft.

I agree that the appeal should be dismissed for the reasons therein stated. I find nothing to add.

5
Hon Justice R.Buteera
JUSTICE OF APPEAL