

THE REPUBLIC OF UGANDA

THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

**(CORAM: S.T. MANYINDO – DCJ., G.M.OKELLO – J., A.E.M. BAHIGEINE – J., J.P.M.
TABARO – J. AND F.M.S. EGONDA-NTENDE)**

CONSTITUTIONAL PETITION NO. 1/97

B E T W E E N

MALIAM ADEKUR]

GIRADO OTAPITO].....PETITIONERS

A N D

JOSHUA OPAJA]

THE ATTORNEY GENERAL] RESPONDENTS

REASONS FOR THE DECISION

After the preliminary objections raised to the Petition by the Director of Civil Litigation Mr. Nasa Tumwesige, we were of the unanimous view that the Petition did not disclose any cause of action as against the 2nd respondent. We proceeded to strike it out as being incompetent, promising to give our reasons later which we now give. This Constitutional Petition No. 2/9 was filed by Maliam Adeku and Girado Otapito as 1st and 2nd Petitioners respectively against Joshua Opaya as 1st respondent and the Attorney General as 2nd respondent. They were seeking the following declarations. *3 a(i) that the inheritance of the 1st respondent*

and its continuation, the arrest and detention

and prosecution of the Petitioners, was and is

inconsistent with the Constitution; Articles

31(1) and (3); Article 33(1), (4) and (6).

(ii) That the confiscation of the 2nd Petitioner's bicycle was inconsistent with the Constitution, Article 26 (2) (6). (iii) An order of redress or refer the matter to the High Court to investigate and determine appropriate redress. The Petition is supported by two affidavits sworn by the Petitioners and both dated 30/1/97.

The first respondent Joshua Opaja did not file any answer to the Petition though he was duly served with the court process by one Ekanya Robert of M/S Emoru & Co. Advocates on 11th February 1997 at around 4.45p.m. The affidavit of service is on record dated 17/2/97. The Court was not requested to proceed ex parte against him. We only proceeded against the 2nd Respondent.

It is the affidavit of the 1st Petitioner that contains the background to the matter.

Para 2 avers that the 1st Petitioner got married to Isaac Machinga of Kidingole Customarily during 1973. The bride price of seven (7) heads of cattle, four (4) goats and shs. 170/= was paid. The two lived together for about five (5) years until he chased her away during 1978. The bride price was never returned. Okiria Machinga later died during 1988 while they were still living apart. The 1st respondent was installed his heir and according to Iteso customs ".....he was also supposed to inherit not only his estate but myself as well" (the 1st Petitioner).

After Machinga's death the 1st petitioner married the 2nd petitioner, Girado Otapito.

On the 4th December 1996 they were arrested in Palisa by the 1st respondent and the sub-county Chief of Kidongole Kumi District. They were charged with elopement c/s 121(A)(1) of the Penal Code before the Magistrate Grade II Kacumbala (Criminal Case No. MS 27/96). They both pleaded not guilty and were released on cash bail of shs. 50,000/= each.

The 2nd respondent's stand was that there was no cause of action against him. Mr. Tumwesige argued that the Attorney General had no role to play in the arrest, detention and prosecution of the petitioner. The arrest had been effected by 1st Respondent and the sub-county chief of Kidongole who is a servant of Kumi District Administration which administration can sue and be sued in its corporate name.

Mr. Emoru however argued that the 2nd Respondent under Article 250 was liable for the acts of the Judicial officer, the Magistrate who perhaps failed to protect the Petitioners rights. We found difficulty in following Mr. Emoru's arguments in view of the provision in Article 128 (4) clearly states: "*A person exercising judicial power shall not be liable to any action or suit for any act or omission by the person in the exercise of judicial power.*" That is self explanatory. The magistrate was not guilty of any omission or wrongdoing.

Secondly the prosecution was not conducted by Police as Mr. Emoru wanted to suggest. It was a private prosecution by the 1st Respondent himself, the arrests having been effected by the Kumi District Administration sub-county chief of Kidongole. Under section 4 (2) (a) the Local Governments Act No. 1 of 1997 the District Administration or Council is a Local government which is a body corporate with perpetual succession and a common seal. It may sue or be sued in its corporate name under section 7 of the Act. There was therefore no justification for dragging the 2nd Respondent Attorney General to court.

We were satisfied that the Petition did not disclose any cause of action against 2nd Respondent. We had therefore no alternative but to strike it out as incompetent. We thought it proper for Mr. Emoru to bear the costs of this Petition personally as clearly this petition was misconceived.

We so ordered.

Dated at Kampala this 13th day of June 1997.

S.T. Manyindo

DEPUTY CHIEF JUSTICE

G.M. Okello

JUDGE

A.E.M. Bahigaine

JUDGE

J.P.M. Tabaro

JUDGE

F.M.S. Egonda-Ntende

JUDGE