

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

**HOLDEN AT KAMPALA**

**CONSTITUTIONAL PETITION CASE NO.15 OF 1997**

**CHARLES ONYANGO & ANOR:..... PETITIONER**

**VERSUS**

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

CORAM: THE HON. JUSTICE S.T. MANYINDO. DCJ. JUSTICE C.M. KATO, JA..  
JUSTICE J.P. BERKO. J.A., JUSTICE S.G. ENGWAU. J.A., AND JUSTICE A.  
TWINOMUJUNI, J.A.

RULING OF THE COURT:

The petitioners were on 24/10/97 jointly charged by the DPP in the magistrates court under S.50 (1) of the Penal code Act for Publication of False News on two counts. The case is still pending in the Magistrates Court. In the meantime, on 24/11/97 they brought this petition under Article 137 of the Constitution and The Fundamental Human Rights and Freedoms (Enforcement Procedure) Rules 1992 (S.T.No.26/92) seeking declaration that the action of the DPP in prosecuting them is inconsistent with the provisions of Articles 29(1)(a), (b) and (e), Article 40(2) and 43(2)(e) of the Constitution and for our order releasing the petitioners from the criminal prosecution, and finally for a declaration that the petitioners are entitled to damages for unconstitutional prosecution strongly they even request this court to refer the matter to the High Court to investigate and determine the quantum of damages.

When the petition was called we invited counsel to address the court on the question whether it was in order for the petition to proceed to trial in view of the criminal case now pending against the petitioners in the Magistrates Court. Counsel for the petitioners Mr. Nangwala submitted that this petition has nothing to do with the charges in the magistrates court as it merely challenges the act of the DPP to charge the petitioners as that act contravenes Art. 29(1) (a) (b) and (e), 40(2) and 43(2)(e) of the Constitution. He also argued that this matter cannot be argued in the lower court by way of defence as that court has no jurisdiction in Constitutional matters. He further argued that the truth or falsehood of what was published is not the issue What is in issue is S50 (1) of the Penal Code which is inconsistent with the above articles, and it is only this court which can pronounce on this matter.

On his part Mr. Nasser Tumwesige for the respondent was contented to let the petition proceed so that he could argue it on its merits. As can be seen from their answer to the petition, their position is that the DPP's act in prosecuting the petitioners cannot be unconstitutional. They also say that S.50 of the Penal code is not inconsistent with the aforesaid articles of the constitution.

We do not agree that this petition has nothing to do with the criminal charges pending against the petitioners. It is remarkable that the petition was brought here after the criminal proceedings had been instituted against the petitioners, It may well be that if the petitioners had not been charged in the lower court, they might not have brought this petition in this court. That is why in their prayer in the petition they seek among others the order releasing them from that criminal prosecution.

It seems clear to us therefore that the purpose of this petition is to circumvent or even pre-empt the criminal prosecution. But as this court held in Const. Petition No.4/97 Arutu John vs. Attorney General where criminal proceedings are pending in another court and a petition is brought to this court in respect to the same matter, then the petition should be stayed pending the determination of the criminal matter in the trial court.

Accordingly we order that this petition be stayed pending be stayed pending determination of

Buganda Road court criminal case No.U 2636/97 against the petitioners.The trial should be conducted as quickly as practicable. We make no order for costs.

**Dated at Kampala this day of 15<sup>th</sup> December, 1997**

**S.T. Manyindo**

DEPUTY CHIEF JUSTICE

**C.M. Kato**

JUSTICE OF APPEAL

**J.P. Berko**

JUSTICE OF APPEAL

**S.G. Engwau**

JUSTICE OF APPEAL

**A. Twinomujuni**

JUSTICE OF APPEAL

I CERTIFY THAT THIS IS A TRUE *COPY* OF THE ORIGINAL.

**J.MURANGIRA**

**REGISTRAR. COURT OF APPEAL.**