

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 6/97

CORAM: JUSTICE S.T. MANYINDO, D.C.J., JUSTICE G.M. OKELLO, J.A., LADY
JUSTICE MPAGI-BAHIGEINE, J.A., JUSTICE J.P. BERKO, J.A., & JUSTICE A.
TWINOMUJUNI, J.A.

UGANDA JOURNALISTS SAFETY

.....

PETITIONERS

COMMITTEE & ANOTHER)

VERSUS

ATTORNEY GENERAL

.....

RESPONDENT

RULING OF THE COURT.

The Uganda Journalists Safety Committee and Haruna Kanabi have brought this petition against the Attorney General for a declaration under Art 550 and 137 of the Constitution of the Republic of Uganda.

In the Petition the Petitioners are asking this court to make a declaration that Sections 37, 41, 42, and 50 of the Penal Code Act (Cap 106) of the laws of Uganda are in consistent with the Constitution of Uganda in their application to the 2nd Petitioner and are a violation of his Fundamental Human Rights contained in Arts 29(1)(a) & (b) 30 and 41 of the Constitution.

Uganda Journalists Safety Committee, the 1st Petitioner, is said to be a non-governmental Organisation registered under NGO Registration Statute of 1989. Its objectives include the advocating or the rights of Journalists, defending democracy, protection of the media and

journalists and defence of press freedom. Haruna Kanabi, the 2nd Petitioner, is said to be a practising journalist and employed as Editor with the Shariat Newspaper.

The grievances of the 2nd Petitioner, as contained in his affidavit, are that on the 19th December 1995 he was convicted by the Buganda Road Chief Magistrate's Court of the Count of Sedition, Contrary to Section 41 (1) (a) and 42 (1)(c) of the Penal Code Act and Publication of False News Contrary to Section 50(1) of the same Penal Code. In respect of the first offence he was sentenced to five months imprisonment or a fine of Shs. 49,500/=. In respect to second count, he was fined Ug Shs. 1,200,000/= or one years imprisonment in default.

He appealed to the High Court against both convictions and sentences. On the 13th November 1996 the High Court dismissed his appeal and upheld both the convictions and the sentences. He has appealed to the Court of Appeal against both convictions and sentences. The appeal to the Court of Appeal is still pending.

It is the contention of the 2nd Petitioner that Sections 41, 42 and 50 of the Penal Code Act under which he was charged, tried and convicted are inconsistent with Arts 29, 30 and 41 of the Constitution of Uganda and consequently his convictions and sentences are null and void and are a violation of his constitutional rights as guaranteed by the Constitution. As a result of this violation, it was alleged he has suffered imprisonment, humiliation and loss and continue to do so, hence the petition.

No affidavit was filed by the 1st Petitioner.

In an answer to the petition, the Attorney General has contended that the 2nd Petitioner was duly convicted and sentenced under the laws of Uganda. His convictions and sentences were not in contravention of Articles 29, 30, 41 of the Constitution as alleged by him. Consequently the petition is frivolous and vexatious and should be dismissed.

The answer to the petition has been elaborated in the affidavit of Lucian Tibaraha accompanying the answer. He is the Ag. Director, Legal Advisory Services in the respondent chambers.

When the matter came up for hearing before us on the 24/11/97 Mr. Nasa Tumwesige, Director of Civil Litigation, raised a number of preliminary objections. The first objection was that the petition was not properly before the court. He reasoned that the petition was on the face of it brought under both articles 50 and 137 of the Constitution. This is clear from the heading. But in para 6 of the Petition it is clearly stated that it was brought under Article 50 of the Constitution. Learned Counsel has submitted that the petition has been brought under a wrong article of the Constitution and must be dismissed.

Learned Counsel for the petitioners, on the other hand, has argued that since the petition refers to both articles 50 and 137, the petition is properly before the Court because the whole Constitution ought to be looked at.

The rules governing procedure of this court are contained in two legal Notices made under the Judicature Statute of 1996. The first one is The Interpretation of the Constitution (Procedure) Rules, 1992 (Modification) Direction, 1996, Legal Notice No. 3 of 1996. Section 2 provides:

"These Directions shall apply to the Constitutional Court in the exercise of its jurisdiction under clause 5 of article 137 of the Constitution, where the matter comes before the Court by reference from another Court".

Clause (5) of Article 137 of the Constitution provides:

"Where any question as to the interpretation of this Constitution arises in my proceedings in a Court of law other than a Field Court Martial, the Court;

(a) May, if it is of the opinion that the question involves a substantial question of law; and

(b) shall, if any party to the proceeding requests it to do so refer the question to the Constitutional Court for decision in accordance with Clause (1) of this article".

It is plain from the above provisions that Legal Notice No.3 of 1996 deals with references from another Court of law to the Constitutional Court.

In the instant case, the matter did not come to this Court following a reference from another Court. That means that Legal Notice No. 3 of **1996** is not applicable.

The second set of rules can be found in the Modifications IN The Fundamental Rights and Freedoms (Enforcement Procedure) Rules, Directions, 1996: Legal Notice No. 4 of 1996.

Section (1) of Legal Notice 4 provides:

"These Directions may be cited as the Rules of the Constitutional Court (Petitions for declarations under article 137 of the Constitution) Directions 1996."

The Schedule to the rules defined "Court" to mean "the Constitutional Court of Uganda established by article 137 of the Constitution of 1995." "Petition" has also been defined to mean "Petition of an aggrieved party seeking to institute proceedings for a declaration or redress under Clause (3) of article 137 of the Constitution."

The rules in Legal Notice No.4 govern the procedure for bringing petitions direct to this court under Art 137 of the Constitution by a party who alleges that :-

- (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 The Constitution, for a declaration to that effect.

The Constitutional Court is thus a new Court created by Article 137 of The Constitution for the sole purpose for the interpretation of the Constitution either following a reference under Legal Notice No. 3 or by means of a Petition under Legal Notice No. 4 of 1996. The jurisdiction of the Court to entertain both matters i.e. 'Reference' and 'Petition' are derived from Article 137 of The Constitution. The Constitutional Court is therefore not a proper forum for a person seeking redress under Article 50 of the Constitution. This is clear from the provision of the Article itself, which provides;

'50(1) Any person who claims that a fundamental or other right of freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a Competent Court for redress which may include compensation'.

The application for redress under Art 50 ought to have been brought by way of an ordinary Civil action in a competent court of Judicature.

The first objection therefore succeeds.

The second objection is that the petition is time barred. Rule 4(1) of Legal Notice 4 requires a Petition to be lodged within 30 days after the date of the breach complained of in the petition. The breach complained of in this petition is the Conviction of the 2nd Petitioner of the offences created by Sections 4(1)(a), 42(1)(c) and 50(1) of the Penal Code Act (Cap 106). That conviction was made on the 19th December 1995. Consequently the breach complained about occurred on the 19th December 1995 and not on the date the 2nd Petitioner swore to the affidavit in support of the petition. The petitioners had 30 days from the 19th December 1995 within which to file the petition. The petition was in fact filed on the 27th May 1997. Consequently it was filed out of time and it is time barred.

We are not persuaded by the argument of Mr. Kenneth Kakuru that in matters of interpretation of the Constitution questions of limitation do not arise and that the time limit in the rules should be disregarded. No authority was cited for such a bold statement. If the legislature thought that time was irrelevant in such matters, it would not have enacted the provision in Rule 4(1) of Legal Notice 4. Section 1 of Legal Notice 4 provides

"These rules may be cited as the Fundamental Rights and Freedom (Enforcement Procedure) Rules; 1992.

The second objection accordingly should succeed.

The third objection is that this court should not make any determination on the matters complained of in the petition as the convictions and sentences of the 2nd Petitioner are the subject of an appeal to The Court of Appeal.

The evidence on record is that the 2nd petitioner was convicted by the Buganda Road Chief Magistrates Court of the offence of Sedition contrary to S. 41(a) and 42(1)(c) and Publication of False News contrary to S. 50(c) of the Penal Code Act. He appealed to the High Court which dismissed his appeal on 13/11/96 and upheld both convictions and sentences. The 2nd Petitioner then appealed to the Court of Appeal. In the appeal the 2nd Petitioner is contesting the legality of his convictions and sentences under the Sections he is complaining about.

In our view, in the absence of any reference from the original courts that have handled the matter, it would be improper to make pronouncement on the matters raised in the petition. We do not think that the issues for determination in the appeal and in the petition are different.

We do not want to speculate on the likely results of the appeal; but it cannot be denied that if the appeal succeeds and the convictions are quashed and sentences set aside, the 2nd Petitioner would not pursue the petition. He would have nothing to complain about in Constitutional terms. He could get redress for any injury he might have suffered following his arrest, trial and conviction from any court of competent jurisdiction. Therefore the third objection is upheld.

The last objection is lack of affidavit accompanying the petition of the 1st Petitioner. This was conceded by the learned Counsel for the petitioners.

We think there is merit in the objection. Rule 3 sub rule 6 of legal Notice No. 4 contains the following provision:

(6) The petition shall be accompanied by an affidavit setting out the facts relating to the grievance complained of by the petitioner and the redress prayed for in the petition".

The need for an accompanying affidavit to a petition has become all the more important in view of the provisions in Rule 12(l) which provides

"All evidence at the trial in favour of or against the Petition shall be by way of affidavit read in open court".

In our view there cannot be a valid petition without an accompanying affidavit. The above provision is mandatory. That ground therefore succeeds.

In the result, we have come to the conclusion that there are merits in the preliminary objections. We upheld the objections. The petition is accordingly struck out with costs to the Respondent.

Dated at Kampala this 16th day December 1997.

S. T. MANYINDO
DEPUTY CHIEF JUSTICE.

G. M. OKELLO
JUSTICE OF APPEAL.

A.E. MPAGI-BAHIGEINE
JUSTICE of APPEAL.

J. P. BERKO
JUSTICE OF APPEAL

A.TWINOMUJUNI
JUSTICE OF APPEAL.