

CONSTITUTIONAL REFERENCE NO. 7 OF 2006

EMMANUEL NAGOLI,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,APPLICANT

ATTORNEY GENERAL AND ANOTHER;,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,RESPONDENT

According to the petitioner, in 1998, the first respondent unilaterally terminated the sale agreement without

giving him notice or hearing. He filed an appeal against the minister's decision in accordance with Section 15 of the Expropriated Properties Act. The trial Judge then framed the following issues which, in his view, required interpretation, namely;

- (i) Whether the Minister's decision contravened the principle of *Audi alteram partem* and Articles 20 and 44 (c) of the Constitution
- (ii) Whether the Minister acted arbitrarily contrary to Article 42 of the Constitution
- (iii) Whether the Minister contravened Articles 20, 21(1), (2) and (3) of the Constitution

HELD:

Although the reference discloses a cause of action within the meaning of Article 137 (5) of the Constitution, it cannot be maintainable in law because the acts of the Minister complained of arise out of a written contract and until they have been determined in the Civil Appeal now pending in the High Court, they cannot be challenged as illegal or unconstitutional. Thus the reference was pre-mature and cannot be maintained in law until those contractual issues have been determined.

Respondent's point of law in opposition to reference allowed. Record of Civil Appeal No. HCT-04-CV-CA 0003/2003 be remitted to High Court to resolve contractual issues involved.

Dated this 24th day of October 2006

OKELLO, JA

TWINOMUJUNI, JA

KITUMBA, JA

KAVUMA, JA

Legislation considered:

Civil Procedure Rules, Cap 71, Order 6 rule 29

The Constitution of the Republic of Uganda, 1995, Articles 20, 21, 42, 44 and 137 Expropriated Properties Act of 1982 (now Cap 87), Sections 9, 15 The Constitutional Court (Petitions and References) Rules, 2005

Cases cited:

Ismail Serugo Vs. K.C.C and Another, Constitutional Appeal No.2 of 1998 Nurdin Ali Dewji and Others vs. Meghiji and Other (1953) 20 EACA 132 Wycliff Kiggundu Kato vs. Attorney General, Civil Appeal No.27 of 1993 (Supreme Court) (unreported)