

**THE REPUBLIC OF UGANDA**

**IN THE CONSTITUTIONAL COURT OF UGANDA AT  
KAMAPALA**

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**CORAM: HON. JUSTICE A.E.N. MPAGI BAHIGEINE, JA ✓**  
**HON. JUSTICE S.G. ENGWAU, JA**  
**HON. JUSTICE A. TWINOMUJUNI, JA**  
**HON. JUSTICE C.N.B. KITUMBA, JA**  
**HON. JUSTICE S.B.K. KAVUMA, JA**

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**CONSTITUTIONAL PETITION NO.02 OF 2004**

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**1. ISMAIL DABULE** ]  
**2. MUSTAPHA RHAMATHAN** ]  
**3. KASSIM RAMATHAN** ].....PETITIONERS

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**V E R S U S**

**1. THE ATTORNEY GENERAL** ]  
**2. BANK OF UGANDA** ] .....RESPONDENTS

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**JUDGMENT OF TWINOMUJUNI, JA**

This petition was filed by the three petitioners on their own behalf and on behalf of thousands of other petitioners whose names appear on an annexure attached to the petition. The petition is brought under article 30 137 of the Constitution of the Republic of Uganda (1995). The petitioners are asking this Court to grant to them the following declarations:-

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- a) The Banking (Freezing of Accounts) Order 1982 Legal Notice 2 of 1982, The Banking (Freezing of Accounts) Order 1984, Legal Notices No.2 and 3 of 1984 contravene**

and are inconsistent with articles 21(1) and (2), of the 1995 Constitution of Uganda. (sic)

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- b) The Banking (Freezing of Accounts) Orders, Legal Notice 2 of 1982 and Legal Notices No.2 and 3 of 1984 are inconsistent with and contravene articles 24 and 44 of the Constitution of Uganda.
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- c) The Banking (Freezing of Accounts) Orders, Legal Notice 2 of 1982, and Legal Notices No.2 and 3 of 1984 are inconsistent with and contravene articles 26(1) & (2), of the Constitution of Uganda.
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- d) The Banking (Freezing of Accounts) Orders, Legal Notice 2 of 1982, and Legal Notices No.2 and 3 of 1984 are inconsistent with and contravene articles 28(1) & (3)(a), of the Constitution of Uganda.
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- e) THAT the acts of the 1<sup>st</sup> and 2<sup>nd</sup> respondents' continued freezing of the accounts of the petitioners and others named in the schedule contravenes and is inconsistent with article 26(1) & (2) and 28(1) & (3)(a) of the 1995 Constitution.
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- f) THAT the 1<sup>st</sup> respondent defreezes the accounts and allow the petitioners and the affected persons named in the schedule access their accounts.
- g) THAT the petitioners are entitled to restitution against the 2<sup>nd</sup> respondent based on the dollar rate at the time of freezing in 1979.
- h) THAT the money of the petitioners should not be subjected to Currency Reform, Statute 1987.
- i) Grant an Order of redress by the respondents by way of;

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- i. The 2<sup>nd</sup> respondent compensating the petitioners and all the affected persons.
  - ii. Award of general damages against the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the violation of the petitioners rights.
  - iii. An Order against the 1<sup>st</sup> and 2<sup>nd</sup> respondent for payment of interest at compounded commercial rate for freezing of the petitioners account from 1979.
  - iv. An Order of damages against the 2<sup>nd</sup> respondent for conversion of the property of the petitioners.
  - v. An Order against the 2<sup>nd</sup> respondents for payment of profits and interest from the money invested in Treasury Bills.
  - vi. An Order against the 1<sup>st</sup> & 2<sup>nd</sup> Respondents for payment of exemplary damages.
  - vii. Refer the matter to High Court for determination of damages, interest, compensation and specific orders.

j) Grant your petitioners the costs of this petition.

k) Grant your petitioners such other reliefs, as the court may deem fit and just."

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The petition is supported by the affidavits of the three petitioners in which they endeavour to explain why they are aggrieved.

The brief background to this petition is as follows:

- 5 Following the overthrowal of President Field Martial Idd Amin in 1979, the Government of the National Liberation Front enacted a law known as The Banking Act (Amendment) Statute 18 of 1980. The statute amended section 26 of The Banking Act of 1969 by adding thereon sections 26A and 26B to the Act. The section provided as follows:

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**“(26) A.(1) The Minister may, by notice published in the Gazette, issue an order requiring any bank or credit institution to freeze a current or savings account of any person, firm or organisation.**

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**(2). No order shall be issued under this section to any bank or credit institution unless the Minister has reason to believe that the operator of the account,**

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**(a) has fled the country as a result of the 1978/79 Liberation War and has not taken steps to return to Uganda; or**

**(b) has defrauded the Government, bank or credit institution of its funds; or**

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**(c) has acquired his funds on such account through business malpractices or corruption; or**

**(d) was a non-citizen who left the country as a result of the Immigration (Cancellation of Entry Permits and Certificates of Residence) Decree, 1972; or**

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- (e) has been an officer or agent of the State Research Bureau or similar organisation or has indulged in any subversive activity during the 1971 to 1979 period of Military Administration; or
- (f) has used his position in, or his connection with the Military Administration during the 1971 to 1979 period to gain any property unfairly.
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- (3) The Minister may, by notice published in the Gazette, cancel any order made pursuant to the provisions of subsection (1).
- (4) Any person aggrieved by the order of the Minister issued under subsection (1) may apply to the Committee for a review of the order and shall be
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- afforded the opportunity of being heard by the Committee."

Following this amendment, Dr. Apollo Milton Obote who became the

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next President of Uganda and Minister of Finance made Legal Notices No.2 of 1982, No.2 of 1984 and No.3 of 1984 which authorised various commercial banks in Uganda to freeze the accounts of individuals and corporations annexed to the legal notices. Altogether, over 1300 entities were named. Most of the petitioners named in the annexure to the

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petition appeared among those named in the Legal Notices. They now claim that these Legal Notices are still in force as a result of which they have never accessed their moneys in the commercial banks. They claim that they never ran out of Uganda after the overthrow of Idd Amin and the conditions for freezing accounts contained in section 26A of The

Banking Act 1969, as amended, did not apply to them. They claim further that they were not given a hearing before their accounts were frozen and that since the Legal Notices are still in force, they contravene various provisions of the Constitution of Uganda, 1995, outlined in the  
5 petition. Hence this petition under article 137 of the Constitution, seeking the above mentioned remedies.

The petition is opposed by the Attorney General of Uganda and the Bank of Uganda which took custody of all the frozen funds from the various  
10 commercial banks where the petitioners' accounts were being operated. In their answer to the petition, they contend that the whole of the Banking Act of 1969 (including S.26A and 26B thereof) was repealed by the Financial Institution Statute No.4 of 1993 and that since then the petitioners have been free to operate their formerly frozen accounts.  
15 They contend further that the petition does not raise any issues requiring constitutional interpretation under article 137 of the Constitution. They further assert that the petition does not disclose any cause of action against the Bank of Uganda. Their prayer is that this court be pleased to dismiss the petition with costs in their favour.

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The parties agreed on the following issues for determination by this court:-

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- “(1). Whether Legal Notices 2 of 1982, and 2 of 1984 and 3 of 1984 are still in force or whether they were repealed.**
  - (2). If the said Legal Notices are in force whether they are inconsistent with or contravenes articles 21, 26, 28 and 44 of the 1995 Constitution.**

(3) Whether the petition discloses a valid claim “cause of action” against the 2<sup>nd</sup> respondent.

(4) Remedies if any.”

At the hearing of the petition, the petitioners were represented by three  
5 counsel, namely Mr. Muhammed Mbabazi, Mr. Emongole and Mr. Kasozi. Mr. Henry Oluka, a Senior State Attorney in the 1<sup>st</sup> respondent’s Chambers represented the 1<sup>st</sup> respondent and Mr. Masembe-Kanyerezi appeared for the 2<sup>nd</sup> respondent. There was no dispute on the facts which constitute the background to this petition. The arguments were mainly  
10 centred on the relevant statutes and their legal interpretations.

#### ISSUE NO.1

This issue is simply whether Legal Notices 2 of 1982 and 2 and 3 of 1984  
15 are still in force or whether they were repealed. The answer to this issue hinges on whether the Financial Institutions Statute No.4 of 1993, especially section 54 thereof, repealed the Legal Notices mentioned in his issue.

20 Addressing us on this issue, Mr. Mbabazi for the petitioners submitted that although the Statute repealed section 26A of The Banking Act of 1969, section 54(2) of the Statute saved some Statutory Instruments including those made under section 26A of the 1969 Act. Though section 54(2) of the Statute provided that only those instruments which were  
25 consistent with the 1993 Statute were saved, Mr. Mbabazi submitted that the impugned Legal Notices of 1982 and 1984 were not inconsistent with the 1993 Statute and the respondents had not proved that they were inconsistent with the Statute. He invited us to hold that the Legal Notices were still in force.

Mr. Masembe-Kenyerezi, who argued this issue for the respondents, could not agree. He submitted that there was no dispute that section 26A of The Banking Act 1969 was repealed by section 54(2) of the 1993 Statute. Section 26A was enacted in 1980 for the purpose of enabling the Government of Uganda to freeze the bank accounts of certain categories of people perceived to have been collaborators of former President Idd Amin. The 1993 Statute discontinued that policy and wholly repealed the section. The Legal Notices which were made purposely to implement the freezing policy could not remain valid and in force when the freezing policy had been reversed by the 1993 Statute. Therefore, they were inconsistent with the Statute and they ceased to have the force of law in 1993. Since then, the petitioners have always been free to access their bank accounts and could otherwise have resorted to courts of law to enforce their rights.

Section 54 of the Financial Institutions Statute No.4 of 1993 States as follows:-

- 20       **“54(1) The Banking Act 1969 is hereby repealed.**
- (2) Notwithstanding the repeal under subsection (1) of this section, all regulations, instructions, licences, orders and decisions made under the repealed Act, shall in so far as they are consistent with this Statute, remain valid and**
- 25       **binding and shall be deemed to have been made under this Statute.” [Emphasis supplied]**

This provision clearly repeals the whole 1969 Banking Act including section 26A thereof. Since Legal Notices 2 of 1982 and 2 & 3 of 1984

were made specifically to implement the policy contained in section 26A, I cannot see how they could survive the repeal of that section. By repealing the whole Act and section 26A, the government decided to reverse the freezing of bank accounts on the grounds stated in section 26A(2) of the Act (supra). The legal notices were nullified by the Statute because their sole purpose ceased to exist and they became inconsistent with the statute. I agree with Mr. Masembe-Kenyerezi that with effect from 14<sup>th</sup> May 1993 when the 1969 Act was repealed, the impugned legal notices ceased to have a force of law and became null and void. I am further strengthened in this belief by the provisions of section 12 of the Interpretation Act which states:-

**“Where any Act or part of an Act is repealed and re-enacted, with or without modification, Statutory Instruments made under it shall, unless a contrary intention appears, remain in force, so far as they are not inconsistent with the repealing Act, until they have been revoked or repealed by Statutory Instruments made under the repealing Act, and until that revocation or repeal, shall be deemed to have been made under the repealing Act.” [Emphasis supplied]**

This is almost the same language that was used in section 54 of the Financial Institutions Statute, 1993 which repealed section 26A of the Banking Act of 1969.

I would answer the first issue in the negative that the impugned Legal Notices are no longer in force. They were repealed by section 54 of the Financial Institutions Act No.4 of 1993.

## ISSUE NO.2

The second issue reads:-

5       **“If the said Legal Notices are in force whether they are  
inconsistent with or contravene articles 21, 26, 28 and 44 of the  
Constitution.”** [Emphasis supplied]

10       This issue clearly anticipates that if the finding of this Court on the first  
issue is that the Legal Notices are no longer in force, the question of their  
inconsistency with the Constitution no longer arises. A law which was  
repealed is null and void and has no legal effect on any provision of the  
Constitution. Moreover the repeal took place two years before the  
Constitution came into force.

## 15       ISSUE NO.3

20       This is whether the petition discloses a valid claim/cause of action against  
the 2<sup>nd</sup> respondent. The answer is that the petition does not disclose a  
valid claim/cause of action against the 2<sup>nd</sup> respondent or anyone else  
because it is grounded on Legal Notices No.2 of 1982 and 2 & 3 of 1984  
which were repealed by the Financial Institutions Act No.4 of 1993.

## ISSUE NO.4

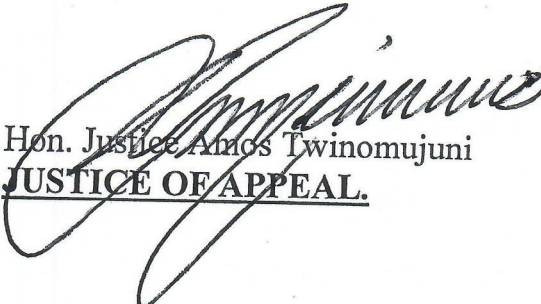
25       This is about remedies, if any. Much as I have sympathy for the  
petitioners who may have suffered injustice, their remedy, if any, does  
not lie in this Constitutional Court. Some documents on this record  
suggest that they have a Civil Suit pending in the High Court. They  
could continue with that, but here no remedy lies.

In the result, I would dismiss this petition with costs to the 2<sup>nd</sup> respondent who does not appear to have contributed to the suffering of the petitioners. The petitioners and the 1<sup>st</sup> respondent should each bear their costs of this petition.

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Dated at Kampala this day.....14<sup>th</sup>..... of.....September.....2007.

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Hon. Justice Amos Twinomujuni  
JUSTICE OF APPEAL.

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

**CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA**  
**HON. JUSTICE S.G. ENGWAU, JA**  
**HON. JUSTICE A. TWINOMUJUNI, JA**  
**HON. JUSTICE C.N.B. KITUMBA, JA**  
**HON. JUSTICE S.B.K. KAVUMA, JA**

**CONSTITUTIONAL PETITION NO. 02 OF 2004**

**1. ISMAIL DABULE }  
2. MUSTAPHA RHAMATHAN }  
3. KASSIM RAMATHAN } :::::::::: PETITIONERS**

**VERSUS**

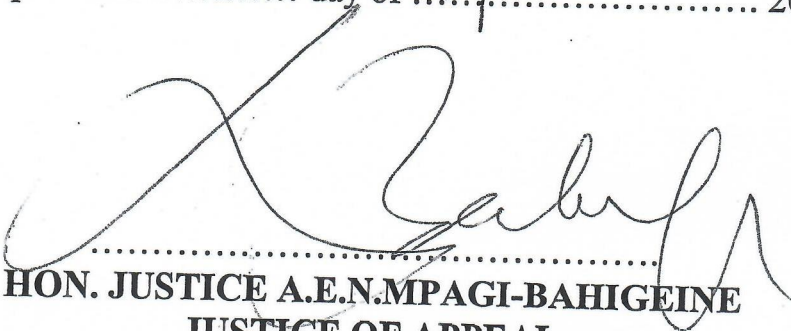
**1. THE ATTORNEY GENERAL }  
2. BANK OF UGANDA } :::::::::: RESPONDENTS**

**JUDGEMENT OF JUSTICE A.E.N. MPAGI-BAHIGEINE**

I have read in draft the Judgement of my Lord Twinomujuni, JA.  
I entirely agree with the findings and orders therein. I have nothing useful to  
add. Since all my Lords S.G. Engwau, C.N.B. Kitumba and S.B.K.

Kavuma JJ.A. all agree the Petition stands dismissed with orders as stated in the lead Judgement.

Dated at Kampala this 14<sup>th</sup> day of September 2007.

  
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**HON. JUSTICE A.E.N.MPAGI-BAHIGEINE**  
**JUSTICE OF APPEAL**

5 CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA. ✓  
HON. JUSTICE S.G. ENGWAU, JA.  
HON. JUSTICE A. TWINOMUJUNI, JA.  
HON. JUSTICE C.N.B. KITUMBA, JA.  
HON. JUSTICE S.B.K. KAVUMA, JA.

15      1.       ISMAIL DABULE    ]  
          2.       MUSTAPHA RHAMATHAN                                 ]  
          3.       KASSIM RAMATHAN                                     ] ::::::::::: PETITIONERS

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1. THE ATTORNEY GENERAL ]  
2. BANK OF UGANDA ] ::::::::::: RESPONDENTS

I have read in draft the judgement of my Lord Twinomujuni, JA. I concur.

30 Dated at Kampala this .....<sup>14<sup>th</sup></sup>.....day of .....September.....2007.

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THE REPUBLIC OF UGANDA  
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CORAM: HON. LADY JUSTICE A.E.N. MPAGI-BAHIGEINE, JA. ✓  
HON. MR. JUSTICE S.G. ENGWAU, JA.  
HON. MR. JUSTICE A. TWINOMUJUNI, JA.  
HON. LADY JUSTICE C.N.B. KITUMBA, JA.  
HON. MR. JUSTICE S.B.K. KAVUMA, JA.

**CONSTITUTIONAL PETITION NO. 2 OF 2004**

A PETITION FOR DECLARATIONS UNDER ARTICLE 137 OF THE  
CONSTITUTION OF THE REPUBLIC OF UGANDA

THE FUNDAMENTAL RIGHTS AND FREEDOMS  
(ENFORCEMENT PROCEDURE) RULES, 1992 DIRECTIONS 1996

BETWEEN

1. ISMAIL DABULE }  
2. MUSTAPHA RAMATHAN } PETITIONERS  
3. KASIM RAMATHAN }

VERSUS

1. ATTORNEY GENERAL OF UGANDA }  
2. BANK OF UGANDA } RESPONDENTS

**JUDGMENT OF JUSTICE S.B.K. KAVUMA, JA.**

I have had the advantage of reading in draft the judgment prepared by my  
Lord A. Twinomujuni, JA.

I agree with that judgment and the orders proposed therein and have  
nothing to add.

Dated at Kampala this 14<sup>th</sup> day of September 2007.

*S.B.K. Kavuma*

JUSTICE OF APPEAL.

**THE REPUBLIC OF UGANDA  
IN THE CONSTITUTIONAL COURT OF UGANDA  
HOLDEN AT KAMPALA**

**CORAM: HON. JUSTICE A.E.N. MPAGI-BAHIGEINE, JA  
HON. JUSTICE S.G. ENGWAU, JA  
HON. JUSTICE A. TWINOMUJUNI, JA  
HON. JUSTICE C.N.B. KITUMBA, JA  
HON. JUSTICE C.K. BYAMUGISHA, JA**

**CONSTITUTIONAL PETITION NO. 02 OF 2004**

**BETWEEN**

1. ISMAIL DABULE  
2. MUSTAPHA RHAMATHAN ] :::::::::: PETITIONER  
3. KASSIM RAMATHAN


**AND**

1. THE ATTORNEY GENERAL  
2. BANK OF UGANDA ] :::::::::: RESPONDENTS

**JUDGMENT OF ENGWAU, JA**

I have read, in draft, the judgment of Twinomujuni, JA. I concur with his findings and orders. I have nothing useful to add.

Dated at Kampala this 14<sup>th</sup> day of September 2007

  
**S.G. ENGWAU  
JUSTICE OF APPEAL**