

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

5 **CORAM: HON. LADY JUSTICE A.E.N.MPAGI-BAHIGEINE,
DCJ
HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE S. B. K. KAVUMA, JA
HON. JUSTICE A. S. NSHIMYE, JA
10 HON. LADY JUSTICE M. S. ARACH AMOKO, JA**

CONSTITUTIONAL PETITION NO. 26 OF 2010

BETWEEN

BUKENYA CHURCH

15 **EMBROSE:::PETITIONER**

AND

ATTORNEY

GENERAL:::RESPONDENT

20 **RULING OF THE COURT**

This is a constitutional reference from the High Court under Article 137 (5) (b) of the Constitution for the interpretation of the following question:

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**“Whether the Rules Committee in enacting the
Judicature (Fundamental Rights and Freedoms)
(Enforcement Procedure Rules) S1 No. 55 of 2008,**

**the Rules under which MC 118 2008 was brought
contravene Article 50 (4) of the Constitution.”**

5 The brief background is as follows:

The Respondent filed Miscellaneous Cause No. 13 of 2010 in
the High Court under Article 50 (1) of the Constitution and Rule
3 (1) of the Judicature (Fundamental Rights and Freedoms)
10 (Enforcement Procedure) Rules, S1 No. 55 of 2008 seeking inter
alia for orders:

(a) That the banning of bimeeza (open air ex-studio line radio
broadcasts) by Government breached the freedom of
15 speech, expression and the media, guaranteed under
Article 29 (1) (a) of the Constitution.

(b) That the honourable Court by way of enforcement of the
applicant's fundamental freedoms of speech, expression
20 and media to order the lifting of the ban on bimeeza.

At the commencement of the proceedings before the Hon. Mr.
Justice V.T. Zehurikiize, Counsel for the Attorney General (herein
after referred to as “Petitioner”) raised a preliminary objection
25 on the Constitutionality of Statutory Instrument 55 of 2008
alleging that it contravenes Article 50 (4) of the Constitution. A
similar objection had been raised by the Attorney General's
representatives earlier on in similar applications, to wit,

Abdalla Byabasaija Vs Major General Kale Kaihura & Attorney General (Misc. Cause No. 4/2010) and **Titus Atugonza Vs Attorney General & 5 Others** and similar questions had been framed for reference to this Court and
5 whose outcome still remained unknown.

Mr. Adrole Richard, a State Attorney appeared for the Petitioner while Mr. Ladislaus Rwakafuuzi represented the Respondent.

10 The case for the Petitioner as stated by Mr. Adrole is that Article 50 (4) of the Constitution specifically provides that Parliament shall make laws for enforcement of the rights and freedoms in Chapter four of the Constitution.

15 Therefore, in making Statutory Instrument 55/08 which clearly provides for the enforcement of the rights and freedoms under Article 50 of the Constitution, the Rules Committee usurped the powers of Parliament.

20 He further reasoned that the Judicature Act, Cap 13 under which the S.1 was made is not a law for enforcement of rights and freedoms. It is a law intended to consolidate and revise the Judicature Act to take account of the provisions of the Constitution relating to the Judiciary. The Judicature Act was
25 made in obedience to Article 150 (1) of the Constitution and not Article 50.

To illustrate this point, Mr. Adrole pointed out that whereas the Constitutional (Petitions and References) Rules were also made by the Rules Committee under Section 41 of the Judicature Act, it must be noted that unlike Article 50 (4), Article 137 of the
5 Constitution which confers jurisdiction on the Constitutional Court does not impose the mandatory requirement for Parliament to enact laws for the interpretation of the Constitution by this Court.

10 He prayed Court to find that by enacting the impugned Rules, the Rules Committee contravened Article 50 (4) of the Constitution.

In reply, Mr. Rwakafuuzi contended that the Rules Committee
15 acted within its powers under S.41 of the Judicature Act in making the Rules.

Article 139 (1) of the Constitution confers unlimited original jurisdiction upon the High Court in all matters, including
20 enforcement of fundamental rights and freedoms enshrined in Articles 20 - 45 of the Constitution. By providing the procedure by which the High Court may exercise its original jurisdiction, the Rules Committee acted within its powers to make rules of procedure including the rules for enforcement of the rights and
25 freedoms guaranteed in Articles 20 - 45.

He further argued that Parliament cannot make rules nor can the Rules Committee make laws, and did not purport to make

laws for enforcement of fundamental freedoms and rights by making Statutory Instrument 55/08.

Even if the Rules Committee was not empowered to make the
5 said Rules as alleged, the Committee was in fact acting in
furtherance of the Constitution. To do so, according to him, is
not acting unconstitutionally.

He prayed that the question be answered in the negative so
10 that the several matters pending before the High Court can be
determined finally.

In rejoinder, Mr. Adrole re-asserted his position and argued that
the power of the Rules Committee to make laws is not in
15 contention. What is in contention is the power of the Rules
Committee to make laws where the mandate is for Parliament
under Article 50 (4) and not the Rules Committee.

Our duty in this reference is to interpret Article 50 (4) of the
20 Constitution to answer the above questions one way or the
other. In so doing, we must bear in mind the guiding
Constitutional interpretation principles which are to the effect
that the Constitution is to be looked at as a whole. It has to be
read as an integrated whole with no one particular provision
25 destroying another but supporting each other. All provisions
concerning an issue should be considered together to give
effect to the purpose of the Instrument. See **Dr. James**

**Rwanyarare & Others Vs Attorney General Constitution
Petition No. 7 of 2002.**

S.1 55/08 was made by the Rules Committee on the 26th day of
5 February, 2008, in exercise of the powers conferred upon the
Committee by Section 41 (1) of the Judicature Act which
provides that:

10 **“The Rules Committee may, by statutory
instrument, make rules for regulating the practice
and procedure of the Supreme Court, the Court of
Appeal and the High Court of Uganda and for all
other Courts in Uganda subordinate to the High
Court.”**

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The long title of the Judicature Act, Cap 13 states that it is:

20 **“An Act to consolidate and revise the Judicature Act
to take account of the provisions of the Constitution
relating to the Judiciary”**

The provisions of the Constitution relating to the Judiciary are
found in Chapter eight of the Constitution.

25 Article 150 (1) which falls under Chapter 8 provides that:

**“(1) subject to the provision of this Constitution,
Parliament may make laws providing for the**

structures, procedures, and functions of the Judiciary.”

The Rules Committee therefore derives its powers to make
5 rules from Article 150 (1) of the Constitution. The Rules are for
regulating the practice and procedure in the Judiciary.

However, applications from which this reference arose were
made under Article 50 of the Constitution. The relevant parts
10 read as follows:

“50 Enforcement of rights and freedoms.

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

20 (2)

(3)

25 (4) **Parliament shall make laws for the enforcement
of the rights and freedoms under this Chapter.”**

It is common knowledge that Parliament has not made any law under Article 50 (4) above. That being so, did the Rules Committee have the mandate to make S.1 55/08?

5 By the use of the word “shall” in Sub Article (4) above, the framers of the Constitution made it mandatory that it is only Parliament that is empowered by the Constitution to make laws for the enforcement of rights and freedoms under Chapter four of the Constitution. It is not the role of any other body to do it
10 except under delegated authority under Article 79, which is not the case here.

We therefore agree with the submission by Mr. Adrole and answer the question in the affirmative.

15

The authority relied on by Mr. Adrole of **Jane Francis Ananio Vs Attorney General, Miscellaneous Civil Application No. 317 of 2002 (arising from Civil Suit No. 843/2001)** was decided by Hon. Justice Katutsi.

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The proceedings were brought under the provisions of Article 50 (1) and Rule 3 (1) of the Fundamental Rights and Freedoms (Enforcement Procedure) Rules 1992. The Learned trial Judge observed, rightly in our view, that the Constitution clearly and
25 in no uncertain words said that Parliament was to make laws for the enforcement of rights and freedoms under the said Constitution and that Parliament had not made any law under Article 50 (4). However, we are not in agreement with him that

in the absence of such a law, until Parliament makes law under Article 50 (4), Article 50 (1) is in abeyance.

5 The argument that the enforcement of rights and freedoms would be in abeyance in the absence of the laws envisaged under Article 50 (4) is in our view, unfounded. When the Constitution was promulgated and came into force, it came into force as a whole document and not in parts.

10 From their submissions, both sides are alive to the fact that other existing procedural laws such as the Civil Procedure Act and the Rules thereunder, the Law Reform Miscellaneous Provisions Act and the Government Proceedings Act were saved by the provisions of Article 274 of the Constitution which saved
15 all existing laws before the coming into force of the Constitution.

Civil Appeal No. 2 of 2008, Mwesigwa Hannington & Others Vs Attorney General cited by Mr. Rwakafuuzi dealt
20 with the issue whether the correct procedure was by Notice of Motion or by plaint, not the issues raised in this reference. It is therefore not helpful to the Respondent's case.

Dated at Kampala this**21st**...day of**March...2011**

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HON. LADY JUSTICE A. E. N. MPAGI-BAHIGEINE

JUSTICE OF APPEAL

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HON. JUSTICE A. TWINOMUJUNI
JUSTICE OF APPEAL

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