

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA CONSTITUTIONAL
PETITION NO. 0036 OF 2012**

SATYA PETER CHAPA ::: PETITIONER

VERSUS

ATTORNEY GENERAL ::: RESPONDENT

**CORAM: HON. MR. JUSTICE S.B.K. KAVUMA, DCJ HON. MR. JUSTICE
REMMY KASULE, JA HON. MR. JUSTICE ELDAD
MWANGUSYA, JA HON. MR. JUSTICE RICHARD BUTEERA,
JA HON. MR. JUSTICE F.M.S. EGONDA NTENDE, JA**

JUDGMENT OF THE COURT:

The petitioner is a resident of Ngenge Trading Centre, Ngenge Sub-County, Kween District formerly under Kapchorwa District.

He brought this Petition under *Article 137 (3) of the*

constitution. He alleges that he has an interest in and is affected by the following matters he considers inconsistent with the Constitution of Uganda, and is therefore, in his view, aggrieved. He alleges as follows:-

- (a) That the act and resolution of Parliament of naming Binyiny Trading Centre as the Headquarters of Kween District against District Council of Kapchorwa resolution (then inclusive of Kween) and L.C 111 Council Resolutions of the Sub-Counties of now Kween District (then Kween County) are inconsistent with/in contravention of Articles 176(2) (a), (b), (c), (e), 179 (1) (b), (4), 79 (1), (3), 1 (1) and 29 of the Constitution of the Republic of Uganda.**
- (b) That the act of the Minister of Local Government and Parliament in not considering and adopting the position chosen by the LCIII Councils of now Kween**

District and the District Council of Kapchorwa (then inclusive of now Kween District) are inconsistent with the Constitution and in contravention of Articles 176 (2) (a), (b), (c), (e), 1 (1) (b), (4), 79(1), (3), 1(1) 38(1) and 29, of Constitution and Sections 2(a), (b), (c), 95 and 991(1) of the Local Governments Act, Cap 243 (as amended), (sic).

The Petition has the following sixteen grounds.

- A.** That Kapchorwa District at one time comprised of now the Districts of Bukwo, Kween and the current Kapchorwa.
 - B.** That on 31st March, the District Council of the mother Kapchorwa unanimously resolved to have its headquarters shifted to Chepsikunya Trading Center in Ngenge Sub-County.
 - C.** That at the creation of Bukwo District (in 2005), Kween County and Tingey County remained in Kapchorwa District.
 - D.** That the people of Kween County later desired and agitated for the creation of another District out of Kapchorwa District. _
 - E.** That the District Council of Kapchorwa then asked the subcounties of the Kween County to decide on how where they desired the District headquarter to be situate.
 - F.** That at the time (2008), Kween County had six (6) Sub-counties which came up with their independent resolutions that were forwarded to the District Council of Kapchorwa for further consideration.
 - G.** That from the resolutions, four (4) Sub-counties of Ngenge, Binyiny, Benet and Kwosir chose the proposed Kween District headquarters to be at Chepsikunya Trading Centre while two (2) Subcounties of Kaproron and Kwanyiny chose Kapropon Trading Centre.
- That the L.C. Ill Councils of the then Kween County by a majority representation chose Chepsikunya Trading Centre to be the Headquarters of the intended Kween District.
- That Kapchorwa District L.C.V. Councilors visited the two (2) locations, made their

assessment and decided that, the headquarters of the then intended (proposed) Kween District be situate at Chepsikunya Trading Centre had plenty of land and it would fight the insecurity associated to cattle rustling in the whole of Sebei sub region, (sic)

That Kapchorwa District Council then forwarded the District Council resolutions to the Minister of Local Government for purposes of establishing Kween District with its headquarters at Chepsikunya Trading Centre.

K. That the petitioner was later shocked to learn that Parliament had passed a Resolution with an entirely new place- Binyiny Trading Centre, as the location for Kween District Headquarters against the expressed will of Kween people through the decisions and considerations of the Sub-counties and District Council.

L. That according to the Parliamentary practice, determination of district headquarters is a matter resolved by District stake holders who are ably represented by their respective Councils.

M. That the petitioner inquired from the Minister of

Local Government for an explanation about the change of Kween District headquarters about the same has not been replied to.

N. That the Minister of Local Government in a letter dated 15th March of 2012 to the Ag. District Chairperson of Kween District stated that his office

had received many petitions concerning the District headquarters to be located.

That the Minister categorically stated that creation

of a district is the mandate of Parliament, and that Kween District was created with its' Headquarters in Binyiny and the Headquarters cannot be relocated without Parliamentary Resolution.

That the act of Parliament and Minister of Local Government in tabling a Motion for location of Kween District Headquarters at Binyiny Trading Centre instead of Chepsikunya Trading Centre which had been the expressed choice of the people of Kween violates/contravenes Articles 176(2) (a), (b), (c), (e), Article 38(1), and Article 29, of the Constitution of the republic of Uganda 1995 (as amended) and sections 2 (a), (b), (c); 9, 95, and 99 of the Local Governments Act, Cap. 243 amended) and the principles Parliament had expressed in the Long Title of the Local Government Act" (sic)

The petitioner prays this Court to grant the following declarations and redress:-

- “a) A declaration that, the act of Local Government Minister and the resolution of Parliament in naming Binyiny Trading Centre without regard to the wishes of the people of Kween County, and Kapchorwa District Council resolutions are in contravention and inconstant with Articles 176 (2) (a), (b), (c), (e),179 (1) of the Local Governments Act, Cap, 243 (as amended).**
- b) A declaration that the resolution of Kapchorwa District Council of 17th September, 2009 then inclusive of Kween County naming Chepsikunya Trading Centre as the headquarters of Kween District lawful and binding.**
- c) A declaration that Chepsikunya Trading Centre the lawful Headquarters of Kween District.**
- d) A permanent Injunction against the respondents, agents and organs of Government construction, use and operation of Binyiny Trading Centre as the headquarters of Kween District.**

e) The costs of this petition be provided for by the respondent.

f) Any other further remedy that this honorable court deems fit in circumstances” (sic)

The Petition is supported by an affidavit sworn by Satya Peter Chapa, the petitioner on 26th June 2012.

The respondent filed an answer to the petition which is supported by an affidavit of Patrick. K. Mutabwire, an acting Permanent Secretary of the Ministry of Local Government deponed on 21st August 2012 as well as an additional affidavit in reply dated 21st July 2015 sworn by Cherotwo Joseline, the Speaker of Kween District Council.

Background

The background of the Petition, as can be discerned from the Pleadings of both parties is briefly that the original Kapchorwa District was subdivided into the current districts of Bukwo, Kween and Kapchorwa.

The District of Kween was created on the 4th May 2010, by the Parliament of Uganda pursuant to the Provisions **Article 179(l)(a)** and **(b)** of the Constitution of Uganda when it altered the boundaries of Kapchorwa District and named Binyiny Trading Center as the Headquarters of the district .

There was a dispute on the choice of Binyiny Trading Center as the headquarters of the district.

The petitioner was dissatisfied with the location of Kween District Headquarters at Binyiny Trading Centre instead of Chepsikunya Trading Centre, hence this Petition.

The Petition alleges that the acts of Parliament and of the Minister of Local Government in tabling a motion for the location of Kween District Headquarters at Binyiny Trading Centre instead of Chepsikunya Trading Centre which had been the expressed choice of the people of Kween violate/contravene **Articles 176 (2), (a), (b), (c), (e), 179 (1), (b) (4), 79(1), (3), 1(1), 3(4), 38(1), 29 1(1) and 29**, of the Constitution as well as Sections **2(a),(b) (c), 9, 95 and 99(1)** of the Local Government Act, Cap, 243 of the Laws of Uganda (as amended).

Representation

At the hearing of the Petition, the petitioners were represented by learned counsel, Mr. Omalla Deogratus who appeared together with learned counsel Mr. Ilukor Emmanuel (Counsel for the petitioner).

Mr. Bafirawala Elisha, a Senior State Attorney from the Attorney General's Chambers, (Counsel for the respondent) appeared for the respondent.

Issues

The petitioner and the respondent had framed different issues but at the hearing of the Petition, it became clear that there were only two issues argued namely:

- (1) Whether the Constitutional Petition raises issues for constitutional interpretation.**
- (2) Whether the acts of the Minister of Local Government and Parliament in not considering and adopting the position chosen by Local Council 111 of the now Kween District when locating the headquarters of Kween District at Binyiny Trading Centre instead of Chepskunya Trading Centre inconsistent and/or in contravention of Art 176(2), (a),(b),(c), (e) 179 (1) (b) (4) 38 (1), and 29 of the Constitution as well as Sections 2(a), (b), (c), 95 and 99 (1) of the Local Governments Act, Cap. 243 (as amended).**

Submissions of counsel for the petitioner.

Counsel, for the petitioner submitted that the act of the Minister of Local Government and the resolution of Parliament of 4th May 2010 naming Binyiny Trading Centre as the District Headquarters for Kween District, without regard to the wishes of the people of Kween County and those of Kapchorwa District Council, are in contravention of and or in consistent with **Articles 176, 2(a), (b), (e)** and **179** of the Constitution.

Counsel conceded that Parliament had the mandate to create new districts but contended, it was bound to seek and take into account the views of the people and failure to do so contravened the Constitution. Counsel prayed Court to grant the prayers stated in the Petition.

Submissions by counsel for the respondent

Counsel for the respondent submitted that the Petition raised no issues for constitutional interpretation and should be struck out with costs.

According to him, the petitioner had not shown how the articles of the Constitution and the provisions of the Local

Governments Act cited had been infringed or contravened by the actions of the Minister of Parliament and, therefore, the Petition raised no matters for interpretation and or adjudication by the Constitutional Court.

Counsel submitted that Parliament has the power under the Constitution to alter boundaries or to create new Districts but there was no provision in the Constitution dealing with the location of district headquarters.

He further submitted that in the instant case, Parliament acted within its powers to create Kween District. The issue of District Headquarters was a matter for an administrative decision and not one for the Constitutional Court to handle by way of interpretation of the Constitution or otherwise.

The decision of the Court:

The first issue in the instant Petition, which is whether or not the petition raises questions for constitutional interpretation, is very important .it raises the question of the jurisdiction of this court which jurisdiction is derived from Article 137 of the constitution. The article provides 137.questions as to the interpretation of the constitution.

(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional court.

(2) ...

(3) A person 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 this Constitution may petition the constitutional court for a declaration to that effect, and for redress where appropriate.

(4) Where upon determination of the petition under clause (3) of this article the constitutional court considers that need for redress in addition to the declaration sought, the constitutional court may-

- (a)** Grant an order of redress; or
- (b)** Refer the matter to the High Court to investigate and determine the appropriate redress.
- (5) ...
- (a)** ...
- (b)** ...
- (6) ...
- (7)...

It is now well settled that not every violation of a right provided for in the Constitution requires constitutional interpretation. To move this Court under *Article 137* supra, the petitioner must allege that the matters put before the Constitutional Court require interpretation of the Constitution and must specify the articles of the Constitution violated or threatened to be violated. In process, the court may, grant redress as may be appropriate; Once those requirements are satisfied, the Court has jurisdiction to entertain the matter presented before it by the petitioner, irrespective of whether or not he/she may eventually succeed at the conclusion of the Courts' consideration of the Petition.

In Phillip Karugaba vs. the Attorney General, Constitutional Petition No. 11 of 2002, this Court held inter alia:-

“...It is necessary to internalize the jurisdiction of this court under Article 137 of the Constitution in order to decide whether Rule 15 is unconstitutional as alleged.

The Supreme Court and this Court have held that the jurisdiction of this court under Article 137 of the Constitution is to interpret the constitution and not grant redress See Ismael Serugo Vs. Kampala City Council and Another Constitutional Appeal No. 2 of 1998 and the Attorney General of Uganda Vs. David Tinyefunza Constitutional Appeal No. 1 of 1998,

Charles Kabagambe Vs. Uganda Electricity Board Constitutional Petition No. 2 of 1999.

In its ruling on the preliminary objection Constitutional Petition No. 2 of 2001, Joyce Nakachwa Vs. The Attorney General and Two Others this Court dwelt at length on the subject Quoting from the decisions of the Supreme Court and its own decision.

This Court reaffirmed that its jurisdiction under article 137 is to interpret the Constitution:

“First we deal with the issue of jurisdiction. This Court has recently pronounced itself on this matter in the case of Alenyo Vs. The Attorney General and 2 Others (supra) in which we followed the Supreme Court decisions in Serugo (supra) and David Tinyefuza (supra). We stated:-

“Article 137 (1) provides: Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.

The Constitution does not define the word “interpretation” However, Article 137 (3) gives a clear indication of what the word means. It states:

137(3) a person who alleges that:-

- 1. An act of parliament or any other anything in or done under the authority of any law, or*
- 2. Any act or omission by any person or authority is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.*

We hold the view that the allegations made to the Constitutional Court, if they are in conformity with article 137(3), give rise to the interpretation of the Constitution and the Court has the jurisdiction to entertain them.

In the instant petition, the petitioner alleges that the Law Council is guilty of commissions and omissions, which are inconsistent with or in contravention of the Constitution. He has petitioned this court for a declaration to that effect. In our judgment these are the type of actions envisaged by Article 137 (3)(b). He is not stating as a fact that he has a definite right that should be enforced. He is alleging that the conduct of the Law Council has violated his right guaranteed by specified provisions of Constitution and this court should so order to do that the Court must determine meaning of the specified provisions of the

Constitution allegedly violated and whether the conduct complained of has actually violated those provisions. The carrying out of the exercise by the court is an interpretation of the Constitution. It is not an enforcement of rights and freedoms. The Court is being called upon to interpret the Constitution. It can make a declaration and stop there or it can grant redress if appropriate. Whether the alleged acts and omissions of the Law Council contravene or are inconsistent with the Constitution is not relevant to the issue of jurisdiction. It is what the court is called upon to investigate and determine after it has assumed jurisdiction. It is not relevant either, that there is a remedy available to the petition somewhere else. That alone cannot deprive the Court of the jurisdiction specifically conferred on it by Article 137⁹⁹ (sic), (underlining mine)

In the instant Petition, the petitioner alleges that the the Minister of Local Government and that of Parliament naming Binyiny Trading Centre instead of chepskunya Trading Centre as the Headquarters of Kweene District contrary to the expressed wish of the people and the local councils of the concerned area, were inconsistent with and in contravention of **Articles 176(2)(a),(b)(c) and (e), 179(l),(b),(4),79(l)(3), 1(1) and 29** of the Constitution and Sections 2(a)(b) (c) and 95 and 99(1) of the Local Government Act.

He prays Court to make declarations and orders of redress

that:

- (a) the said acts of the Minister for Local Government and Parliament Contravene the named articles of the Constitution and the Local Government Act specified above.
- (b) the resolution of Kapchorwa District Council of the 19th September 2009 naming Chepskunya Trading Centre as the Headquarters of Kweene Districts is lawful and binding and that chepskunya is the lawful District Headquarter of Kween District.

Given the above circumstances of their Petition, we conclude that the carrying out of the above exercise by this Court as requested by the petitioners amounts to an interpretation of the Constitution. The court is not being merely asked to enforce rights.

The petitioner also seeks orders of redress although that aspect of his petition is not relevant to the jurisdiction of this Court.

In the Ismail Sserugo vs Kampala City Council and Another, Constitutional Appeal No.2 of 1998 as cited in the later case of Baku Raphael Obudra and Obigia Kania Vs. The Attorney General, Constitutional Petition No.1 of 2003 the then Chief Justice. J.B. Odoki, held:

“I agree with the opinion of Mulenga, JSC in that case, that a petition brought under Article 137 (3) of the is Constitution sufficiently discloses a cause of action if it describes the act or omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent or which is alleged to have been contravened by the act or omission and pray for a declaration to that effect”.

On the basis of the above authorities, we find instant Petition raises questions for interpretation as envisaged under **Article 137 (3) (b)** of the Constitution. This Court, therefore, has jurisdiction to entertain the matters laid before it in the instant Petition

We accordingly answer the first issue covered in ground one, in the affirmative.

Issue 2

The gist of this issue is the petitioners complaint that the minister of Local Government did not consider the wishes of the people concerned when naming Binyiny Trading Centre the Headquarters of Kween District instead the peoples' preferred choice of Chepskunya Trading Centre and that this was inconsistent with or in contravention of **Articles**

176(2)(a), (b), (c), (e); 179 (1) (b) (4); 79(1), (3); 1(1); 38(1)

and **Article 29** of the Constitution and Sections 2 (a), (b),

(C) , 95 and 99(1) of the Local Governments Act, Cap 243 (as amended).

That court should name Chepskunya Trading Centre the lawful District Headquarters of Kween District.

The Petition does not show, how the act of locating Kweene District Headquarters at Binyiny Trading Centre

Contravenes or is inconsistent with any of the articles of the

Constitution. When **Article 179** of the Constitution is carefully looked at, although it comes nearest to the petitioner's complaint, is not in any way contravened by the acts complained of. Parliament is not in any way required to act in the manner the petitioner's contentions suggest. The Constitution does not in any of the cited provisions require the minister of Local Government to merely endorse or act in accordance with the recommendations of the people or Local Government Councils concerned.

We, therefore, find in the negative, in respect of issue 2.

Issue 3

This issue relates to costs of the petition.

We have considered this to be a public interest litigation Constitutional Petition. We, in our discretion, therefore, consider it appropriate to order that each party bears their own costs.

In the result, this Petition only partly succeeds in that raises matters for constitutional interpretation but the rest of its aspects.

We, therefore, decline to make any of the declarations and orders of redress sought by the petitioner. Each party shall bear its own cost.

We so order.

Dated at Kampala this 9th day of Feb 2016

S.B.K KAVUMA

DEPUTY CHIEF JUSTICE

Hon. Justice Remmy Kasuule

JUSTICE OF THE CONSTITUTIONAL COURT

Hon. Justice Eldad Mwangusya

JUSTICE OF THE CONSTITUTIONAL COURT

Hon. Justice Richard Buteera

JUSTICE OF CONSTITUTIONAL COURT

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Hon Justice F.M.S.Engonda Ntende

Justice of the constitutional court