

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

CONSTITUTIONAL PETITION NO. 50 OF 2011

BETWEEN

DR. MAURICE ALEX MUHWEZI MARARI PETITIONER

10

VERSUS

1. BUSITEMA UNIVERSITY

2. ATTORNEY GENERAL RESPONDENTS

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA/ JCC

Hon. Lady Justice Elizabeth Musoke, JA/ JCC

15

Hon. Mr. Justice Cheborion Barishaki, JA/ JCC

Hon. Mr. Justice Ezekiel Muhanguzi, JA/ JCC

Hon. Mr. Justice Stephen Musota, JA/ JCC

JUDGMENT OF HON. JUSTICE KENNETH KAKURU, JA/ JCC

20 The Petition is brought under *Article 137* of the 1995 Constitution of Uganda. The petitioner in this matter is seeking from this Court multiple declarations and orders.

Background

25 The petitioner was until September 2006 employed by the African Institute for Capacity Development (AICAD) in Nairobi when he was externally sourced by the 2nd respondent to be a pioneer in the setting up of the 1st respondent and he was appointed a member of the Management Committee of the 1st respondent. The petitioner subsequently was appointed to the position of University Secretary. There appears to have emerged a dispute between the University Administration and the petitioner relating to his emoluments. He raised his concerns

5 with the Administrative and policy organs of the University now 1st respondent but
the dispute was not resolved. He eventually had to leave his employment. Feeling
aggrieved by the manner in which he had been treated and the difficulties he had
been subjected to, the petitioner filed this petition contending as follows;-

- 10 a. *The act of victimizing your Petitioner, discriminating against him on the basis
of his social and economic status and punishing him without cause is
inconsistent with and/or in contravention of Articles 21(2), 28(1),42, 44(c), 45,
173 (a)(b) of the Constitution of the Republic of Uganda, 1995.*
- 15 b. *The act of Prof. Mary Okwakol the Vice Chancellor of the 1st Respondent turning
herself into your Petitioner's tormentor, complainant, investigator and Judge in
determination of your Petitioner's security of tenure and your Petitioner's and
her own salaries and emoluments and issuing stop orders and the 1st
Respondent allowing her to continue to do so is inconsistent with and/or in
contravention of Articles 21 (1), 20(2) 26(1)(2), 40(1)(a)(b), (2), 42, 44(c), 45,
173(a)(b) of the Constitution of the Republic of Uganda, 1995.*
- 20 c. *The act of usurping, sapping, undermining and hijacking your petitioner's
duties, roles and authority of University Secretary as conferred by the
Universities and Other Tertiary Institutions Act is inconsistent with and/or in
contravention of Articles 20 (1)(2), 24, 40(1)(a), (2), 42, 43(1) (2)(c), 44
(c), 45, 79(2), 173(a)(b) of the Constitution of the republic of Uganda, 1995.*
- 25 d. *The act of forcing the Petitioner to perform the additional roles and duties of
the Deputy Vice Chancellor Finance and Administration and Deputy Vice
Chancellor Academic without corresponding pay tantamount to slavery and
servitude and was inconsistent with Articles 20 (1) (2), 21 (1)(2)(3), 24,
25(1)(2), 40(1)(b), 42, 43(1) (2)(c), 44(c), 45, 173(a)(b) of the
30 Constitution of the Republic of Uganda, 1995.*

- 5 e. *The act of the Respondents placing your Petitioner in a situation whereby he no longer has freedom and exercises no right to contract and to negotiate his existing emoluments the continuance and/or maintenance thereof is inconsistent with and/or in contravention of Articles 20 (1) & (2), 21 (1) & (2) 158 (1) & (2) and 173(a) & (b) of the Constitution of the Republic of*
- 10 *Uganda, 1995.*
- f. *The act of dictating to your Petitioner and forcing upon him a lower remuneration than what he was earning and lower than what had been promised to him by the 2nd Respondent and denying him his legitimate expectation that his emoluments will not be reduced and drowned is*
- 15 *inconsistent with and/or in contravention of Articles 20 (2), 21 (2), 26 (1) (2) (a) (b), 28 (1), 42, 44 (c) & 45 of the Constitution of the Republic of*
- Uganda, 1995.*
- g. *The act of forcibly and uncompromisingly reducing your Petitioner's emoluments and robbing him of his vested rights in his "personal- to-holder"*
- 20 *status and salary level, being tantamount to robbing your Petitioner of his property in his vested emoluments is inconsistent with and/or in contravention of Articles 20 (1) & (2), 21 (2), 25 (1), 26(1)& (2)(a)(b), 28, 40(1)(b) 41 (1)(b) & (2), 44, 45 and 158 of the Constitution of*
- the Republic of Uganda, 1995.*
- 25 h. *The act of Prof. Mary Okwakol engaging in broad day light defamation and libel of your Petitioner by spreading malicious propaganda campaign amongst your Petitioner's workmates and peers and staff of the University and Council is inconsistent with and/or in contravention of Articles 21 (2), 24, 28(1), 29, 40(2), 42 and 173 (1)(b) of the Constitution of the Republic of Uganda, 1995.*

- 5 i. *The act of deciding conclusively the Petitioner's rights over his salary and in so doing adversely altering the same without giving him a hearing and without cause whatsoever and or fault on his part is inconsistent with and/or in contravention of Articles 21 (1), 26(1) & (2)(a)(b), 28, 40(1)(b) &(2), 42, 44, 45 and 158 of the Constitution of the Republic of Uganda, 1995.*
- 10 j. *The act of failure of the 1st Respondent to address the legitimate concerns of your Petitioner and instead render him in a position of resignation is insensitive, inept and a failure to provide your Petitioner his due and vested salary status and amounts to victimization of a public officer and is inconsistent with and/or in contravention of Articles 20 (1) & (2), 21 (1), 26(1)& (2), 40(1)(2) 42, 44, 45,*
- 15 *158 and 173(a) and (b) of the Constitution of the Republic of Uganda, 1995.*

The petitioner contends that the acts of the respondents complained of above, were inconsistent with or in violation of various provisions of the Constitution set out therein and prayed for declarations to that effect. The petitioner alleges that the declarations sought are proper and appropriate as they are a direct

20 consequence of this Court interpreting the impugned actions. He sought for compensation, in form of exemplary, aggravated, special and general damages and costs of the Petition.

At the hearing of this petition Mr. *James Akampumuza* learned Counsel appeared for the petitioner while *Mr. George Omunyokol* learned Counsel appeared for the 1st

25 respondent, the 2nd respondent was not represented in spite of the fact that they had been duly served at their known address. Court ordered the hearing of this petition to proceed in their absence under *Rule 56 (1)* of the Rules of this Court.

Counsel with leave of the Court, were allowed to adopt their conferencing notes as written submissions. It is on the basis of the written submissions that this petition

30 has been determined.

5 When the petition came up for hearing, Mr. Omunyokol for the 1st respondent raised a preliminary objection to the effect that the petition does not raise any questions for Constitutional interpretation. He contended that the petitioner's action can best be addressed by way of judicial review or by way of an ordinary suit. He argued that the petition is incompetent and ought to be dismissed on that account.

10 For the petitioner, it was contended that the petition was properly brought before this Court and that it raises serious issues that require the interpretation of this Court under *Article 137* of the Constitution.

I shall therefore proceed to resolve this preliminary issue of law as it has the capacity to determine the petition as a whole. I have carefully perused the grounds of the petition and the affidavit in support thereof together with all the annexures annexed thereto. The petitioner protests the acts of the 1st respondent in respect to his employment. He mainly seeks for enforcement of his rights and freedom guaranteed under the Constitution.

20 The jurisdiction of the Constitutional Court is derived from *Article 137* of the Constitution and is limited to the interpretation of the Constitution. It provides as follows;-

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

25 *(2) When sitting as a Constitutional Court, the Court of Appeal shall consist of five members of that Court.*

(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

30 *(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*

5 *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 there is need for redress in addition to the declaration sought, the constitutional court may-*

10 *(a) grant an order of redress; or*

(b) refer the matter to the High court to investigate and determine the appropriate redress.

(5) *Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the court-*

15 *(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 proceedings requests it to do so, refer the question to the Constitutional Court for decision in accordance with clause (1) of this article.

20 *(6) Where any question is referred to the Constitutional Court under clause ((5) of this article, the constitutional court shall give its decision on the question, and the court in which the question arises shall dispose of the case in accordance with that decision.*

25 *(7) Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.*

In *Attorney General vs Major General David Tinyenfuzza, Supreme Court*
30 *Constitutional Appeal No. 1 of 1997, Wambuzi CJ had this to say:-*

"In my view, jurisdiction of the Constitutional Court is limited in Article 137

5 (1) of the Constitution to interpretation of the Constitution. Put in a different
way no other jurisdiction apart from interpretation of the Constitution is
given. In these circumstances I would hold that unless the question before
the Constitutional Court depends for its determination on the interpretation
or construction of a provision of the Constitution, the Constitutional Court
10 has no jurisdiction." (Emphasis added).

Black's Law Dictionary, 9th Edition page 894, defines "interpretation" as the
process of determining what something especially the Law of legal document
means; the ascertainment of meaning to be given to words or other
manifestations of intention. Further "Interpretation; as applied to written Law, is
15 the art or process of discovering and expounding the intended signification of
the language used, that is, the meaning which the authors of the Law designed it
to convey to the others." See: Henry Campbell Black, Hand Book on the
Constitution and Interpretation of the Laws 1 (1896).

The most recent decisions of this Court following on the earlier ones by the
20 Supreme Court emphasise the principle that unless there is a matter for
Constitutional interpretation this Court has no jurisdiction.

In *Ismail Serugo and Kampala City Council & Another Constitutional Petition No. 2
of 1998*, Mulenga JSC referring to the case of *Attorney General vs David Tinyefuza*
(Supra) had this to say;-

25 "Although there are a number of issues in that case decided on the basis of
majority view, it is evident from a proper reading of the seven judgments in
that case, that it was the unanimous holding of the court that the jurisdiction
of the Constitutional court was exclusively derived from Article 137 of the
Constitution. It was not a holding in any of the judgments that Article 50 of
30 the Constitution confers, on the Constitutional Court, any additional and/or

5 *separate jurisdiction to enforce the right and freedoms guaranteed under the*
Constitution. It seems to me that what Mr. Mbabazi may have misconstrued
is the holding that the Constitutional Court was "a competent court"
for purpose of Art 50 to which an application (for redress) may be made
when such right or freedom is infringed or threatened. It must be noted,
10 *however, that this holding is subject to a rider to the effect that such*
application for redress can be made to the Constitutional Court, only in the
context of a petition under Art 137 brought principally for interpretation of
the Constitution. It is provisions in clauses (3), and (4) of Art 137 that
empower the Constitutional Court, when adjudicating on a petition for
15 *interpretation of the Constitution, to grant redress where appropriate.*
Clause (3) provides in effect, that when a person petitions for a declaration
on interpretation of the Constitution, he may also petition for redress where
appropriate. Clause (4) then provides:

20 *"(4) Where upon determination of the petition under Clause (3) of this article*
the Constitutional Court considers that there is need for redress in addition
to the declaration sought, the Constitutional Court may -

(a) grant an order for redress; or

(b) refer the matter to the High Court to investigate and determine the
appropriate redress".

25 *It follows that a person who seeks to enforce a right or freedom guaranteed*
under the Constitution, by claiming redress for its infringement or
threatened infringement, but whose claim does not call for interpretation of
the Constitution, has to apply to any other competent court. The
Constitutional Court is competent for that purpose only upon determination
30 *of a petition under Art 137(3)."*

5 Wambuzi CJ also had this to say:

"In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a Constitutional provision has been violated. If therefore rights have been
10 *violated as claimed, these are enforceable under Article 50 of the Constitution by another competent court. I am aware that the Constitutional Court is also a competent court under Article 50 but this court has already held that the Constitutional Court has no jurisdiction in any matter which does not involve the interpretation of a provision of the Constitution."*

15 See also: *Mbabaali Jude vs Hon. Edward Kiwanuka Ssekandi Constitutional Petition No. 0028 of 2012, Herman Semujju vs Attorney General Constitutional Petition No. 1 of 1998, Charles Kabagambe vs Uganda Electricity Board Constitutional Petition No. 2 of 1999 and Paul Ssemwogerere and 2 others vs Attorney General Constitutional Petition No. of 2002.*

20 It appears to me clearly that what the petitioner is seeking from this court is not interpretation of any provision of the Constitution, but rather repetition redress in respect of loss of employment, harassment and unjust and unfair treatment including denial of basic rights to a fair hearing. He ought to have pursued these remedies under *Article 50* of the Constitution in an action for enforcement of
25 rights. He could also have pursued the same remedies through Judicial Review proceedings at the High Court. There is no requirement for the Constitutional Court to first interpret the Constitution before the petitioner can seek the remedies sought in another Court of law. I find that the remedies sought in this petition could have been sought in the High Court under Article 50 of the
30 Constitution or by way of Judicial Review proceedings.

5 In *Charles Kabagambe vs Uganda Electricity Board (Supra)*. This Court held as follows at page 11 of the Judgment of Court.

“It is therefore now settled once and for all that if the matter does not require an interpretation of a provision of the Constitution, then there is no juristic scope for the invocation of the jurisdiction of this court.

10 *Here the petitioner alleges that his rights were violated and claims declaration and redress. On the facts available one cannot rule out wrongful dismissal. This is a matter dealt with by specific laws. They can be enforced by a competent court and should a question of interpretation of the Constitution arises, that question can always be referred to this*
15 *court.”*

In *Engineer Edward Turyomurugyendo & others vs Attorney General & others Constitutional Petition No. 25 of 2009*, this Court stated as follows;-

20 *“What is apparent is that the petitioners are complaining against administrative actions of their superior and employers. They rightly in our view instituted judicial review proceedings. No reason has been given as to why that cause of action was not pursued to its logical conclusion. It appears to us clearly that the dispute between the parties to the petition would better be resolved through a normal suit under the Civil Procedure Act or perhaps by way of Judicial Review proceedings.”*

25 *In Mbabaali Jude Vs Hon. Edward Kiwanuka Ssekandi (Supra) the petition was a disguised petition, similarly the petition before us also appears to be a disguised petition. The whole petition in our view appears to mirror judicial reviews proceedings and we can only conclude that it's indeed, an administrative law matter disguised as a Constitutional Petition.*

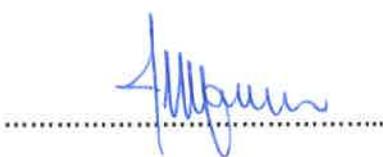
30 The above authorities are still good law and I am bound to follow them. The facts that gave raise to this petition are almost on all fours with those in the above two

5 authorities. Applying the above authorities to this petition, I find that the petition does not raise issues for Constitutional Interpretation under Article 137 (3) of the Constitution and this Court has no jurisdiction to entertain it. Since the resolution of this issue has determined the petition, I have no reason to answer the remaining ones.

10 Accordingly I find no merit in the petition which I hereby dismiss with costs to the respondents.

As Musoke, Barishaki, Muhanguzi and Musota, JJA/JJCC also agree, it is so ordered.

15 **Dated at Kampala** this^{5th}.....day of^{Nov.}.....2019.



20

Kenneth Kakuru

JUSTICE OF APPEAL/ JUSTICE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
(Coram: Kakuru, Kiryabwire, Musoke, Cheborion, Musota, JJA)
CONSTITUTIONAL PETITION NO. 0050 OF 2011

DR. MAURICE ALEX MUHWEZI MARARI PETITIONER

VERSUS

1. BUSITEMA UNIVERSITY

2. ATTORNEY GENERAL RESPONDENTS

JUDGMENT OF ELIZABETH MUSOKE, JA/JCC

I have had the benefit of reading in draft the lead judgment of my learned brother, Kakuru, JA/JCC. I concur with the reasoning and conclusions he makes therein with nothing substantial to add.

I, too, agree that the petition does not raise any issues for constitutional interpretation to warrant its consideration and it should therefore be dismissed with costs.

Dated at Kampala this 5th day of Nov. 2019



ELIZABETH MUSOKE
JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO.50 OF 2011

DR. MAURICE ALEX MUHWEZI MARARI:.....PETITIONER

VERSUS

1. BUSITEMA UNIVERSITY

2. ATTORNEY GENERAL:.....RESPONDENT

JUDGMENT OF JUSTICE CHEBORION BARISHAKI, JA/JCC

I have had the benefit of reading in draft the judgment prepared by my learned brother Hon. Kakuru JA/JCC and I agree with his findings and orders.

What the Petitioner is seeking from this Court is redress arising from an employment dispute with the first respondent. The Petitioner has not shown that there is a matter in his Petition which calls for interpretation of any provision of the Constitution.

For this Court to have jurisdiction, the Petitioner ought to demonstrate the existence of a matter which seeks interpretation of the Constitution. Since the Petitioner failed to do so in this case, the Petition is dismissed with costs to the Respondent.

Signed and dated at Kampala this^{5th}.....day of.....^{Nov.}.....2019



Cheborion Barishaki

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Kakuru, Musoke, Barishaki, Muhanguzi & Musota, JJA/JJCC)

CONSTITUTIONAL PETITION NO. 50 OF 2011

DR. MAURICE ALEX MUHWEZI MARARI.....PETITIONER

VERSUS

1. BUSITEMA UNIVERSITY

2. ATTORNEY GENERAL.....RESPONDENT

JUDGMENT OF EZEKIEL MUHANGUZI, JA/JCC

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru, JA/JCC.

I agree with the reasons and orders proposed and I have nothing more useful to add.

Dated at Kampala this.....⁵ day of.....^{Nov}.....2019.



.....
Ezekiel Muhanguzi
Justice of Appeal/Constitutional Court

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
CONSTITUTIONAL PETITION NO. 50 OF 2011

5 **DR. MAURICE ALEX MUHWEZI MURARI ::::::::::::::::::::::::::::::: APPELLANT**

VERSUS

10 **1. BUSITEMA UNIVERSITY**
2. ATTORNEY GENERAL ::::::::::::::::::::::::::::::: RESPONDENT

CORAM:

15 **HON. MR. JUSTICE KENNETH KAKURU, JA/JCC**
HON. JUSTICE ELIZABETH MUSOKE, JA/JCC
HON. JUSTICE CHEBORION BARISHAKI, JA/JCC
HON. JUSTICE EZEKIEL MUHANGUZI, JA/JCC
HON. JUSTICE STEPHEN MUSOTA, JA/JCC

20 **JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA/JCC**

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Kenneth Kakuru JA/JCC.

I agree with his judgment and the orders he has proposed. I have nothing to add.

25 Dated at Kampala this 5th day of Nov, 2019



30 Stephen Musota
JUSTICE OF APPEAL/COSTITUTIONAL COURT