

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CORAM: OWINY-DOLLO DCJ; KAKURU, EGONDA-NTENDE, CHEBORION, MADRAMA, JJA

CONSTITUTIONAL PETITION NO. 02 OF 2019

BETWEEN

ANIKET PATEL PETITIONER

AND

ATTORNEY GENERAL RESPONDENT

SUMMARY JUDGMENT OF THE COURT

Background

The Petitioner and others were charged in the High Court Anti-Corruption Division, vide HCT-00-AC-SC-0015/2015, with various counts of the offence of embezzlement in contravention of section 19(b)&(d) (i) & (iii) of the Anti Corruption Act, 2009; and other offences under the Penal Code Act. In the course of the trial, the Petitioners moved the trial Court in an application for the trial judge to issue an order directing the State to avail the accused persons Tally Accounting System data, and documents, in the possession of the State, which the Petitioner contends contain evidence of accountability of the funds they are alleged to have embezzled. They desire to use these materials in their defence to disprove the allegations made against them in the various charges; and render them baseless. The trial judge however declined to make the order sought; hence this petition before this Court.

In the petition, brought under Article 137 (3) of the 1995 Constitution, the Petitioner contends that the denial by the prosecution to avail the

5 him the facilities and materials in the Tally Accounting System data, and documents showing accountability of the funds they are alleged to have embezzled, and are being tried for, is inconsistent with Article 20(2), 28 (1) (3) (C) and (g), 44 (c), 45 and 120 (5) and (6) of the Constitution.

10 We have given due consideration to the matter, after hearing Counsel for the Petitioner, and for the Respondent. For reasons we shall give on notice, we make the following findings, declarations, and orders:

15 1. This Court is seized with jurisdiction to hear and determine this matter pursuant to the provisions of Article 137 of the Constitution.

20 2. The refusal by the Prosecution and the trial Court, in course of his trial before the High Court of Uganda, to avail the Petitioner the materials he sought from the prosecution, for his defence during the trial, was a denial of the fundamental and non-derogable right to a fair hearing. This violated Articles 28 (1) and 44 (c) of the Constitution; and so, rendered the trial a nullity.

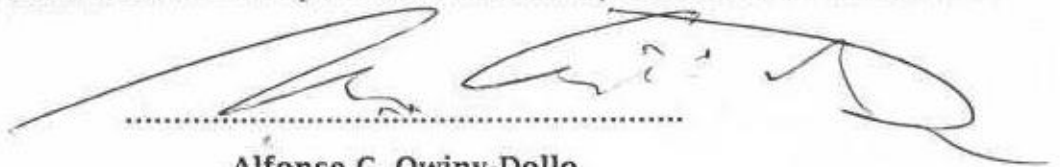
25 3. The proceedings in the High Court (Anti-Corruption Division) vide Criminal Case No. HCT-ACT-SC-0015 of 2015 are hereby quashed; and a trial de novo shall be conducted by another Judge, appointed by the Principal Judge, from the Criminal Division of High Court of Uganda.

30 4. Owing to our quashing of the proceedings before the High Court, the bail earlier granted to the Petitioner by the Magistrate's Court is hereby reinstated.

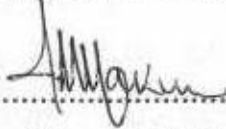
5 5. The Prosecution and or complainant shall grant the Petitioner access to all the materials and documents in possession of the prosecution and or the complainant, which the Petitioner requires for use in his defence.

10 6. In light of the foregoing, it is unnecessary to determine the bail application (Miscellaneous Application No. 13 of the 2019) that was filed and heard before this Court. It therefore abates

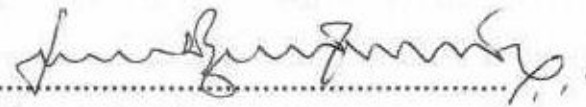
Signed, and delivered at Kampala this 15th day of October 2019.



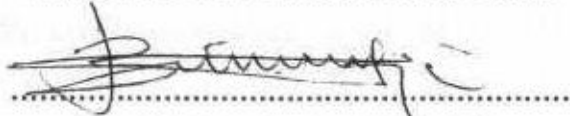
15 **Alfonse C. Owiny-Dollo**
Deputy Chief Justice



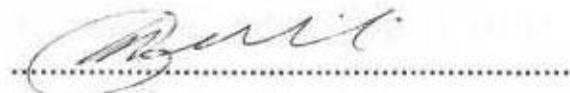
20 **Kenneth Kakuru**
Justice of the Constitutional Court



25 **F.M.S Egonda Ntende,**
Justice of the Constitutional Court



Cheborion Barishaki
Justice of the Constitutional Court



30 **Christopher Madrama**
Justice of the Constitutional Court