

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

*(Coram: Owiny- Dollo, DCJ, Kakuru, Egonda-Ntende, Cheborion,  
Madrama, JJA / JJCC)*

**Constitutional Petition No. 85 of 2011**

**BETWEEN**

|   |   |             |
|---|---|-------------|
| <ul style="list-style-type: none"><li>1. Spedag Interfreight Uganda Ltd</li><li>2. SDV Transami (U) Ltd</li><li>3. Damco Logistics (U) Ltd</li><li>4. Threeways Shipping Services (Group) Ltd</li></ul> | } | Petitioners |
|---|---|-------------|

**AND**

|  |   |             |
|--|---|-------------|
| <ul style="list-style-type: none"><li>1. Attorney General</li><li>2. Great Lakes Ports Ltd</li></ul> | } | Respondents |
|--|---|-------------|

**Judgment of Fredrick Egonda-Ntende, JA / JCC**

**Introduction**

- [1] The petitioners are all limited liability companies incorporated under the laws of Uganda, duly licensed and severally engaged in various aspects of the business of clearing, forwarding and handling import and export goods. The petition is supported by the affidavit of Thomas Stroh, the director of the first petitioner.
- [2] The petitioners contended that the Government of Uganda acting through the Ministry of tourism, trade and industry entered into a contract with the respondent which is a private limited company for the establishment and management of an inland dry port at Tororo. The petitioners alleged that the

Government granted the 2<sup>nd</sup> respondent exclusive rights for a period of 10 years in respect of forwarding and handling of all goods imported into and exported out of Uganda through the port of Mombasa thus creating a monopoly which is unconstitutional.

[3] The petitioners contended that the act of the Government granting such exclusive rights to the 2<sup>nd</sup> respondent and creating a monopoly in the business is inconsistent and in contravention of Articles 40 (2), 43 (1), 21 (1) and 22 (1) of the Constitution. The petitioners also contended that the actions of the Permanent Secretary of granting a licence to the 2<sup>nd</sup> respondent to create an inland dry port in Uganda is illegal because the power to create ports is vested in the Council of the East African Community and the power to designate customs areas is vested by law in the Commissioner General of the Uganda Revenue Authority. They contended that the illegal actions aforesaid violate constitutional rights and are not demonstrably justifiable in a free and democratic society.

[4] The petitioners further contended that the impugned contract is in contravention of Uganda's obligations under the Protocol on the establishment of the East African Community Customs Union that prohibits any agreement with the intent of preventing, restricting or distorting competition within the community. They also contended that Uganda is a free market economy where all persons are entitled to enjoy full economic freedom by participating in any lawful trade or business. Therefore the Government has no power to grant monopoly rights to an individual person.

[5] The petitioners sought the following declarations:

‘(i) A declaration that Article 40(2) of the Constitution establishes a free market economy in Uganda in relation to all lawful professions, occupations, business or trade and consequently outlaws the establishment of any monopoly by the Government in respect of any profession, occupation, business, industry or trade and further, preserves and protects the right of all persons to

enter into, undertake and complete in all aspects of the free market economy.

i) That this Honourable Court be pleased to declare that the act of the respondents in executing a contract in respect of the managing of the proposed Tororo Inland Dry Port, which purported to vest monopoly rights over clearing, forwarding, and handling services of all imports and exports to and from Uganda through the Port of Mombasa in the 2nd Respondent is inconsistent with and and /or in contravention of the Constitution and to that the extent, null and void.

ii) That this Honourable Court be pleased to grant an order of redress cancelling the contract between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent on the ground of unconstitutionality

iii) This Honourable Court be pleased to grant costs of this petition to the Petitioners.'

- [6] The respondents opposed the petition. The 1<sup>st</sup> respondent filed an answer to the petition supported by the affidavit of Mr. Wanyama Kodoli, a Principal State Attorney. The 2<sup>nd</sup> respondent also filed an answer to the petition that was supported by the affidavits of Captain Patrick Nelson Wamala-Musoke, the managing director of the 2<sup>nd</sup> respondent.
- [7] The respondent in answer to the petition contended that the terms of the contract are neither inconsistent with or in contravention of Articles 40 (2), 43 (1), 22 (1) of the Constitution. They alleged that the contract did not grant the 2<sup>nd</sup> respondent monopoly rights nor does it bar the petitioners and other citizens from conducting the business of clearing and forwarding in Uganda. The respondents contended that the purpose of the agreement was to reduce on the excessive logistics costs of importing and exporting goods

## Submissions of Counsel

- [8] At the hearing of the petition, the petitioners were represented by Mr. Byenkya Ebert and Mr. Anthony ~~M~~Bazira. The 1<sup>st</sup> respondent was represented by Ms. Nabakooza Margaret, Principal State Attorney, while the 2<sup>nd</sup> respondent was represented by Mr Herbert Kiggundu Mugerwa.
- [9] Mr. Byenkya submitted that Article 40 (2) of the Constitution establishes a free market economy in Uganda in relation to all lawful professions, occupation, business or trade and consequently outlaws the establishment of any monopoly by the Government in respect of the same so as to protect and preserve the rights of all persons engaged in the various aspects of the free economy market.
- [10] He submitted that when the Government executed the impugned contract, there arose a threat to their right to conduct business because the contract established a monopoly when it gave the 2<sup>nd</sup> respondent a 10 year exclusive right to receive all imported goods from and deliver all exported goods to ocean vessels in Mombasa, the right to expedite delivery of all imported goods from Mombasa to Uganda and deliver export goods from Uganda to Mombasa, the right to receive imported goods at the inland port dry port, off loading and storing the goods, the right to facilitate verification of goods by any competent authority, the right to undertake custom, excise and other formalities required by customers and the right to facilitate the work of the Uganda Revenue Authority.
- [11] Mr Byenkya further submitted that under clause 4.22 of the contract, the Government covenanted with the 2<sup>nd</sup> respondent not to grant any other person competing rights, privileges or incentives similar to those granted to the 2<sup>nd</sup> respondent in respect of the services contemplated by the contract. Mr. Byenkya argued that this is detrimental to the petitioners because approximately 97% of Uganda's exports and imports go through the port of Mombasa and that the alternative route of Dar es Salaam is longer and more expensive



- [12] Counsel for the petitioners contended that the Deputy Prime Minister of Uganda at the time, the late Honourable Eriya Kategaya wrote a letter to the president pointing out to him that the impugned contract had the effect of creating a monopoly in favour of the 2<sup>nd</sup> respondent which was illegal and that the right to create ports is vested with the Council of ministers of the East African Community. He also referred to another letter written by the Permanent Secretary to the Ministry of Tourism, Trade and Industry where he recognised that they had granted a monopoly to the 2<sup>nd</sup> respondent and that they were seeking help to justify the creation of the monopoly.
- [13] Mr. Byenkya further submitted that the contract is a threat to the petitioner's right of participation in any lawful trade or business because the 2<sup>nd</sup> respondent can decide to build the port anytime and the contract would start running. He also submitted that there are elements of illegality to the contract that make it incapable of being called demonstrably justifiable and this is because the establishment of the contract was a violation of the East African Community treaty obligations. He also cited Article 21 of the Protocol on the establishment of the East African Customs Union that prohibits partner states from engaging in any practice that adversely affects free trade.
- [14] Counsel for the petitioners prayed for a declaration that the contract is in violation of Article 40 (2) and that the contract is invalid to the extent that it is inconsistent with the Constitution.
- [15] In reply to counsel for the petitioners' submissions, Ms. Nabakooza submitted that this petition does not call for the interpretation of the Constitution and that there is no live dispute therefore no one is aggrieved at the moment. She also submitted that the 2<sup>nd</sup> respondent was mandated to build and convene the Tororo inland port within 2 years from the date of agreement which was 4<sup>th</sup> March 2009 so as to be granted the licence and enjoy the rights thereunder. She averred that to date, the 2<sup>nd</sup> respondent has not been granted the exclusive licence because it has never built the port and the period within which to build the port expired. She relied on clause 2.1 and 2.3 of the contract. Counsel for the first respondent stated that the second respondent abandoned the contract because it was

frustrated. She cited the case of Legal Brains Trust (LBT) Limited and the Attorney General of the Republic of Uganda Appeal No. 4 of 2012 where the East African Court of Justice stated that a court of law will not adjudicate hypothetical questions where no real live disputes exist.

- [16] Counsel for the 1<sup>st</sup> respondent submitted that according Mbabali Jude v Edward Kiwanuka Ssekandi [2014] UGCC 15, there is no question for constitutional interpretation in this case. She submitted that the contract did not create any monopoly over the services of clearing, forwarding and handling goods as claimed by the petitioner and the said services will not be affected by the construction of the inland port and that the petitioners will be able to carry out their businesses from Tororo to Kampala and vice versa. She submitted that the purpose of the agreement was to tackle the difficulties faced by the business community in this area.
- [17] She also submitted that the Government has the right to restrict the rights in the interest of the general public. She concluded that the monopoly was not illegal *per se*. It was for a specific period of time to enable the second respondent to recoup its investment and that the contract was supposed to be under the monitoring of the Government. Ms. Nabakooza contended that the letter written by the Honourable Eriya Kategaya was scrutinised by the Chief Government Legal Adviser and was cleared. She also submitted that if there was a problem in relation to the East African Community agreement, it should have been addressed to the East African Court of justice. With regard to Articles 40, 43, 21 and 22 of the Constitution that the petitioners alleged were violated, counsel for the petitioners submitted that procurement process was open and competitive and all the petitioners were granted an opportunity to compete and that had one of them won the contract, the facts would have remained the same. She concluded by submitting that the limitation created by the contract is demonstrably justifiable in a democratic society.
- [18] Counsel for the 1<sup>st</sup> respondent prayed that this court dismisses the petition because it had no merit. There is no live dispute and no question for

constitutional interpretation arose. Lastly that there was no violation of any provision of the Constitution.

- [19] Counsel for the 2<sup>nd</sup> respondent associated himself with the submissions of counsel for the 1<sup>st</sup> respondent and added that the contract project did not take off because of this petition. He stated that banks refused to fund the project because its viability depended on the exclusive rights under the contract which were being challenged in this petition. He also submitted that the petitioners' rights were not extinguished so far as their clearing of exports and imports from Tororo to Kampala and that the exclusive right was over a foreign jurisdiction over which this court has no power to adjudicate.

### Analysis

- [20] The first issue for determination is whether the petition discloses a cause of action. According to article 137 of the Constitution a person who is aggrieved by an act or omission done under the authority of any law may petition the Constitutional Court for a declaration to that effect and for redress. Article 137 (3) states:

‘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.’

- [21] In order for court to determine whether there is a cause of action in cases brought under Article 137(3) of the Constitution, the Act, action or omission complained of by the petitioner must be sufficiently described. The provision of the Constitution which the Act, action or omission is alleged to have contravened must be stated. And there must be a prayer for a declaration to that effect. See Major General Tinyefuza vs Attorney General Supreme Court Constitutional

Appeal No. 1 of 1997 (unreported) and Baku Raphael Obudra & Anor vs Attorney General, [2003] UGSC 3.

- [22] In the circumstances, the petitioners' claim stems from the agreement entered into between the first respondent and the second respondent on 4<sup>th</sup> March 2009 for the latter to set up and operate an Inland Dry Port at Tororo. Under the agreement, the 1<sup>st</sup> respondent granted the 2<sup>nd</sup> respondent some exclusive rights that had the effect of creating a monopoly in the business of handling and forwarding in which the petitioners are involved. The petitioners are challenging the constitutionality of the powers of the 1<sup>st</sup> respondent do so and allege that the grant of the exclusive rights is in violation of Article 40(2) of the Constitution.
- [23] The petitioners, in my view, established on the petition a cause of action against the respondents.
- [24] The respondent contended that the petition is bad in law as there is no live dispute between the parties. Counsel for the respondent relied on the case of Legal Brains Trust (LBT) Limited and the Attorney General of the Republic of Uganda Appeal No. 4 of 2012 (unreported).
- [25] The facts of this case are that following the conflicting interpretations of Article 51 (1) of the Treaty Establishing the East African Community, the then Speaker of the Parliament of Uganda wrote a letter requesting the Attorney General of the Republic of Uganda to seek an Advisory Opinion from the East African Court of Justice ("EACJU), pursuant to Article 36 of the EAC Treaty. The Attorney General did not seek the requested Advisory Opinion. Instead, he responded with a written legal opinion of his own on the matter. The applicant lodged a reference in the First Instance Division of the East African Court of Justice seeking an interpretation of Article 51 (1) of the Treaty. Aggrieved by the judgment of the First Instance Division, the appellant lodged this appeal to the Appellate Division. The court dismissed the matter on the basis that there was no legal dispute for adjudication in the following words:

‘In this regard, it is a cardinal doctrine of our jurisprudence that a court of law will not adjudicate hypothetical questions -namely, those concerning which



no real, live dispute exists. A court will not hear a case in the abstract, or one which is purely academic or speculative in nature -about which there exists no underlying facts in contention. The reason for this doctrine is to avoid the hollow and futile scenario of a court engaging its efforts in applying a specific law to a set of mere speculative facts. There must be pre-existing facts arising from a real live situation that gives rise to, for instance, a breach of contract, a tortious wrong, or other such grievance on the part of one party against another. Absent such a dispute, the resulting exercise would be but an abuse of the court's process'

- [26] The facts in this case are distinguishable from the above matter. Much as the 2<sup>nd</sup> respondent has not yet built a dry in land port at Tororo, the cause of action is far from hypothetical. The contract in question was made by the respondents. It is the entering into of such a contract that is questioned. Whether the contract has been performed or not does allay the threat created. The issue for determination is whether in the first place the 1<sup>st</sup> respondent, in entering into a contract that had the effect of eliminating the petitioners' rights to carry out their businesses, did not contravene the fundamental constitutional rights of the petitioners. The dispute before the Court is not hypothetical in my view.
- [27] This court will have to determine whether the petitioner has established, *prima facie*, that it is seized with a fundamental right under article 40 (2) of the Constitution, and whether enjoyment of that right has been impaired or is threatened to be impaired by the actions of respondents. If the petitioner so establishes this court will then have to consider the contention of the 1<sup>st</sup> respondent that it is justified to impair that right under article 43 of the Constitution. The 1<sup>st</sup> respondent will have to prove that the impairment is authorised by law, and if so, whether it is justifiable in a free and democratic society.
- [28] The facts of this case are not in dispute. In the impugned agreement, the purpose of building the port was to ameliorate the concerns raised by Uganda's business community by improving the efficiency and cost of handling sea borne cargo



from and into Uganda, enhancing revenue collection and reducing dumping of goods among others.

[29] As stipulated in the contract, upon building the inland port, the 2<sup>nd</sup> respondent was to provide the following services;

‘1.1.6.1 receiving all imported goods from and delivering all export goods to ocean vessels at the Port of Mombasa.

1.1.6.2 Expediting the delivery of imported goods from the Port of Mombasa to Uganda and delivery export goods to the Port of Mombasa.

1.1.6.3 receiving imported goods which have arrived at the Inland Dry Port and Uganda goods to be exported through the Inland Dry Port and offloading and storing the same goods;

1.1.6.4 facilitating the verification at the Inland Dry Port of Uganda goods as required by any competent Authority;

1.1.6.5 undertaking all customs and excise and other formalities as may be required by customers or the relevant competent authorities in respect of Uganda goods;

1.1.6.6 facilitating the work of the Uganda Revenue Authority in respect of Uganda.’

[30] In consideration of the 2<sup>nd</sup> respondent building and operating the inland dry port, the Government agreed under Article 2 to grant the 2<sup>nd</sup> respondent a license to operate for 35 years from the time of commencement of full operation to offer the services stipulated in the contract. The 2<sup>nd</sup> respondent was also granted exclusive rights as follows:

‘Under the same licence, the Government shall grant to the Company an exclusive licence for the duration of TEN (10) years and the Company shall exclusively offer the services in respect of all sea- borne Uganda goods passing through the port of Mombasa and/or the Company’s handling facility at Chagamwe for onward transfer to the Inland Dry Port at Tororo. Under the same

license, the Company shall exclusively offer the services in respect of all sea-bound Ugandan Goods passing them through the Inland Dry Port at Tororo and or the Port of Mombasa.'

[31] The licence and the exclusive licence were to become operative from the date of commencement of full operations according to Article 2 clause 3. Under clause 2.5 (a), the Government was to revoke the contract promptly and without notice if the 2<sup>nd</sup> respondent failed to build the inland dry port at Tororo within 2 years from the date of issue of the licence. To date, the 2<sup>nd</sup> respondent has never built the port due to lack of facilitation resulting from the institution of this petition.

[32] It is evident that the Government intended to create a monopoly in the trade of handling exports and imports to and from the inland dry port, had it been established, to the port of Mombasa in favour of the 2<sup>nd</sup> respondent. The respondents did not deny the ramifications of the agreement in as far as creating a monopoly was concerned but only sought to justify it.

[33] Article 40 (2) of the Constitution of Uganda provides:

'Every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.'

[34] Article 40 (2) guarantees that all citizens shall have the right to practice any profession, or to carry on occupation, trade or business. However, the right to carry on a profession, trade or business is not unqualified. It can be restricted and regulated by authority of the law, pursuant to article 43 of the Constitution.

[35] Article 43 of the Constitution provides:

**'43. General limitation on fundamental and other human rights and freedoms.**

(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

- (2) Public interest under this article shall not permit—
- (a) political persecution;
  - (b) detention without trial;
  - (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.'

[36] In light of the foregoing provisions of article 43 the enjoyment of a fundamental right may be limited in case it prejudices the enjoyment of fundamental rights by another person or the public interest. In case public interest is what is prejudiced and therefore the cause or justification of the limitation, that limitation shall not be beyond what is 'acceptable and demonstrably justifiable in a free and democratic society or what is provided in the Constitution.' It necessarily follows that this limitation must be expressed in some law as I cannot conceive of a limitation to a fundamental right being outside of the law.

[37] There are 2 main categories of limitations permitted under article 43 of the Constitution. Firstly, the enjoyment of a fundamental right or freedom by anyone person should not prejudice or impair the enjoyment of fundamental rights and freedoms by other people. This limitation is by law, set out in the Constitution itself.

[38] Secondly the enjoyment of fundamental rights and freedoms should not prejudice the public interest. How then is public interest to be determined? Article 43 (2) declares, inter alia, what is not permissible under public interest, and then continues to provide a further limitation that it shall not be beyond what is demonstrably justifiable in a free and democratic society or as provided by the Constitution. It would follow in my view that any limitation to fundamental rights and freedoms in the public interest must be expressed in some law. Governance is a creature of the law starting with the Constitution. Any action by those exercising governmental authority must have its root in law. So must any limitation on account of public interest. It ought to be expressed in some

law. The absence of a law would leave the claim of public interest without any foundation.

[39] Mulenga, JSC., very ably dealt with the issue of limitation in Charles Onyango Obbo and Anor v Attorney General [2004] UGSC 1. He stated:

‘However, the limitation provided for in clause (1) is qualified by clause (2), which in effect introduces “a limitation upon the limitation”. It is apparent from the wording of clause (2) that the framers of the Constitution were concerned about a probable danger of misuse or abuse of the provision in clause (1) under the guise of defence of public interest. For avoidance of that danger, they enacted clause (2), which expressly prohibit the use of political persecution and detention without trial, as means of preventing, or measures to remove, prejudice to the public interest. In addition, they provided in that clause a yardstick, by which to gauge any limitation imposed on the rights in defence of public interest. The yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. This is what I have referred to as “a limitation upon the limitation”. The limitation on the enjoyment of a protected right in defence of public interest is in turn limited to the measure of that yardstick. In other words, such limitation, however otherwise rationalised, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society.’

[40] Article 4 of the International Covenant on Economic, Social and Cultural Rights (1976) recognises that states may subject economic rights to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purposes of promoting the general welfare in a democratic society.

[41] In R v Oakes (1986) 1 SCR 103, the Supreme Court of Canada was of the view that while limiting the enjoyment of rights, the objective must be of sufficient

importance to warrant overriding a constitutional right. It must impair as little as possible the rights or freedoms in question and the means chosen must be reasonable and proportionate.

[42] The onus of proving that a limitation on any right is reasonable and demonstrably justified in a free and democratic society rests upon the party seeking to uphold the limitation. See Attorney General v Major General Tinyefuza Supreme Court Constitutional Appeal No. 1 of 1997 (unreported) and Charles Onyango Obbo and Anor v Attorney General [2004] UGSC 1.

[43] The respondents do not contend that the limitation in this instance is justified as it prejudices the right of any other person. It is simply contended that the rights in question have limitations in the public interest without more. The respondents do not point to any law that sets out this limitation. Neither do they provide any justification for the limitation given the burden of proof that lies upon them. In my view before the 1<sup>st</sup> respondent could countenance entering into an agreement of this kind there had to be legislation that expressly authorised them to do so given the fact that the impugned provisions of the contract between the respondents contravened the petitioners' fundamental rights under article 40 (2) of the Constitution.

[44] In conclusion, the Government does not have the power, in the circumstances of this case, to enter into a contract that limits the petitioners' fundamental right under article 40 (2) of the Constitution.

### **Decision**

[45] I would therefore declare that the act of the respondents executing a contract which purported to vest monopoly rights over clearing, forwarding, and handling services of all imports and exports to and from Uganda through the Port of Mombasa in the 2nd Respondent is inconsistent with and in contravention of Article 40 (2) and Article 43 of the Constitution and to that extent, null and void. I would grant the petitioners costs of this petition.



Signed, dated and delivered at Kampala this 25<sup>th</sup> day of Aug 2019<sup>20</sup>



Fredrick Egonda-Ntende  
**Justice of the Constitutional Court**

**THE REPUBLIC OF UGANDA**

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

**CONSTITUTIONAL PETITION NO. 85 OF 2011**

- 1. SPEDAG INTERFREIGHT UGANDA LTD**
  - 2. SDV TRANSAMI (U) LTD**
  - 3. DAMCO LOGISTICS (U) LTD**
  - 4. THREeways SHIPPING SERVICES (GROUP)..... PETITIONERS**
- VERSUS**

- 1. THE ATTORNEY GENERAL**
- 2. THE GREAT LAKES PORTS LTD ..... RESPONDENTS**

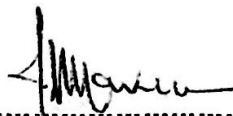
**CORAM:**     **Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ**  
                  **Hon. Mr. Justice Kenneth Kakuru, JA/ JCC**  
                  **Hon. Mr. Justice F.M.S Egonda-Ntende JA/ JCC**  
                  **Hon. Mr. Justice Cheborion Barishaki, JA/JCC**  
                  **Hon. Mr. Justice Christopher Madrama, JA/JCC**

**JUDGMENT OF JUSTICE KENNETH KAKURU, JA**

I have had the benefit of reading in draft the Judgment of my learned brother Hon. Mr. Justice F.M.S Egonda-Ntende JA.

I agree with him that this petition ought to succeed for the reasons he has very ably set out in his well written and well reasoned Judgment. I also agree with the declarations and orders he has proposed and I have nothing useful to add.

Dated at Kampala this 25<sup>th</sup> day of Aug 2019. 20



.....  
**Kenneth Kakuru**  
**JUSTICE OF APPEAL/CONSTITUTIONAL COURT**

**THE REPUBLIC OF UGANDA,**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
*(Coram: Owiny – Dollo, DCJ, Kakuru, Egonda – Ntende, Cheborion and  
Madrama, JJA/JJCC)*

**CONSTITUTIONAL PETITION NO 85 OF 2011**

- 1. SPEEDAG INTERFREIGHT (U) LTD}**
- 2. SDV TRANSAMI (U) LTD}**
- 3. DAMCO LOGISTICS (U) LTD}**
- 4. THREWAYS SHIPPING SERVICES (GROUP) LTD} ... PETITIONERS**

**VERSUS**

- 1. ATTORNEY GENERAL}**
- 2. GREAT LAKES PORTS LTD} .....RESPONDENTS**

**JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA/JCC**

I have read in draft the judgment of my learned brother Hon. Frederick Egonda – Ntende. I concur with the facts and analysis of law in the judgment and have nothing useful to add. I also agree that the petition be granted with costs.



**Christopher Madrama Izama**

**Justice of the Constitutional Court**

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Owiny-Dollo, DCJ, Kenneth Kakuru, Egonda-Ntende, Cheborion Barishaki & Christopher Madrama, JJA/JJCC)

CONSTITUTIONAL PETITION NO. 85 OF 2011

BETWEEN

1. SPEDAG INTERFREIGHT UGANDA LTD
2. SDV TRANSAMI (U) LTD
3. DAMCO LOGISTICS (U) LTD
4. THREWAYS SHIPPING SERVICES (GROUP) LTD:.....PETITIONERS

AND

1. ATTORNEY GENERAL
2. GREAT LAKES PORTS LTD:.....RESPONDENT

JUDGMENT OF CHEBORION BARISHAKI, JA/JCC

I have had the benefit of reading in draft the judgment of my learned brother Fredrick Egonda-Ntende, JA/JCC and I agree that this Petition should succeed. Clearly the agreement entered into between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent in March 2009 granted the 2<sup>nd</sup> respondent an exclusive licence of 10 years to handle all Uganda inbound and outbound cargo through the inland dry port at Tororo and Mombasa which amounts to 97% of all the import and export cargo from Uganda through the port of Mombasa. This in effect threatened the participation of the Petitioners in the business of cargo handling and clearance through the said ports thus creating an unjustified monopoly in contravention of the petitioners' rights guaranteed under Article 40(2) of the Constitution.

The appeal should therefore, succeed with costs to the Petitioner.

Dated at Kampala this.....<sup>25<sup>th</sup></sup> day of.....<sup>Aug</sup>.....<sup>2019</sup>

  
Cheborion Barishaki

Justice of Appeal/Constitutional Court

**THE REPUBLIC OF UGANDA**

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

**CORAM: OWINY - DOLLO, DCJ; KAKURU, EGONDA-NTENDE, BARISHAKI  
CHEBORION, MADRAMA IZAMA JJA/JJCC.**

**CONSTITUTIONAL PETITION No. 85 OF 2011**

**BETWEEN**

- 1. SPEDAG INTERNATIONAL UGANDA LTD**
- 2. SDV TRANSAMI (U) LTD**
- 3. DAMCO LOGISTICS (U) LTD**
- 4. THREEWAYS SHIPPING SERVICES (GROUP) .....PETITIONERS**

**AND**

- 1. ATTORNEY GENERAL**
- 2. GREAT LAKES PORTS LTD .....RESPONDENT**

**JUDGMENT OF OWINY - DOLLO, DCJ.**

I have had the benefit of reading the judgment of my learned brother, Egonda- Ntende JCC, in draft. I agree with his reasoning, findings, and the conclusion he has reached that this petition must succeed.

Since the other members of the Court sitting in this petition agree with Egonda- Ntende JCC, in toto, orders are hereby given in the terms proposed by Egonda- Ntende JCC.

Dated, and signed at Kampala this <sup>25<sup>th</sup></sup> day of <sup>Aug</sup> ..... 2020

  
Alfonse C. Owiny - Dollo

**Deputy Chief Justice**