

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
**CONSTITUTIONAL PETITION NUMBER 37 OF 2012**

5 **JOHN IMANIRAGUHA =====PETITIONER**

**VERSUS**

**1. THE COMMISSIONER GENERAL**  
**UGANDA REVENUE AUTHORITY**  
**2. THE ATTORNEY GENERAL** } =====RESPONDENTS

10 Coram:

Hon. Mr. Justice Kenneth Kakuru, JCC

Hon. Mr. Justice Geoffrey Kiryabwire, JCC

Hon. Mr. Justice Barishaki Cheborion, JCC

Hon. Mr. Justice Ezekiel Muhanguzi, JCC

15 Hon. Mr. Justice Stephen Musota, JCC

**JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE**

**INTRODUCTION**

20 This Petition is brought under Articles 137 (3) of the Constitution of Uganda 1995 (hereinafter referred to as the Constitution) and the Constitutional Court (Petitions and References) Rules 2005.

## BRIEF FACTS.

The facts in this matter as stated in the Petition are as follows:

a) THAT the Petitioner is a businessman in Uganda and owns several fuel trucks in Uganda.

5 b) THAT the URA has on several occasions contented that the Petitioner owes money in unpaid or unremitted excise taxes on several of his trucks and/or vehicles particularly **UAA 268D, UAB 603N, UAB 607N, UAB 647N** and **UAB 107H**, but in seeking to ascertain the truth of its contention the same personnel of the URA, and the Police and the Director of Public Prosecutions have contravened provisions  
10 of the Constitution in so far as they:

i. Unlawfully seized and continued to hold the Petitioner's said trucks;

15 ii. Commenced Criminal proceedings against the Petitioner in **Nakawa Chief Magistrates Court, NAK-CO 519 of 2007** on 24<sup>th</sup> October 2007, (hereinafter referred to as "the Nakawa Criminal Proceedings") which were dismissed on three separate occasions for want of prosecution but each time reinstated only to withdraw them and then commenced criminal charges, for the  
20 same or substantively the same alleged offences regarding the same trucks and/ or vehicles, before the designated Chief Magistrate in the Anti- Corruption Division of the **High Court, ACC-CO 087-2012 of 2012** (hereinafter referred to as "the Anti-Corruption Court Proceedings");

iii. Effectively commenced the anti-corruption proceedings on the 29<sup>th</sup> May 2012 while the Nakawa Criminal Proceedings were pending and before the withdrawal of the latter on 20<sup>th</sup> June 2012 when they were fixed for hearing.

5 iv. Caused the committal of the Anti-corruption Court Proceedings on a defective indictment in as far as the same was not filed and did not comply with Sections 168 of the Magistrates Court Act Cap. 16; and

10 v. Generally engaged in conduct that is abusive of the process of criminal courts with a view to exerting pressure on the Petitioner to cause to compromise his demand for release to him of the said trucks and/ or vehicles and compensation for unlawful seizure and detention of the same.

15 c. THAT on 30<sup>th</sup> July 2012 the Petitioner was apparently indicted and committed to the High Court Division of the Anti-Corruption Court despite the Petitioners challenge to the indictment on which the presiding Magistrate declined to make a ruling upon and did not read and explain the indictment to the Petitioner.

20 d. The Respondents jointly and severally commenced criminal proceedings against the Petitioner in Nakawa Chief Magistrates Court, **NAK-CO 499 of 2007**, (hereinafter referred to as "the Nakawa Criminal Proceedings") which were dismissed and the Petitioner acquitted upon his being found not guilty.

25 e. THAT the personnel of the URA, and the Police and the Director of Public Prosecutions have contravened provisions of the



Constitution in so far as they have refused and or neglected to comply with the orders to release to the Petitioner his trucks registration numbers **UAB 145N/UAD 717U, UAA 312W** and **UAB 433L** following the Petitioners acquittal;

- 5 f. THAT the 2<sup>nd</sup> Respondent has since June 2007 held and detained the Petitioners motor vehicle registration **UAB 784E** which has not been the subject of any Court proceedings but has refused to release and/or compensate the Petitioner for the same despite various complaints and demands.

10 **ALLEGED CONSTITUTIONAL VIOLATIONS, DECLARATIONS AND REMEDIES SOUGHT AND PRAYED FOR:**

The Petitioner in the Petition alleged that the Respondents had contravened and violated the provisions of the Constitution. He further sought for the following declarations and remedies:

- 15 i. A declaration that the conduct of the URA in withdrawing the Nakawa Criminal Proceedings on the 20<sup>th</sup> June 2012 and causing the immediate re-issue of criminal summons for the Petitioner before commencing the Anti-corruption Court Proceedings on the same matters in circumstances of the case contravened **Articles**
- 20 **20(2), 28(1), 28(9), 44(c), 126(1), 128(2) and 128(3) of the Constitution.**
- ii. A declaration that the conduct of the URA in causing the committal of the Anti-Corruption Court proceedings to the Anti-Corruption Division of the High Court on the 30<sup>th</sup> July 2012 contravened

**Articles 120(5), 28(1), 28(3)(b), and 126(1) of the Constitution.**

- 5      iii. A declaration that the indictment and committal of the Petitioner on an indictment that did not comply with the provisions of Section 168 of the Magistrates Court Act Cap. 16, the failure to read out and explain the same to the Petitioner, the presiding Magistrates' decline to rule on the Petitioners challenge to the Indictment, all contravened **Articles 28(1), 28(3)(b) and 120(5) of the Constitution;**
- 10      iv. A declaration that the cumulative effect of the conduct of the URA towards Petitioners in matters connected with the Nakawa Criminal Proceedings and the Anti-Corruption Court Proceedings contravenes **Articles 28(1), 28(3) and 44(c) of the Constitution;**
- 15      v. An order permanently staying the proceedings against the Petitioners in the Anti-Corruption Court Proceedings and directing the Anti-Corruption Division Court seized of the said proceedings to immediately discharge the Petitioners.
- 20      vi. An order that the Petitioner be compensated for unlawful arrest, detention and subsequent restrictions (whilst on conditional bail) since 24<sup>th</sup> October 2007, in the form of general and aggravated damages, pursuant to **Article 23(7) of the Constitution;**
- vii. An order permanently prohibiting the URA or any other prosecution organ of the State from initiating any other criminal

charges against the Petitioner arising out of or in connection with trucks and /or vehicles hereinabove described that are substantially similar to those in both the Nakawa Criminal Proceedings and the Anti-Corruption Court Proceedings.

5      viii. A declaration that the URA's failure, refusal and /or neglect to comply with the Judgment and orders of the Chief Magistrates Court of Nakawa contravened Articles

10      ix. A Declaration that the continued seizure and detention of the Petitioner's trucks and/ or vehicles herein above mentioned contravened **Articles 26 and 128(3)** of the Constitution.

x. A declaration that the Petitioner herein is entitled to full and adequate compensation for each of the violations herein complained of.

## **REPLIES BY THE RESPONDENTS**

15      Both Respondents filed answers to the Petition. The first Respondent contended that the Petitioner was in default of customs taxes but denied that Commissioner General of the Uganda Revenue Authority (hereinafter referred corporately as the "URA") used unconstitutional means to demand for payment of the said taxes. The URA in answer to the Petition stated  
20      that it legally seized and held the Petitioner's trucks. The URA further answered that the dismissal, reinstatement, withdrawal and subsequent charge at the anti-corruption court was neither illegal nor unconstitutional as such procedures are envisaged under the law. Further it is denied that the indictment at the Anti-corruption court was made on a defective charge

sheet but rather that the said objection to the charge sheet was over ruled by the trial magistrate and the ruling has subsequently been appealed. The URA in further answer to the Petition stated that the Petition does not disclose a cause of action against the first Respondent.

- 5 The second Respondent Attorney General in their answer to the Petition, denied all the allegation against them. The Attorney General stated that the Petition was misconceived, frivolous, and vexatious and raised no issues for interpretation by this Court.

### **Representations.**

- 10 Mr Macdosman Kabega and Enock Barata appeared for the Petitioner. Mr. Baluku Ronald and Allideki Alex appeared for the first Respondent while Mr. Geoffrey Madete appeared for the second Respondent.

### **CONFRENCING OF THE PETITION.**

- 15 All the parties filed separate conferencing notes. One common issue that appeared to be conversed by the parties was whether the Petition disclosed issues for constitutional interpretation. I shall address this issues as a preliminary matter.

### **INTERLOCUTORY MATTERS**

- 20 When this matter was called for hearing, Court had to deal with the following interlocutory matters.

#### **1. Application for Stay of Proceedings.**

The Petitioner filed Constitutional Application No. 28 of 2012 seeking to stay the criminal proceedings against the Petitioner (as applicant) in the





Anti-corruption division of the High Court of Uganda under ACC-CO 087-2012 until this Petition is heard and determined. When this Petition came up for hearing the said application had not yet been heard and therefore is deemed to have been overtaken by events and consequently stands struck  
5 out.

## 2. Citation for Contempt

It was also established that the first Respondent had not returned some of the Petitioner's trucks despite existing court orders from various courts to do so. This Court then found the first Respondent to be in contempt of  
10 those Court Orders and ordered that the First Respondent purge itself of the contempt before this Petition could be heard which they did.

## **DUTY OF THIS COURT**

This Court is clothed with jurisdiction under Article 137 (1) of the Constitution which provides:

15 *"...Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional court..."*

In this Petition it is alleged that certain acts and or omissions by the Respondent are inconsistent with or are in violation of the constitution.

In this regard Article 137 (3) (b) provides:

20 "...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..."



The Constitution under Article 137 (4) goes on to provide for redress as follows:

"...Where upon determination of the petition under clause (3) of this article the constitutional court considers that there is need for redress in addition  
5 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..."

The above provisions set the jurisdiction and parameters for the  
10 interpretation by the Constitutional Court. However Jurisdiction is not enough as it is also settled that the Petition so filed must in addition disclose a cause of action. In the case of **Baku Raphael Obudra and Obiga Kania V Attorney General** Constitutional Appeal No 1 of 2003 Justice Mulenga (JSC as he then was recalling his holding in **Ismail**  
15 **Serugo V Kampala City Council & Attorney General** Constitutional Appeal No 2 of 1998) held that a petition 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 alleged to have contravened by the act or omission and prays for a  
20 declaration to that effect. In **Wycliffe Kiggundu V Attorney General** Civil Appeal No 27 of 1993 Hon. Justice W.W. Wambuzi (Chief Justice as then was) held that it is not sufficient on the face of it to have an allegation of the breach of or inconsistency of an Article or Articles of the



Constitution with any act, omission or law which would have merely fulfilled the requirement to plead so under Article 137 (3) of the Constitution. In other words there must be a controversy involving interpretation before the matter can be referred to the constitutional Court.

5 In **Davis Wesley Tusingwire V Attorney General** Constitutional Petition 2 of 2013 this Court however held:

10 "... that a liberal and broader interpretation should be given to a constitutional petition than is given to a plaint in a normal civil suit when determining whether a cause of action has been established (**Baku Raphael Obudra and Another v Attorney General Constitutional Appeal No. 1 of 2003 (SC)**). The same principal applies to subsidiary legislation... "

15 Furthermore under Article 2 (2) of the Constitution, if any law is inconsistent with any of the provisions of the constitution then the Constitution shall prevail and that law shall to the extent of the inconsistency, be void.

20 In this matter it has been argued that the Petition does not disclose a cause of action. I shall first address this issue before I proceed to resolve the Petition.

Counsel for the Petitioner argued that in this matter there were two broad areas for interpretation namely; to do with a fair hearing and secondly the process and administration of justice in the Judiciary. When pressed further by this Court Counsel for the Petitioner framed the question for  
25 interpretation as whether the conduct of the URA in withdrawing the

proceedings at the Nakawa court and immediately reissuing criminal summons contravened the Constitution.

On the other hand, Counsel for the first Respondent in their conferencing notes argued that the first Respondent had withdrawn charges and subsequently preferred other charges at the Anti-corruption court. The first Respondent lost criminal cases No. 419 and 318 of 2007 and appealed the decisions to the High Court. The first Respondent also lost a tax reference at the Tax Appeals Tribunal and appealed that decision to the High Court. It is therefore the case for the first Respondent that there is nothing in the Constitution for this Court to interpret as the remedies sought by the Petitioner can be addressed by the Magistrates and High Courts.

A careful reading of the Petition in my view points to the heart grievance of the Petitioner. Even though violations of the Constitution have been cited in the Petition, the following paragraphs need specific mention. Paragraph 1 (b) (ii) of the Petition refers variously to the institution and dismissals of charges in the Nakawa Chief Magistrates Court on three separate occasions in respect of alleged offences involving the same trucks owned by the Petitioner. Paragraph 1 (b) (iv) of the Petition refers to the URA causing the Petitioner at the Anti-corruption court to be committed on a defective indictment contrary to section 168 of the Magistrates Court's Act. Paragraphs 4, and 5 of the Petition refers to the refusal by the URA to release the Petitioner's trucks to him despite orders by the Chief Magistrates Court to do so. Furthermore a study of the Petition also reveals the type of remedies sought by the Petitioner. Paragraph 6 (iii) refers to a declaration that the indictment against the Petitioner does not comply with



the provisions of section 168 of the Magistrates Courts Act. Paragraph 6 (v) refers to an order permanently staying the proceedings against the Petitioner in the Anti-corruption Court. Paragraph 6 (vi) refers to an Order for the Petitioner to be compensated for unlawful arrest, detention and restrictions on his bail terms in the form of general and aggravated damages pursuant to Article 23 (7) of the Constitution. Lastly Paragraph 6 (ix) which refers to a declaration that the continued seizure and detention of the Petitioners trucks and or vehicles contravened Articles 26 and 128 (3) of the Constitution.

10 In the Petition of **Mbabaali Jude V Hon Edward Kiwanuka Ssekandi** Const. Petition No 028 of 2012 in a not too dissimilar situation Justice Kenneth Kakuru JA/JCC while reviewing the Petition in that matter held:

15 *"...In paragraph 19 reproduced above we find nothing that requires Constitutional interpretation. The petitioner asserts that the respondent violated the provisions of the **Leadership Code**. In paragraphs 17 and 18 he asserts that the petitioner violated the provisions of the **Parliamentary Elections Act, 2008**.*

20 *All laws in this country emanate from the Constitution. Violation of any law by any act or omission directly or by implication is also a violation of the Constitution. The violation of any law must be addressed to and settled by an appropriate court or tribunal and not by this court, unless there is an issue for Constitutional interpretation. This Court may however, having resolved the issue requiring constitutional interpretation, grant any appropriate remedy..."*

In this matter, it is apparent to me that the Petitioner faults the manner in which the criminal cases against him were handled contrary to the Magistrates Courts Act and also the noncompliance by the First Respondent of court orders to release his trucks to him. The latter I have already  
5 partially handled as interlocutory in this petition. He further seeks damages and other compensation as well. These allegations refer to violations of laws which indeed emanate from the Constitution but I find no question for constitutional interpretation in them. Such alleged violations can be addressed and settled in another appropriate court.

10 In the **Mbabali Petition** (Supra) it was further held that:

*"I therefore find that the petition does not raise issues for Constitutional Interpretation under **Article 137 (3)**. The petitioner ought to have brought his action in another competent court under an appropriate law.*

15 *This court has no jurisdiction to entertain this petition as it raises no issues for Constitutional Interpretation at all.*

*The first issue is therefore resolved in the negative..."*

The above holding would equally be applicable here. I accordingly find that this Petition does not raise a question or issue for constitutional interpretation. The Petitioner should find redress in another competent  
20 court.

### **Final Result**

I find as a result that this Court does not have jurisdiction to hear this Petition and hereby dismiss it.

Given that the first Respondent was earlier in these proceedings found to be in contempt of court I will not award them costs and order that each party bear their own costs.

5 Date at Kampala this 13<sup>th</sup> day of July 2020

  
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**Hon. Mr Justice Geoffrey Kiryabwire**  
**Justice of Appeal/Constitutional Court**

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**JOHN IMANIRAGUHA .....PETITIONER**

**VERSUS**

**1. THE COMMISSIONER GENERAL**

**UGANDA REVENUE AUTHORITY**

**2. ATTORNEY GENERAL ..... RESPONDENT**

**CORAM:     Hon. Mr. Justice Kenneth Kakuru, JA/JCC**  
**Hon. Mr. Justice Geoffrey Kiryabwire, JA/JCC**  
**Hon. Mr. Justice Cheborion Barishaki, JA/JCC**  
**Hon. Mr. Justice Ezekiel Muhanguzi, JA/JCC**  
**Hon. Mr. Justice Stephen Musota, JA/JCC**

**JUDGMENT OF JUSTICE KENNETH KAKURU, JA/JCC**

I have had the benefit of reading in draft the judgment of my learned brother Kiryabwire, JA/JCC.

I agree with him that this petition ought to fail for the reasons he has set out in his well-reasoned judgment. I also agree with the orders he has proposed. I have nothing useful to add.

As Barishaki Cheborion, Muhanguzi and Musota, JJA/JJCC also agree, this petition stands dismissed with no orders as to costs.

**Dated at Kampala this 13<sup>th</sup> day of July 2020.**

  
.....  
**Kenneth Kakuru**

**JUSTICE OF APPEAL/ CONSTITUTIONAL COURT**



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

**CONSTITUTIONAL PETITION NO. 37 OF 2010**


## VERSUS

**UGANDA REVENUE AUTHORITY**

**JUDGMENT OF BARISHAKI CHEBORION, JA/ JCC**

I also agree with the orders made.

Dated at Kampala this 13<sup>th</sup> day of July 2020



## Barishaki Cheborton

## JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
**CONSTITUTIONAL PETITION NO. 37 OF 2012**

**JOHN IMANIRAGUHA.....PETITIONER**

**VERSUS**

**1. THE COMMISSIONER GENERAL  
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**2. ATTORNEY GENERAL.....RESPONDENTS**

**CORAM:**     **Hon. Mr. Justice Kenneth Kakuru, JA/JCC**  
                  **Hon. Mr. Justice Geoffrey Kiryabwire, JA/JCC**  
                  **Hon. Mr. Justice Cheborion Barishaki, JA/JCC**  
                  **Hon. Mr. Justice Ezekiel Muhanguzi, JA/JCC**  
                  **Hon. Mr. Justice Stephen Musota, JA/JCC**

**JUDGMENT OF EZEKIEL MUHANGUZI, JA**

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA.

I agree with the final decision that the petition must be dismissed with each party to bear its costs as it does not disclose any issue for constitutional interpretation.

Dated at Kampala this 13<sup>th</sup> day of July 2020.



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

**THE REPUBLIC OF UGANDA**

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

**CONSTITUTIONAL PETITION NO. 37 OF 2010**

**JOHN IMANIRAGUHA ::::::::::::::::::::::::::::::::::: PETITIONER**

**VERSUS**

**1 COMMISSIONER GENERAL**

**UGANDA REVENUE AUTHORITY**

**2 ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT**

CORAM: HON. JUSTICE KENNETH KAKURU, JA/JCC

HON. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

HON. JUSTICE CHEBORION BARISHAKI, JA/JCC

HON. JUSTICE EZEKIEL MUHANGUZI, JA/JCC

HON. JUSTICE STEPHEN MUSOTA, JA/JCC

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

I have had the privilege of reading in draft the judgment by my brother Justice Geoffrey Kiryabwire, JA/JCC.

I agree with his analysis, conclusions and orders he has proposed. The petitioner complains of several violations of existing laws by the respondents. For example he faults the manner in which the criminal cases against him were handled contrary to the Magistrates Courts Act and non-compliance by the 1<sup>st</sup> respondent with court orders to release the trucks to him.

These allegations refer to violations of laws which, although they emanate from the constitution, raise no question for constitutional interpretation. These violations can be addressed and settled in another appropriate court.

Therefore, I agree that this petition be dismissed and it is so ordered.

Each party will bear their own costs.

Dated this 13<sup>th</sup> day of July 2020



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**Stephen Musota**  
**JUSTICE OF APPEAL/CONSTITUTIONAL COURT**