

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. NO.5 OF 2017

LEADS INSURANCE LIMITED PETITIONER

VERSUS

1. ATTORNEY GENERAL

2.DIRECTOR OF PUBLIC PROSECUTIONS 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 Muzamiru Mutangula Kibeedi, JA/JCC

Hon. Mr. Justice Remmy Kasule, Ag. JA/JCC

JUDGMENT OF JUSTICE KENNETH KAKURU, JA/JCC

I have had the benefit of reading in draft the Judgment of my learned brother The Hon. Cheborion Barishaki, JA/JCC.

I agree with him that this petition ought to succeed for the reasons he has ably set out therein.

I also agree to the orders he has proposed. I have nothing else to add.

By majority decision Kenneth Kakuru, Cheborion Barishaki, JJCC, Remmy Kasule, Ag. JCC with Geoffrey Kiryabwire and Muzamiru Kibeedi, JJCC dissenting, this petition succeeds with orders as set out in the Judgment of Cheborion Barishaki, JJCC.

Dated at Kampala this^{15th} day of ^{March}..... 2021.



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

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NUMBER 05 OF 2017

Between

5 **Leads Insurance LimitedPetitioner**

And

1. Attorney General

2. Director of Public ProsecutionsRespondents

CORAM:

10 **HON. MR. JUSTICE KENNETH KAKURU, JA/JCC**
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA/ JCC
HON. MR. JUSTICE BARISHAKI CHEBORION, JA/JCC
HON.MR. JUSTICE MUZAMIRU MUTANGULA , JA/JCC
HON. MR. JUSTICE REMMY KASULE, Ag. JA/JCC

15 **JUDGMENT OF JUSTICE GEOFFREY KIRYABWIRE**

Introduction

20 This Petition was instituted under Article 137(3) of the Constitution of the
Republic of Uganda seeking declarations that certain acts of the second
Respondent (Director of Public Prosecution) were inconsistent with the
constitution and in violation of the Petitioner Company's fundamental rights.

The Petition is supported by the affidavit of Mr. Apollo Turyamusiima who is a Director and Chairman of the Board of the Petitioner Company.

The first Respondent is the Attorney General of Uganda and the Principal Legal Advisor of the Government of Uganda. The Second Respondent is the
5 Director of Public Prosecutions (herein after referred to as the "DPP")

Brief Background

The Petitioner is a limited liability Company that was carrying out insurance business until its licence was revoked by the Insurance Regulatory Authority.

On 13th November 2012 Police Officers carried out a search at the Petitioner
10 Company's Office and impounded several land titles belonging to the Petitioner Company. These land titles were never returned. As a result the Insurance Regulatory Authority decided to derecognise the Petitioner Company's investments. The Insurance Regulatory Authority calculated the solvent position of the Petitioner Company at Shs. 1, 408,518, 000 and not
15 recognising the value of the properties which was held by the second Respondent. The properties were valued at Shs 3,580,000,000. The Insurance Regulatory authority also declined to process the Petitioner Company's licence for the year 2015.

The Petitioner decided to institute legal Proceeding under Miscellaneous
20 Cause No. 3 of 2015 and was granted an Order by court to have the land titles returned but the second Respondent did not comply with that order.

This prompted the Petitioner to institute Civil Suit No. 056 of 2015 for declaration that by the agents of the Attorney General failing to comply with the orders arising from Civil Suit No.3 of 2005 acted illegally and

unconstitutionally. The Petitioner instituted these legal proceeding under Article 50 to enforce its right to Property. The trial Judge found that the first Respondent was obligated to obey court orders.

The second Respondent then lodged an Application in the Anti-corruption Court seeking orders for restriction of the disposal of assets and bank accounts. This application was made against Obey Christopher one of the directors of the Petitioner Company. The court however declined to grant the second Respondent a right to attach the Petitioner's property.

The Declarations and Remedies prayed for

1. The Respondents are bound by their oaths to uphold the Constitution and comply with court order.
2. The continued seizure and refusal to release the titles of the Petitioner is unconstitutional and it tantamounts to act of expropriation of the Petitioner's property by the state.
3. That the first Respondent is the legal advisor and representative to Government and is empowered by the Constitution to give legal efficacy to court orders and direct organs, agencies person or officer to comply with Court Order and take remedial action.
4. That the titles of the Petitioner should be released to them within a period of seven days from the date of Judgment and in lieu of that the Petitioner is entitled to compensatory value of **Ug shs 3,980,000,000/=** and a further disturbance of 30% of the said
5. An order restraining the Respondents and its agents and or employees from interfering with the Petitioner's right to property.
6. An order unfreezing all the Petitioner's accounts.

At the scheduling the Parties agreed on the following three issues for determination;

1. Whether this court and any other court of law can interfere with the powers of the Director of Public Prosecution vested under Article 120 of the constitution?

2. And whether in the circumstances orders were lawfully issued against the Director of Public Prosecutions?

3. What are the remedies available to the Petitioner?

It was agreed by the parties that this Petition proceed by way of consideration of the parties' written submission on record. The Petitioner was represented by Mr. Yesse Mugenyi while both the Respondents were represented by Mr. Geoffrey Atwiine.

Duty of the Court

Before I delve into this Petition, it is important that I recall the Role of a Constitutional Court and the principles that guide its decisions.

Article 126 of the Constitution provides that judicial power which is derived from the people shall be exercised by the Courts established under the Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people. In adjudicating cases, the Courts shall, subject to the law, apply certain principles including the concepts that Justice shall be done to all irrespective of their social or economic status, promotion of reconciliation between the parties and the administration of justice without undue regards to technicalities.

With regard to principles of constitutional interpretation Article 137 (1) of the Constitution provides:

“...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 the Director of Public Prosecution acted inconsistently or in violation of the Constitution. As to such actions and
5 omissions Article 137 (2) (b) provides:

*“...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...”*

10 *As to remedies Article 137 (4) provides:*

“...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 of redress; or

15 *(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 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
20 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 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
25 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 declaration to that effect. In **Wycliffe Kiggundu V Attorney General** Civil Appeal No 27 of 1993 Hon. Justice S.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 with 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. In **Davis Wesley Tusingwire V Attorney General** Constitutional Petition 2 of 2013 this Court however held:

"... 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..."

It can also be deduced from the decisions of **Serugo; Raphael Baku and Wycliffe Kiggundu** (Supra) that it is evident that the onus to prove that there is a controversy involving interpretation lies with the Petitioner.

Petitioner Company's Submissions

Counsel for the Petitioner submitted that the acts of the second Respondent were inconsistent with Article 120(5) of the Constitution. He submitted that there was no provision in the Constitution that empowers the DPP to seize property.

He further submitted that if the DPP is to seize property he is supposed to do this taking into account Article 26 of the Constitution which allows every person to own property individually or in association with others.

Counsel for the Petitioner submitted that even though sections 34, 53 and 54 of Anti-Corruption Act 2009 empowered the DPP to seize property, the property which it can seize must be property which was acquired after committing a crime and it must be related to the offence under investigation.

5 He argued that this was why in Miscellaneous Application No. 3 of 2015 in which the attachment of property of the Petitioner by the present Respondents was challenged, the said challenge was up held by court. He submitted the trial Judge had found that there was no nexus between the proceeds of the offence (i.e. pension funds) and the petitioner's properties.

10 Counsel for the Petitioner submitted that the court further found that even though the criminal court had convicted one of the Directors of the Petitioner (i.e. Mr. Christopher Obey) that would not constitute a basis for holding the titles of the Petitioner Company because the crimes of the shareholders could not be imputed on the company.

15 Counsel for the Petitioner submitted that as a result of the actions of the second Respondent taking the Petitioner Company's titles the Petitioner Company could not secure a business licence for the year 2015 and the subsequent years from the insurance regulator. This was because the land titles were part of the Petitioner Company's balance sheet.

20 He also argued that that the Petitioner Company was denied the right to carry on any lawful occupation or business.

It was submitted for the Petitioner that the Constitution demands total compliance with court orders. He submitted that Article 128(1) and (2) of the Constitution provides that no person or organ of the state may interfere with
25 the functioning of the court. He submitted that this obligation was embodied

in Article 128 (3) of the Constitution which provides that all organs and agencies of the state shall accord to court such assistance as maybe required to ensure effectiveness of the courts.

5 Counsel for the Petitioner then cited several cases about the consequence of non-compliance with court orders. He cited the case **Hardkinson v Hardkinson** (1952) ALL ER 567 AT 571 for the proposition that all court orders whether null; regular or irregular must be obeyed.

10 Counsel for the Petitioner submitted that the Petitioner Company was innocent because the DPP had not preferred any charges against the petitioner for seven years.

Respondent's submissions

15 Counsel for the Respondents submitted that the Petition did not raise any questions for Constitutional interpretation. He submitted that the entire petition was enforcement of the petitioner's constitutional rights and in particular the Right to own property under Article 26 of the Constitution.

20 He further submitted that the Petition was an abuse of court process .This was because the Petitioner had already filed Civil Suit No.65 of 2015 in the High Court seeking enforcement of its Constitutional Rights and the High Court went ahead to make orders. He submitted that the High Court had already pronounced itself on the same issues raised in this Petition.

Counsel for the Respondents also submitted that the issue framed by the Petitioner as to whether this court and any other court of law can interfere with the powers of the Director of Public Prosecutions vested under Article

120 of the Constitution was moot academic and not in contention at all in this Petition.

Counsel for the Respondents submitted that even though the High Court has the jurisdiction to grant declaration and orders that affect the functions of the DPP the court should not be seen to interfere in the institution of prosecution given that the question of whether to prosecute or not is for the prosecutor and not the court. He relied on the case of **Dr. Tiberious Muhebwa v Uganda Constitutional Reference No. 9 of 2012**.

Counsel for the Respondents submitted that the trial Judge in Miscellaneous Application NO. 3 of 2016 was correct to find that the Director of Public Prosecution was the Constitutional authority for all prosecutions in the country. He submitted that the DPP was not under any direction or control of any person or authority therefore the Attorney General could not direct the Director of Public Prosecutions to release titles that he was holding. He relied on Article 120 (6) of the Constitution.

Counsel for the Respondents also submitted that the acts of the second Respondent were not inconsistent with the Constitution because the office of the DPP is mandated to be in charge of all criminal prosecutions save for those of the court martial. He cited Article 120 (6) of the Constitution. He argued that the DPP was independent and has discretion in all prosecutions.

Counsel for the Respondents also submitted that the Second Respondent was never a party to civil suit No. 65 of 2015 (*Leads Insurance v Attorney General*) He argued that the second Respondent could not comply with orders that were not directed at it. He submitted that the orders were directed to the

servant or agents of the Attorney General of which the second Respondent was not.

Counsel for the Respondents also submitted that the failure to comply with a court order does not give rise to a Petition for Constitutional interpretation.

5 He argued that the Petition should have applied to High Court for an order of mandamus or even an application for contempt of court but not a constitutional petition.

Counsel for the Respondents also submitted that a formal application was made to have the property of the Petitioner attached. He submitted that the
10 orders to attach were lawfully granted under the provisions of sections 71, 72 and 73 of the Anti-Money Laundering Act.

Counsel for the Respondents further argued that the Petitioner could have applied for a review or setting aside of the said orders instead of filing a constitutional petition. He argued that the petition did not disclose any issue
15 for constitutional interpretation and prayed that the petition be dismissed.

Considerations of the Petition

I have considered the Petition and the answer to the Petition. I have also considered the submission by the counsel to the parties to the Petition and the legal authorities relied on for which I am grateful.

20 A close scrutiny of the declarations sought by the Petitioner Company and remedies already given to the Petitioner Company in **Leads Insurance Ltd V The Attorney General, The Director of Public Prosecutions and the Commandant/Officer in Charge Kireka (SIU)** Miscellaneous Cause No. 03 of 2015 dated 22nd January 2015 and the Judgment dated 30th March 2016

Leeds Insurance Company V Attorney General Civil Suit No. 056 of 2015

have a lot in common. The decisions in those two matters at the High Court relate to release by the Second Respondent (DPP) of titles belonging to the Petitioner Company the Uganda Insurance Regulatory Authority within seven days of the Ruling in Miscellaneous Cause No. 03 of 2015. The Judgment against the Attorney General in Civil Suit No. 056 of 2015 was to declare that the Ruling in Miscellaneous Cause No. 03 of 2015 had not been complied with.

Indeed the Attorney General was sanctioned with general damages (Shs 200,000,000/=) and punitive damages (Shs 300,000,000/=) for

noncompliance. It is clear that to date the decisions of the High Court have not been complied with. To my mind that is the reason for this Petition namely, to obtain enforcement of the High Court decisions and not Constitutional interpretation. This is the line of argument as well for the first and second

Respondents both represented by counsel from the Attorney General's Chambers. It is incredible that the Respondents would take this line of argument well aware that they are in clear default of the existing court orders simply hoping that the problem will go away. The detailed Judgment of the Hon Justice Musota J. (as he then was) in **Civil Suit No 056 of 2015** (supra) outlines the illegality and unconstitutionality of the noncompliance of the

Orders of Hon. Justice Yasin Nyanzi J. in **Miscellaneous Cause No. 03 of 2015** (supra). It is of no additional value for me to reiterate the legal reasoning behind those court orders. A court order is a court order and should be complied with as counsel for the Petitioner correctly argued and cited the case of **Hadkinson V Hadkinson** (Supra). Such court orders do not need the

Constitutional Court to give them further interpretation. If the Respondents were not happy with these decisions they should have appealed them instead

of ignoring them. The court orders and especially so in **Miscellaneous Cause No. 03 of 2015** (Supra) cover both the Respondents in this present Petition. The second Respondent cannot run away from that fact by arguing they were not a party in **Civil Suit No. 056 of 2015** (Supra). For five years these court
5 orders have not been complied with by both the Respondents. The Respondents are therefore in contempt of the orders of the High Court. Ordinarily this Court would not have given audience to the Respondents until they had purged themselves of this contempt but because this Petition was determined on the basis of written submissions the opportunity to do so by
10 this Court did not arise.

Whereas I find that this Petition does not disclose a cause of action because there is no question for Constitutional interpretation, I cannot turn a blind eye to the fact of contempt of court by the Respondents as this contempt clearly and for a long time has impeded the course of justice.

15

Final Result

Given my findings above, I hereby;

1. Order that the Respondents individually and collectively comply with the court orders in Miscellaneous Cause No. 03 of 2015 and Civil Suit
20 No. 056 of 2015 and do so within 14 days of the date of this Judgment.
2. Dismiss the Petition for it does not disclose a cause of action.
3. By reason of the contempt of the Respondents deny them costs of the Petition and order that each party bear their own costs.

25 **I so Order**

Dated at Kampala this 1st day of March 2021



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HON. MR. JUSTICE GEOFFREY KIRYABWIRE JA/JCC

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 5 OF 2017

(Coram: Kakuru, Kiryabwire, Cheborion, Kibeedi, JJ.A/CC & Kasule, Ag. J.A/CC)

LEAD INSURANCE LIMITED:.....PETITIONER

VERSUS

1. ATTORNEY GENERAL

2. DIRECTOR OF PUBLIC PROSECUTIONS:.....RESPONDENTS

JUDGMENT OF CHEBORION BARISHAKI, JA/CC.

I have had the benefit of reading in draft the Judgment of my learned brother Kiryabwire, JA/CC; the submissions of the parties are set out therein and I need not repeat them. In this Judgment, I set out my reasons for allowing the Petition partly.

The petitioner is the registered proprietor of several pieces of land with the following descriptions, as per the certificates of title: Kyadondo Block 232 Plot 1685, Kyadondo Block 217 Plot 843, Kyadondo Block 253 Plot 110, LRV 2572 Folio 20 Plot 1971 Kyadondo Block 244 and LRV 1986 Folio 6 Plot 810 at Bukoto and was in possession of the respective duplicate certificates at its registered office until the 13th day of November, 2014.

On that date, the certificates were confiscated by the police following a search conducted at the petitioner's registered office. It subsequently came to light that

the certificates of title were confiscated at the insistence of the then Director of Public Prosecutions (DPP), and it became clear that they could only be released upon getting his clearance. The DPP's reasons for holding the petitioner's certificates of title are not very clear, but there is a theory, that the DPP had suspicions that because one of the directors of the petitioner had been charged for corruption involving alleged theft of tax payers' money, the petitioner may have acquired the pieces of land in question using proceeds of that illicit money.

At all material times, the petitioner carried out insurance business and the said pieces of land, valued at Ug. Shs. 3,580,000,000/= comprised some of the assets on which the company's solvency was hinged. Following the seizure of the certificates of title at the instance of the DPP, the insurance regulator de-recognized the relevant pieces of land as assets on which the valuation of the petitioner's capital could be based. As a result the petitioner was no longer able to meet the minimum capital requirement of Ug. Shs. 4,000,000,000/= for insurance business which caused the insurance regulator to refuse to renew the petitioners licence for the year 2015.

The petitioner commenced proceedings in the High Court to compel the DPP to release its certificates of title. In an order dated 22nd January, 2012 the Court ordered the DPP to release the certificates of title. Although the DPP did not appeal against the court order, he did not abide by it. This prompted the petitioner to commence proceedings for contempt of Court against the Attorney General vide High Court Civil Suit No. 0056 of 2015. In a judgment dated 20th of March, 2016, the High Court held the Attorney General and its agents including the DPP to be in contempt of Court for refusing to abide with the earlier order. However, over 4 years later, the petitioner's certificates of title have never been returned.

By the present Petition, the petitioner is protesting the conduct of the DPP. He alleges that in continuing to hold the petitioner's title deeds, when the petitioner has not been subjected to any criminal proceedings; and there exist Court orders declaring the detention of the petitioner's title deeds unlawful and that they

should be returned to the petitioner, the DPP is acting in contravention of Articles 20 (1) & (2), 26, 120 (5) and 128 (3) of the Constitution.

Although the Petition makes allegations of breach of several rights of the petitioner namely; right to property and right to a fair hearing among others, I agree with the conclusion reached by my learned brother Kiryabwire JA/JCC that these issues raise no question for interpretation of the constitution. In my view, the separate most significant issue with which the Petition is concerned is the need to ensure the effective administration of justice. This issue ought to be severed from the rest of the issues which raise no cause of action and be determined.

The constitutional order in Uganda is premised on interalia, values of democracy and one of the key tenets of democracy is the respect for the rule of law and the existence of a strong and efficient justice system to assist in the peaceful resolution of disputes. Article 126 (1) of the Constitution vests the courts of judicature in Uganda with judicial power and the courts dispense functions which contribute to the effectiveness of the justice system. It therefore, follows that the constitution requires every one, private or public to respect the orders made by competent Courts and avoid acting in contempt of those orders.

To effect the administration of justice and ensure sanctity of the rule of law, persons who act in contempt of Court must be punished. On this point I agree with the observations of Gillard, J. of the Supreme Court of the **Victoria State, Australia in the case of Law Institute of Victoria Limited vs. Sylvester Finbarr Nagle [2005] VSC 47**, that:

“It is vital to the administration of justice in this State that a person bound by an Order obeys it. Disobedience of an order poses a threat to the administration of justice and attacks its very foundation. It threatens the rule of law and its destruction results in anarchy and a return to the law of the jungle. If a person bound by an order willfully refuses to obey it and is not severely punished for willful disobedience, then parties in litigation will have no confidence in the legal system. Respect for the system must

be maintained. There is a public interest factor, in punishing a contemnor in most cases, especially where the contempt is a criminal one."

In **Amrit Goyal vs. Harichand Goyal and 2 Others**, Court of Appeal Civil Application No. 109 of 2004, it was held that a court order is a court order. It must be obeyed as ordered unless it has been set aside or varied. It is not a mere technicality that can be ignored. If court orders were allowed to be ignored with impunity, it would destroy the authority of judicial orders which is the heart of all judicial systems and what would follow is chaos and anarchy.

At common law, there was a distinction between criminal contempt and civil contempt of Court. This distinction was explained by Kellock, J. of the Supreme Court of Canada in the case of **Poje vs. Attorney General for British Columbia** [1953] 1 S.C.R 516, relying on a passage in the textbook Oswald's Contempt of Court, 3rd edition, as follows:

"...the distinction between contempts criminal and not criminal seems to be that contempts which tend to bring the administration of justice into scorn, or which tend to interfere with the due course of justice, are criminal in their nature; but that contempt in disregarding orders or judgments of a Civil Court, or in not doing something ordered to be done in a cause, is not criminal in its nature. In other words, where contempt involves a public injury or offence, it is criminal in its nature, and the proper remedy is committal—but where the contempt involves a private injury only it is not criminal in its nature."

Contempt of Court ought to be taken seriously and there was a view at common law that acts of contempt had a quasi-criminal nature. In **Ambard vs. Attorney-General of Trinidad** [1936] AC 322, Lord Atkin stated:

"Everyone will recognize the importance of maintaining the authority of the Courts in restraining and punishing interferences with the administration of justice whether they be interferences in particular civil or criminal cases or take the form of attempts to depreciate the authority of the Court themselves. It is sufficient to say that such interferences when they amount to contempt of Court are quasi-criminal acts and orders

punishing them should generally speaking be treated as orders in criminal cases.”

According to the **Halsbury’s Laws of England, (Volume 9(1) (Reissue)** at paragraph 402:

“Contempt of court may be classified as either (1) criminal contempt, consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced; or (2) contempt in procedure, otherwise known as civil contempt, consisting of disobedience to the judgments, orders or other process of the court, and involving a private injury.”

In the present case, there are existing court orders which the DPP, a constitutional authority in the country has flagrantly refused to obey. It is the duty of this Court to remind the DPP that the power it exercises is derived from the people as mandated by the Constitution under which they are appointed to office. The people of Uganda consented to be governed in accordance with the Constitution and what the Constitution demands ought to be done without excuse.

It is also the duty of this Court to remind the DPP that whether or not they were a party to the proceedings pursuant to which the Court order directing them to return the petitioner’s titles was made, is immaterial, in the finding of contempt findings against them. The law is that a non-party may be held liable for contempt if there is evidence indicating that he/she was aware of the court order but chose not to obey it in any way.

The spirit of the Constitution which is its animating principle informs its interpretation and contributes to the existence of a cause of action in the terms of Article 137 (1) of the Constitution. As mentioned above, ensuring effective administration of justice is part of the spirit of the Constitution. Therefore, the acts of the DPP in acting in contempt of the orders of the High Court requires the intervention of this Court to safe guard the Constitutional order set out in

the Constitution which requires all persons, whether public or private individuals to respect Court orders. In that regard, no exceptions can be made for the DPP as all persons are equal under the law, with which they must comply.

There are several permissible punishments for contempt of court, varying from committal or the Court requiring the contemnor to purge him/herself of the contempt. This Court ought to condemn in the strongest terms possible the DPP's acts of non-compliance with the orders of the High Court.

I have deliberately stayed clear of delving into a discussion of the decision of Gidudu, J. of the Anti-Corruption Division of the High Court in Miscellaneous Application No. 3 of 2016, which has been relied on by the respondents as an excuse for their acts constituting contempt of Court. This is wrong because first Gidudu, J. was not sitting on appeal from the other decisions of the High Court by which the DPP was required to release the petitioner's certificates of title. Whatever observations Gidudu, J. expressed in his ruling, with the greatest of respect cannot whittle down the effect of the earlier High Court orders.

Secondly, given that the Petitioner is a distinct person in law from its shareholders and directors and has never been charged for any criminal act, it could not have its assets restrained in the manner proposed in that ruling.

When this petition came up for hearing on 31/ 8/2020, the respondent was directed by this Court to deposit the certificates of title in his possession the subject matter of this Petition with the Registrar of this Court within two weeks of the order. The respondent has not done so.

I would therefore allow this petition in part and further make the following orders:-

1. The following certificates of title in respect of property of the Petitioner held by the respondent be and are hereby cancelled;

Mailo Register

- a) Kyadondo Block 232 Plot 1685,

Mailo Register

b) Kyadondo Block 217 Plot 843,

Mailo Register

c) Kyadondo Block 253 Plot 110,

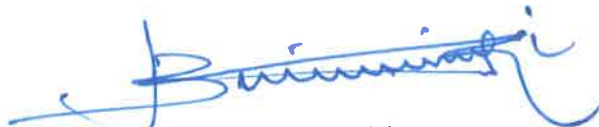
d) LRV 2572 Folio 20 Plot 1971 Kyadondo Block 244

e) LRV 1986 Folio 6 Plot 810 at Bukoto

2. The Commissioner for Land Registration is hereby ordered to issue special Certificates of title to the Respondent in respect of the places of the Certificates of titles set out in paragraph 1 above.
3. The Commissioner for Land Registration issues a report to this Court certifying that the order of this Court in paragraph (2) above has been complied with, within 14 days from the date hereof.

I would so order.

Dated at Kampala this 18th day of March 2021.



Cheborion Barishaki

Justice of Appeal/Constitutional Court

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. NO.5 OF 2017**

LEADS INSURANCE LIMITED PETITIONER

VERSUS

1. ATTORNEY GENERAL

2.DIRECTOR OF PUBLIC PROSECUTIONS 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 Muzamiru Mutangula Kibeedi, JA/JCC

Hon. Mr. Justice Remmy Kasule, Ag. JA/JCC

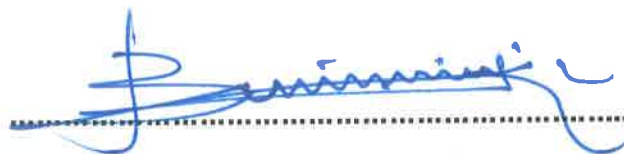
Correction under Slip Rule. Rule 36 of The Judicature (Court of Appeal Rules)

Directions S.1 13-10.

The majority decision of the Court set out at page 7 of the judgment of Cheborion Barishaki, JA/JCC paragraph 2 thereof is hereby corrected by substituting the word “Respondent” with the word “Petitioner”. In the result paragraph 2 thereof shall read as follows;-

2. The Commissioner for Land Registration is hereby ordered to issue special Certificates of title to the Petitioner in respect of the places of the Certificates of titles set out in paragraph 1 above.

Dated at Kampala this.....1st.....day ofApril..... 2021



Cheborion Barishaki

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Kakuru, Kiryabwire, Cheborion, Kibeedi, JJ.A/CC & Kasule, Ag. J.A/CC)

CONSTITUTIONAL PETITION NUMBER 05 OF 2017

Between

Leads Insurance LimitedPetitioner

And

1. Attorney General

2. Director of Public ProsecutionsRespondents

Judgment of Muzamiru Kibeedi, JA/JCC

I have had the advantage of reading in draft the lead Judgment prepared by my Learned Brother, Kiryabwire, JA/JCC. I concur with his reasoning and the decision that this petition raises no issues for constitutional interpretation.

I have also had the advantage of reading in draft the Judgment of my Learned Brother, Cheborion Barishaki, JA/JCC . I agree with his observations about the need for this court to ensure the effective administration of justice and the sanctity of the rule of law by punishing persons who act in contempt of court. However, I hold the view that the court best positioned to enforce any Court Orders in contempt of which any person is alleged to be, is the very Court which issued the Orders (otherwise termed herein as “the issuing court”). The issuing court has the added advantage of being possessed with the background facts and the original file and ought to be left to be fully in charge of its proceedings and resultant orders without being interfered with or being made to feel inadequate to discharge its mandate without reinforcement from other courts, except in accordance with the law. Otherwise to allow litigants to freely move from one court to another in search for one a party thinks will be most suitable to enforce a Court Order (otherwise termed as “Forum Shopping”) has an inherent risk of abuse of the court system, duplicity and ultimately mitigating against the intended goal of ensuring a proper administration of justice. Counsel in this matter ought to have raised the complaints set out in the petition before

the issuing court(s) and, in case of dissatisfaction, access the higher courts through the appellate procedure prescribed by law.

In the premises, I would dismiss the Petition in the terms proposed my Lord Kiryabwire, JA/JCC.

Dated at Kampala this 18th day of March 2020



Muzamiru Kibeedi

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA

AT KAMPALA

CONSTITUTIONAL PETITION NO. 05 OF 2017

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Leads Insurance Limited ::::::::::::::::::::::::::: Appellant

Versus

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1. Attorney General

2. Director of Public Prosecutions ::::::::::::::::::: Respondents

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Coram: Hon. Mr. Justice Kenneth Kakuru, JA/CC

Hon. Mr. Justice Geoffrey Kiryabwire, JA/CC

Hon. Mr. Justice Cheborion Barishaki, JA/CC

Hon. Mr. Justice Muzamiru Kibeedi, JA/CC

Hon. Mr. Justice Remmy Kasule, Ag JA/CC

Judgment of Remmy Kasule, Ag. JA/CC

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I too have had the benefit of reading the draft Judgments of my learned brothers on the Coram.

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For emphasis, I wish to go on record to state that it is a grave undermining of the Rule of Law in Uganda by a Constitutional body of the Director of Public Prosecutions set up under Article 120 of the Constitution to refuse to comply with Court orders issued under **High Court Miscellaneous Cause No. 03 of 2015** and **High Court Civil Suit No. 056 of 2015** whereby the

Director of Public Prosecutions was ordered by the High Court to hand over to the petitioner a number of certificates of titles to the suit land. It is an act of defiance that must not be tolerated by this Court, the whole Judiciary and indeed the whole governance of the Country.

The Rule of law is equality before the law by equal subjection of all classes of people to the ordinary law of the land, administered by the ordinary law Courts so that as Lord Denning MR stated in **COURIER V UNION OF POST OFFICE WORKERS [1977] QB PP 761-762:**

“To every subject in this land no matter how powerful, I would use Thomas Fuller’s words over 300 years ago; “be you never so high, the law is above you”.

The Supreme Court of Nigeria in **GOVERNOR OF LAGOS STATE V OJUKWU (1986)1NWLR(Pt.18) P.622**, dealt passionately and extensively on the obligation by everyone to obey Court orders by holding that it is a very serious matter for anyone to flout a positive order of Court and proceed to insult the Court further by seeking a remedy in a higher Court while still in contempt.

An order of Court must be obeyed even if such an order is perverse, until such a time that the said order is set aside by a competent Court. A flagrant flouting of an order of the Court by the executive is an invitation to anarchy. See also: **NIGERIAN ARMY Vs MOWARIN (1992) 4NWLR (Pt. 235), P.345.**

The none compliance with the Court orders by the Director of Public Prosecutions, an institution that is part of the Executive in the governance of the Country, is an act of defiance that must

not be tolerated by this Court, the Court that issued the orders,
the whole Judiciary and indeed the whole democratic
governance of the Country.

65 I otherwise agree with the conclusions as set out by His
Lordship Cheborion Barishaki, JA/JCC and orders he proposes
including those as to costs.

In case of further contempt by the DPP after the delivery of this
Judgment, then necessary steps ought to be immediately taken
by this Court against the Director of Public Prosecutions that
70 will ensure respect and compliance by the DPP with orders
issued by the Courts of law.

Dated at Kampala this.....^{18th} day of.....^{March} 2021.

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.....
Remmy Kasule
Ag. Justice of Appeal/Constitutional Court

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