

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 002 OF 2020

ATUBUA LETIA SHAMIL=====PETITIONER

VS

ATTORNEY GENERAL=====RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A. /JCC.

HON. LADY JUSTICE IRENE MULYAGONJA, J.A. / JCC.

HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, J.A. / JCC.

HON. LADY JUSTICE EVA LUSWATA, J.A./ JCC.

HON. MR. JUSTICE OSCAR KIHICA, JA/JCC

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

Introduction

This Petition is brought under Article 137(3) of the Constitution of the Republic of Uganda 1995 (herein after referred to as the Constitution) and the Constitutional Court (Petitions and References) Rules 2005.

The background to the Petition

The Petitioner is an accountant who obtained his qualifications from Singapore. He disputes the requirement of the Institute of Public Accountants of Uganda to first pass qualifying examinations conducted by the Institute's examinations board and then complete practical training before the accountants in Uganda can become members of the Institute.

In particular, the Petition challenges the Constitutionality of section 5 subsection 3 (b) of the Accountants Act 2013 alleging that it denies membership to Accountants who have studied in foreign countries or have foreign accountancy qualifications.

It is also contended by the Petitioner that Section 5 subsection 3 (b) of the Accountants Act 2013 denies direct membership into the Institute of Certified Public Accountants which is contrary to Article 21 of the Constitution of Uganda which provides that all persons are equal before the law.

The Petitioner drafted the Petition in an unconventional manner and sought Declarations and Orders which can be summarised as follows: -

- a) A declaration that section 5 subsection 3 (b) of the Accountants Act 2013 is unconstitutional as it does not state the specific society to be the Institute of Chartered Secretaries and Administrators and not any other Accounting Society.
- b) Costs if the Court granted them formally but it is the position of the Petitioner that Government of Uganda would not pay them.

In answer to the Petition, the Respondent opposed the Petition on ground that
45 the Petition did not raise any questions or issues for Constitutional
interpretation.

ISSUES FOR DETERMINATION

The Parties framed the following issues for the court's determination;

1. Whether the Petition raises any issues for Constitutional Interpretation.
- 50 2. Whether Section 5 (3) of the Accountants Act, 2013 is inconsistent with
Article 21(1) of the Constitution of Uganda.

Representations

The Petitioner represented himself while the Respondent was represented by
55 Mr. Brian Musota, a State Attorney.

Duty of the Court

Before we delve into the consideration of this Petition, it is important that we
recall some of the Roles of a Constitutional Court and the principles that guide
its decisions.

60 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
65 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 regard to technicalities.

With regard to principles of Constitutional Interpretation, Article 137 (1) of the Constitution provides: -

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

In this regard Article 137(3) (a) (b) provides;

"an act of parliament or any other law or anything in or done under the authority, of any law; or

75 *"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..."

As to remedies Article 137 (4) provides:

80 *"...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

85 *(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 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, 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 W. Wambuzi (Chief Justice as he 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 of any act, omission or law which merely fulfilled the requirement of pleading under Article 137 (3) of the Constitution. Therefore, there must be in issue a controversy involving the Interpretation of the Constitution before the matter can be referred to the Constitutional Court.

In **Davis Wesley Tusingwire V Attorney General** Constitutional Petition No. 2 of 2013 this Court went on to hold:

*"... 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
110 *principal applies to subsidiary legislation... “*

In interpreting the Constitution, the Rule of harmony or completeness requires that Constitutional provisions should not be looked at in isolation. Rather, the Constitution should be looked at as a whole with no provision destroying another but supporting each other. This is the Rule of harmony, the Rule of
115 completeness and exhaustiveness and the Rule of Paramountcy of the Constitution. (**Paul Semogerere v Attorney General Constitutional Appeal No. 1 of 2002 (SC); Attorney General v Susan Kigula and Others Constitutional Appeal No. 03 of 2006 (SC).**)

To determine the Constitutionality of a section of a statute or Act of Parliament,
120 court has to consider the purpose and effect of the impugned statute or section thereof. If its purpose does not infringe a right guaranteed by the Constitution, the court has to go further and examine the effect of its implementation. If either its purpose or the effect of its implementation infringes a right guaranteed by the Constitution, the impugned statute or section thereof shall
125 be declared unconstitutional. This principle was applied in **Salvatori Abuki v Attorney General Constitutional Petition No.2 of 1997.**

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

130 We shall keep these principles and others in mind while resolving the issues in this Petition.



Ground 1: Whether the Petition raises any issues for Constitutional Interpretation?

Appellant's submissions

135 The Petitioner submitted that section 5 subsection 3(b) of the Accountant Act created a scenario of elective discrimination where some professions were favored against others in contravention of Article 21(1) of the Constitution.

He further argued that the Act was ambiguous because under Section 5 (2) (b) set out who a member of the Institute is and then immediately thereafter under
140 Section 5 (3) (b) declares who is ineligible under the same Act.

He further submitted that section 5 subsection 3(b) was also unclear in how it ought to be implemented.

Respondent's submissions

Counsel for the Respondent submitted that the Petition did not disclose any
145 questions for Constitutional Interpretation.

Counsel submitted that not every violation of the Constitution or a validity of a claim must end up in the Constitutional Court (**Mbabali Jude V Edward Kiwanuka Ssekandi** Petition No 028 of 2012). Counsel further referred to the Judgment of Kenneth Kakuru JCC (as he then was) in **Mbabali Jude** (Supra)
150 where he held that: -

"...the Constitutional Court had no original jurisdiction merely to enforce rights and freedoms enshrined in the Constitution in isolation to interpreting the Constitution and resolving any dispute as to the meaning of its provisions... to be

155 *clothed with jurisdiction at all, the Constitutional Court must be petitioned to determine the meaning of any part of the Constitution in addition to whatever remedies are sought from it in the same petition..."*

160 It was submitted by counsel for the Respondent that the Petitioner alleges that his rights were violated and claims declaration and redress. However, counsel for the Respondent submitted that this Petition raised issues that could be enforced by a competent court. If there then did arise a question for the interpretation of the Constitution, the question could at that point in time be referred to the court.

Court's Findings

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

This Petition points to discrimination as who may be enrolled as a member of the Institute of Chartered Accountants of Uganda (ICPAU). In Para 1 of his Affidavit in Support of his Petition the Petitioner depones: -

170 "...That I am a male adult Ugandan of sound mind and a Certified Chartered Accountant..."

175 The Petitioner unfortunately does not attach to the said affidavit any document to support this deposition. There is even no correspondence between the Petitioner and ICPAU which could have sparked this conflict. We for example do not know where or in which country the Petitioner is enrolled as a Certified Chartered Account. He only states under Para 2 of the Affidavit in Support that



he has a foreign accountancy qualification, and has been refused to enroll as a Chartered Accountant in Uganda.

180 It was the Attorney General's contention that this court did not have jurisdiction to entertain the Petition as it does not raise any issues for Constitutional Interpretation under Article 137.

Counsel for the Attorney General submitted that the complaints raised in the Petition related to violation of rights which call for enforcement under Article 50 of the Constitution and not Interpretation of the Constitution. He prayed that
185 the Petition be dismissed with costs for being incompetent.

Section 5 of the Accountants Act 2013 provides as follows: -

“

(2) A person shall be eligible for full membership of the Institute if he or she

*(a) passes the qualifying examinations conducted by the examinations board and
190 completes the practical training prescribed by the Council; or*

(b) is a member of a society or an institute of accountants approved by the Council as being a society or institute with a status equivalent to that of the Institute.

(3) For the purposes of subsection (2) (b), the Council may: -

195 *(a) determine the specific class of members of a society or an institute of accountants approved as being a society or institute with a status equivalent to that of the Institute, that is eligible for membership; or*

(b) provide that a member of a specific society or institute of accountants is not eligible for membership of the Institute unless he or she passes the qualifying examinations conducted by the examinations board and completes the practical training prescribed by the Council..." (Emphasis ours).

This Petition as presented is devoid of essential facts as to what constitutes discrimination. The Petition is couched in generalities and therefore it is impossible to determine with clarity the controversy involving the Interpretation of the Constitution. A quick look at the Accountants Act shows that it has several criteria for membership. Where is the proof that these provisions have been applied in a discriminatory manner? It appears to us that if the Petitioner requires a remedy based on the broad facts that he has pleaded in this Petition, then it is better for him to file a regular suit in the relevant trial court so the facts are properly pleaded and the dispute heard on the merits. Should a constitutional question arise during trial, then a Reference can be made to this Court for determination.

We therefore agree with the Respondent that this Petition does not disclose a question for constitutional interpretation. That being our finding we shall not go further in addressing this Petition.

Final Orders

In the circumstances we hereby dismiss the Petition.

As to costs we find that it is in the interests of Justice that each party bear their own costs as the Petitioner is self-represented.

WE SO ORDER.

Dated at Kampala this22nd.....day ofSeptember.....2023.


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HON. MR. JUSTICE GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

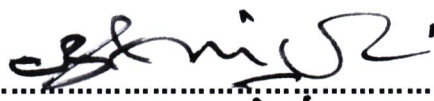
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HON. LADY JUSTICE IRENE MULYAGONJA, J.A. / JCC.

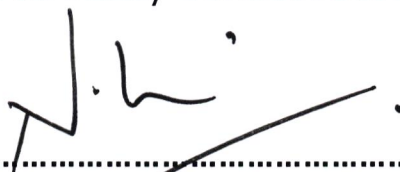
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HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, J.A. / JCC.

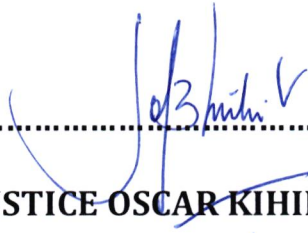
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HON. LADY JUSTICE EVA LUSWATA, J.A./ JCC.

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JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

A handwritten signature in blue ink, appearing to read 'Oscar Kihika', is written over a horizontal dotted line.

HON. MR. JUSTICE OSCAR KIHICA, JA/JCC

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

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