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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO.001 OF 2021

BETWEEN

GEOFFREY NANGUMYA ::::::::::::::::::::::::::::::::::::::: PETITIONER

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AND

1. ATTORNEY GENERAL

2. LAW COUNCIL

3. EMMY TUMWINE::::::::::::::::::::::::::::::::::::: RESPONDENTS

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CORAM:

HON MR. JUSTICE F.M.S EGONDA-NTENDE, JCC

HON LADY JUSTICE CATHERINE BAMUGEMEREIRE, JCC

HON LADY JUSTICE MONICA MUGENYI, JCC

HON LADY JUSTICE EVA K. LUSWATA, JCC

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HON MR. JUSTICE OSCAR KIHKA, JCC

JUDGMENT OF HON. LADY JUSTICE EVA K. LUSWATA, JCC

Background

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1] The brief facts of this petition were related in the judgment in
HC Civil Appeal No. 93/2018, the suit the petitioner filed to

5 contest a decision of the Uganda Law Council, the 2nd
respondent here.

2] In brief, it was stated that sometime during November 2013, the
Petitioner (an advocate) was instructed by Mr. Tumwine the 3rd
respondent, to recover for him Ugx 50,000,000/= with interest
10 and damages for money he had paid in a failed land transaction.
The petitioner filed a suit to recover that sum but before it could
be decided, Mr. Tumwine withdrew instructions and contracted
new lawyers. The new lawyers confirmed that the petitioner
had in fact previously received Shs. 63 million in full settlement
15 of the Mr. Tumwine's claim and in addition, a consent was filed
and executed to close the case. When consulted, the petitioner
admitted receiving the above sum, but claimed that Mr.
Tumwine had with reasons objected to sign the consent
judgment and that, Mr. Tumwine also owed the petitioner's firm
20 money for several matters handled for him. That the sum
received was retained as a lien for outstanding legal fees. Mr.
Tumwine who claimed not to have been informed of the
payments, was aggrieved by the petitioner's explanation and
thereby lodged a complaint before the Disciplinary Committee
25 of the Law Council (hereinafter the Committee) *vide* LCD
70/2015. The complaint was decided in Mr. Tumwine's favour
and the following orders were made:

- a) The petitioner was ordered to pay the complainant (3rd
Respondent) Ugx 59,900,000/= (Uganda Shillings Fifty-
30 Nine Million Nine Hundred Thousand Only).
- b) Costs to the complainant of Ugx 1,000,000/= (Uganda
Shillings One Million Only).

- 5 c) Pay the Committee costs of Ugx 1,500,000/= (Uganda Shillings One Million Five Hundred Shillings Only).
- d) Interest on the sums in (a), above at 28% per annum with effect from March 2015.
- 10 e) The respondent was suspended from practice for a period of two (2) years less the time he had so far served as the interlocutory suspension earlier imposed against him on 24th November 2017, pending the hearing of the complaint i.e. serve a further suspension of 16 months.
- 15 f) The Secretary Law Council is to take note of the disciplinary action taken against the appellant and sanctions imposed and cause them to be inscribed on his official record. If within five years, the appellant appears before the committee for any disciplinary action for professional misconduct involving client's money, he
- 20 would stand to be disbarred and his name truck off the Roll for good.

3] The petitioner being dissatisfied with the decision of the Committee lodged HC Civil Appeal No. 93/2018, which was dismissed. When dismissing the appeal, the Judges of the High Court upheld all the orders of the Committee with an order that they take immediate effect. It was as a result of the above Court orders that the petitioner commenced this Constitutional Petition under Article 137(3) of the Constitution and the Constitutional Court (Petitions & References) Rules, 2005. The petitioner alleged that the

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the aforementioned judgement was inconsistent with and in

5 contravention of the Constitution. He thus petitioned this
Court seeking the following declarations:

10 a) *The act of ordering the Petitioner to remit to the 3rd
respondent Ugx 59,900,000/= (Uganda Shillings Fifty-
Nine Million Nine Hundred Thousand Shillings Only) yet
he had a lien on the same for unpaid legal services
rendered to the 3rd respondent by the petitioner is
inconsistent with and/or in contravention of Article 26,
28, 42 and 44(c) of the Constitution.*

15 b) *The act of speculating the petitioner's involvement in
future acts of professional misconduct and to direct the
Law Council to impose punishment on the appellant if
within five years he appeared before the Committee for
any disciplinary action for professional misconduct
involving client's money is an act of interference of the
dispensation of justice by the Law Council and thus is
inconsistent with and/or in contravention of Objective I(i)
of the National Objectives and Directive Principles of
State Policy and Articles 28, 42, 44(c) and 2(2) of the
Constitution.*

25 c) *A declaration that the act of directing the 2nd respondent
on what kind of punishment to impose on the petitioner
by disbaring and having his name struck off the roll for
good in the event that he appears before it on cases
involving client's money and is inconsistent with and/or
in contravention of Objective I(i) of the National
Objectives and Directive Principles of state policy and
Articles 28, 42, 44(c) and 2(2) of the Constitution.*

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d) That the act of interfering with the independence of the Disciplinary Committee of the Law Council impinges on the impartiality of the Disciplinary Committee towards the Petitioner and is inconsistent with and/or in contravention with Article 28(1) of the Constitution.

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e) A declaration that the Judgement and orders made therein be nullified.

f) Costs of the petition.

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4] The 1st and 2nd respondents in their answer to the petition contended that the petition is misconceived, lacks merit and raises no issues and questions for constitutional interpretation. It was emphasized that the appellant was afforded a right to a fair hearing and the High Court made its decision when exercising its appellate jurisdiction and in doing so, confirmed the orders of the Committee, but did not impinge on or interfere with the latter's independence. Further that the High Court did not impose a prior punishment but only made orders to deter the appellant from future similar professional misconduct, which was reasonable and justifiable in the circumstances. In conclusion, it was specifically contested that the decision of the High Court was inconsistent and contravened Articles 28, 42, 40 and 44(c) of the Constitution of Uganda. They prayed for dismissal of the petition with costs.

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5] The 3rd respondent in his answer to the petition related the facts leading to the decision of the Committee. He too contested the petition and agreed with most of what his co-respondents had pleaded. He added that save for Shs. 3,100,000/= over which the petitioner had a lien, he was liable to refund to him Shs.

5 59,000,000/= as ordered by the Committee within its mandate,
and not an act done in contravention of the Constitution. That
the petition only seeks to challenge a judicial decision but raises
no question for constitutional interpretation as provided for
under Article 137 of the Constitution. In conclusion, that the
10 decision in HC Civil Appeal No. 93 of 2018 did not infringe upon
the rights of the petitioner as stipulated in Articles 26, 28, 42
and 44(c) of the Constitution but rather restored Mr. Tumwine's
rights as the rightful owner of the decreed sum. He too prayed
for dismissal of the petition with costs.

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Representation

6] At the hearing of the petition on 27/9/2013, the petitioner was
represented by Mr. James Muhumuza assisted by Mr. Luwalira
Muhammad, while the 1st and 2nd respondents were
20 represented by Mr. Ocol Ambrose and Ms. Patience Mutoro,
both senior State Attorneys. Mr. Tumwine was represented by
Mr. Dan Busingye. At the hearing, the Court permitted counsel
to adopt their submissions as the legal arguments in support of
the petition. We note that in addition to those submissions, Mr.
25 Bageya Motooka a senior State Attorney filed an affidavit in
support of the 1st and 2nd respondent's answer to the petition.
Indeed, much of what the evidence there is, a restatement of
their filed replies.

Issues

7] I have confirmed from the record that there was no conferencing
at which the parties could have framed agreed issues for
determination by this Court. As a result, in their submissions,

5 each party formulated its own set of issues. However, for consistency, I will adopt the issues raised by the 1st and 2nd respondents, as the set which best represents the matters that appear to be in dispute. There are as follows:

- 10 i. Whether the petition raises any questions for constitutional interpretation.
- ii. Whether the decision of the High Court in Civil Appeal No. 93 of 2018 contravenes Articles 26, 28, 42, 40 and 44(c) of the Constitution.
- 15 iii. Whether the High Court interfered with the independence of the Law Council's Disciplinary Committee contrary to Article 28 of the Constitution.
- 20 iv. Whether the sanctions imposed on the petitioner violate his rights guaranteed under Articles 28, 42, 40 and 44 and 2(2) of the Constitution.

I emphasize that this being the Constitutional Court, the first issue will be the pivotal question to be addressed. The Court has no mandate to consider the other three, if the facts in the petition raise no question for constitutional interpretation.

25 **Issue one.**

Petitioners submissions

8] As a precursor to their submissions, the petitioner's counsel submitted that the petition is brought under Article 137 of the Constitution of the Republic of Uganda and that this Court has jurisdiction to handle it. Counsel referred to the decision of
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5 **Joyce Nakachwa versus Attorney General & Others,**
 Constitutional Petition No. 2 of 2001 [2002] UGCC 1 in that
 regard. He argued then that the decision and findings of the
 decision of the High Court in **HC Civil Appeal No. 93 of 2018,**
 Geoffrey Nangumya versus Emmy Tumwine & 2 others
10 **(hereinafter the appeal)** contravenes Article 26(1), 28, 40, 42
 and 44(c) of the Constitution.

 9] Counsel also cited the Supreme Court decision of **Gavin**
 Edmondson Solicitors Limited Versus Haven Insurance
 Company Limited, (2018) UKSC 21, where it was held that a
15 solicitor is entitled to a common law retaining lien for payment
 of their costs and disbursements. He therefore considered that
 he had the benefit of a lien on the sum decreed and that by the
 committee ordering that he remits it to Mr. Tumwine, was
 deprivation of his property in contravention of Article 26 of the
20 Constitution. In his view, he was justified as an advocate to hold
 on to any of his client's property pending payment. Counsel
 further hinged his arguments on this Court's decision of
 Raphael Baku & Another versus Attorney General,
 Constitutional Petition No. 1 of 2003 to argue that the
25 petition satisfied the three tenets required for constitutional
 interpretation. In that, the acts complained of were stated, the
 constitutional provisions which were violated and the
 declarations sought, were also outlined.

 10] He in addition, attacked the order by the High Court directing
30 the Committee powers to discipline him for any future
 misconduct involving clients' money, as an act that interfered
 with the powers and impartiality of the Committee and thus

5 inconsistent or in contravention of Objective 1(i) of the National Objectives and Directive Principles of State Policy, and Articles 2(2), 28(1), 42, and 44(c) of the Constitution.

Respondent's submissions

10 11] In response, Mr. Ocol Ambrose for the 1st and 2nd respondents submitted that the petition is misconceived and does not raise any questions for constitutional Interpretation. He argued that the jurisdiction of the Constitutional Court is limited to interpretation of the Constitution, and therefore, mere reference
15 to constitutional provisions does not open the door to constitutional interpretation. Counsel considered that the petitioner wishes to apply and enforce the Constitution in as far as his rights are concerned, which is outside the jurisdiction of this Court. Counsel cited the Supreme Court decision of **Attorney General versus Major General David Tinyefuza, Constitutional Appeal No. 1 of 1997** and this Court's decision of **Francis Drake Lubega versus Attorney General and 2 Others, Constitutional Petition No. 37 of 2011**, in that regard.

25 12] Mr. Tumwine's counsel substantially agreed with his colleagues and cited the same authorities that explained the jurisdiction of this Court. Counsel added that during the hearings of the Committee, both parties were heard and the petitioner's appeal
30 against the decision of the Committee was dismissed. That knowing he had no further right of appeal, the petitioner chose to file this petition, when there is no question for constitutional interpretation. Mr. Tumwine's counsel considered the petition

5 a ploy by the petitioner to evade paying the decretal sum owed
to his former client. Counsel explored and then found baseless
the claim by the petitioner that the orders of the High Court
violated his rights under Articles 26, 28 and 42 of the
Constitution. It was also his view that in the petition, the
10 petitioner attempts to enforce what he thinks are his rights to
money that the High Court has already ruled on. Counsel then
concluded that the claims in the petition do not fall under the
jurisdiction of this Court and prayed that the same be
dismissed with costs.

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Analysis and decision of the Court

13] The Petition was presented in accordance with Article 137 (1)
and (3) of the Constitution which provides as follows:

20 (1) *Any question as to the interpretation of this
Constitution shall be determined by the Court of
Appeal sitting as the constitutional Court.*

(3) *“A person who alleges that;*

25 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
30 declaration to that effect, and for redress where
appropriate.”*

14] The issue of actions that are justiciable under Article 137(3) of
the Constitution has been the subject of numerous judicial
decisions of this Court and the Supreme Court. What stands
35 out in all of them is that for this court to have jurisdiction over

5 any issue or issues raised before it, interpretation of a provision
or provisions of the Constitution must be necessary in the
resolution the of the said issue(s). It was for example stated by
the Supreme Court in **Attorney General versus Major General
David Tinyenfuzza, (Supra)** that:

10 *“... as far as the case of General D. Tinyefunza v.
Attorney-General Constitutional, Appeal No.1 of 1997
[Unreported] is concerned. There is a number of facets
to the decision of the Supreme Court in that case.
Nevertheless, when it comes to that Court’s view of
15 the jurisdiction of the Court of Appeal as a
Constitutional Court, its decision in that case is that
the Constitutional Court has no original jurisdiction
merely to enforce rights and freedoms enshrined in
the Constitution in isolation to interpreting the
20 Constitution and resolving any dispute as to the
meaning of its provisions. The judgment of the
majority in that case, [Wambuzi, C.J., Tsekooko
J.S.C., Karokora J.S.C., and Kanyeihamba J.S.C], is
that to be clothed with jurisdiction at all, the
25 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. It is therefore erroneous for any petition to
rely solely on the provisions of Article 50 or any other
30 Article of the Constitution without reference to the
provisions of Article 137 which is the sole Article that
breathes life in the jurisdiction of the Court of Appeal
as a Constitutional Court.”*

35 In the same case, Wambuzi, CJ (as he then was) explained the
jurisdiction of this court succinctly in the following passage, at
page 24 of his opinion. He held that:

*“In my view, jurisdiction of the Constitutional Court is
limited in Article 137 (1) of the Constitution to*

5 *interpretation of the Constitution. Put in a different*
 way, no other jurisdiction apart from interpretation of
 the Constitution is given. In these circumstances, I
 would hold that unless the question before the
10 *Constitutional Court depends for its determination on*
 the interpretation of the Constitution or construction
 of a provision of the Constitution, the Constitutional
 Court has no jurisdiction.”

15] The Constitution neither defines nor sets out a criterion for
determining what amounts to a “*question as to the interpretation*
15 *of the Constitution*” Several attempts have been made to give a
definition. We shall consider one made in the recent decision of
this Court in **Foundation for Human Rights Initiative versus**
Attorney General, Constitutional Petition No. 53 of 2011.

Hon. Justice Christopher Madrama, JCC went to great length
20 to consider the meaning of the phrase; He had this to say:

“The mandate of the Constitutional Court only arises where
 there is a doubt or precisely a dispute as to the meaning of
 an Article or Articles i.e. a question as to
 interpretation.....

25 *My understanding is that the word “question” used in*
 Article 137(1) means “controversy” or imports the meaning
 of an “arguable issue” which discloses a genuine dispute
 about interpretation of the Constitution so as to resolve the
 controversy. If the word “question” under Article 137(1) is
30 *read to mean “controversy” with particular reference to*
 controversy as to interpretation, it would mean that the
 Constitutional Court ought to only determine petitions or
 references where there is a controversy or controversies
 about the meaning of a provision of the Constitution. This
35 *meaning is possible because the High Court has the*
 constitutional mandate to interpret any provision of the
 Constitution unless there is a dispute about meaning
 thereof.....An allegation of inconsistency with an
 article of the Constitution can fulfil the requirements of

5 Article 137(3) of the Constitution but it is not sufficient on
the face of it to merely allege breach or inconsistency with
an Article or Articles of the Constitution by any act,
omission or law. For the Constitutional Court to have
10 jurisdiction, such an allegation must have in it a
controversy as to interpretation of the Constitution of the
Republic of Uganda. It follows that the question before court
should involve a controversy about interpretation before the
Constitutional Court assumes jurisdiction in the matter. As
15 I have noted above, a question for interpretation must be an
arguable case about interpretation and where there is some
doubt about the meaning which the person having doubt
needs cleared or their point of view adopted by the court
while the adverse party has a contrary view about the
20 meaning and scope of an article of the Constitution. In other
words, it must be a doubt which makes the meaning of an
article controversial and which controversy should be
cleared by the Constitutional Court." Emphasis applied.

In the same case, Justice Mugamba who followed the decision
25 in **Joyce Nakacwa versus Attorney General, Kampala City**
Council & Anor, Constitutional Petition No. 2 of 2001,
held that:

30 *"The Constitution is very clear. It does not require a*
constitutional interpretation to determine whether a
person's constitutional rights have been violated for
example, if it is established that the person was
arrested without cause and detained for more than
24 hours without being taken to court. It is a matter
of drawing an inference which can be done by any
35 *competent court. In that case, an application for*
redress would be better entertained under Article 50
of the Constitution."

5 Further, in a latter decision of this Court it was held that for
the jurisdiction of the Court to be triggered, there must be
controversy as to whether or not the acts or omissions
complained of, are constitutionally permissible. See **Alenyo**
versus the Chief Registrar of Courts of Judicature & 2 Ors,
10 **Constitutional Petition No. 32 of 2014**

16] Applying the aforesaid criteria to the instant case, the question
that arises is, do the substantive issues raised here, call for
resolution of an arguable controversy about the interpretation
15 or meaning of the provisions of the Constitution, as alleged by
the petitioner?

17] The substance of the petitioner's complaint is that the decision
of the High Court on appeal, confirmed a decision of the Law
20 Council which deprived him of his right to property, denied him
a fair hearing, and interfered with the presumption of
innocence, all rights to which he is entitled under Articles 28,
40, 42 and 44(c) of the Constitution. He also contests part of
the decision of the High Court which directs the Disciplinary
25 Committee of the Law Council to consider having him disbarred
in the event he ever appears before the Committee for any
disciplinary action for professional misconduct involving
clients' money. He considers the order to be one that
undermines the independence of the Committee.

30 18] The facts before the Court are that the petitioner was arraigned
before the Committee for wrongly holding onto to Mr.
Tumwine's money that he had on the latter's instructions,

5 received from a defendant in a suit. The Committee sat and allowed both parties to present their case. Their decision was that the petitioner as the advocate could only retain Shs. 3,100,000/= out of the sum received, and he was ordered to pay to Mr. Tumwine Ugx 59,900,000/=.

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19] On appeal, the panel of Judges of the High Court considered that the Committee had properly evaluated the evidence before it. They too agreed that the petitioner had not demonstrated to the Committee or the High Court that he had informed or
15 remitted to Tumwine Ugx 59,900,000/= paid to him as a result of his instructions. It was then held on appeal that that the petitioner could only retain Shs. 3,100,000/= for which he had a taxed bill. They agreed with the Committee's finding that his conduct was unbecoming of an advocate and thereby,
20 amounted to professional misconduct. The Committee's orders that the petitioner refunds Shs. 59,900,000/= with interest, payment of Tumwine's costs in the sum of Shs. 1,000,000/=: and the Committee costs of Shs. 1,500,000/=: were sustained. The Committee's order suspending the petitioner for a period of
25 16 months was also upheld.

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20] I am unable to find that the petitioner's rights to property were violated by the order the directing him to refund certain monies to Mr. Tumwine. The Court cannot be compelled to consider
30 interpretation of the Constitution on that account alone. The dispute between the parties was clearly a matter of professional misconduct of an advocate. He received money which as part of his instructions, he had to account for and then hand over to

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5 Mr. Tumwine, his client, but he did not do so. I agree with the
principle that an advocate does have an equitable lien which
the Court considered to be a form of security for the recovery by
lawyers, of their agreed charges for the successful conduct of
litigation. See: **Gavin Edmondson Solicitors Limited Versus**
10 **Haven Insurance Company Limited** (Supra). However, save
for his fees, the decretal sum was not his property for the
petitioner to retain. He was given a full hearing by both the
Committee and the High Court, and then ordered to refund it.
His complaint that he was not afforded a hearing is quite
15 baseless. It would be far-fetched for this Court to be drawn into
disputes between advocates and their clients over fees. There is
ample legislation to cover that area.

21] Having found that the petitioner has no property rights in the
20 money recovered other than his duly taxed professional fees, a
claim under Article 26(1) would be unsustainable. Similarly, his
right to practice his profession under Article 40(2) would not be
negated by the order to return the money that did not belong to
him. I therefore find that the decision of the High Court in
25 relation to the proceedings before the Committee required no
interpretation of the Constitution.

22] On the other hand, I consider that the decision of the High
Court directing the Committee of the Law Council to take
30 disciplinary action against the petitioner and even prescribed
the punishment for any future offence of a similar nature,
would meet the threshold for this Court to consider
interpretation of the Constitution.

23] It was the order of the Court that should the petitioner appear before the Committee within the next five years for any disciplinary action for the same offences, he would stand to be disbarred and struck off the Roll of Advocates. In my view, that would be an order that prescribes a prospective punishment for future behaviour or misbehaviour, and in contravention of Article 28(1) of the Constitution which provides that:

(1) *In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.*

24] An advocate facing disciplinary proceedings before the Committee is entitled to due process in accordance with the law. I say so because every complainant against an Advocate for professional misconduct can only be considered as a fresh proceeding before the Committee. Irrespective of previous convictions, the respondent in such proceedings would be entitled to a fair, speedy and public hearing before the Committee. It would be unconstitutional for the High Court to speculate the petitioner's future professional misconduct and purport to set a punishment for it. Should he for any reason fall in similar error again, due process should prevail so that he receives a fair hearing during which all current misconduct is addressed on its merit. His previous conviction can only be considered as an aggravating factor in determining an appropriate punishment for the complaint under review.

5 25] I agree then as raised in the second issue, that part of the
decision of the High Court contravenes Articles 2(2), 28(1), 42
and 44 (c) of the Constitution.

10 26] In the third issue the Court is taxed to determine whether the
order of the High Court interfered with the independence of the
Law Council's Disciplinary Committee, and if so, whether that
would be an order made in contravention of Article 28(1) of the
constitution.

15 27] The Law Council is established under S.26 of the Advocate's Act
and has as one of its core functions, power to discipline
Advocates through its Disciplinary Committee. Under Section
19 of the Advocate's Act, the proceedings of the Committee are
akin to judicial proceedings and it is expected that the
20 committee is afforded the same degree of independence. Under
Section 22 of the Advocate's Act, any Advocate aggrieved by the
decision of the Committee has a right of appeal to the High
Court which after a hearing can confirm, set aside, vary or
substitute the order of the Committee.

25 28] The above provisions indicate that the High Court only exercises
appellate jurisdiction in respect of orders of the Committee, but
not matters that are expected to come before it in the future. It
would be interference with the independence of the Committee
30 for the High Court to prescribe prospective punishment for
future conduct. As I have stated, there must be fair trial of
every complaint lodged with the Committee.

5 29] In conclusion, the petition has succeeded in part, and I make the following declarations:

10 a) *The act of ordering the petitioner to remit to the 3rd respondent Ugx 59,900,000/= (Uganda Shillings Fifty-Nine Million Nine Hundred Thousand Shillings Only) was not done in contravention of Article 26(1) and Article 40(2) of the Constitution.*

15 b) *The act of speculating the petitioner's involvement in future acts of professional misconduct and to direct the Law Council to impose punishment on the appellant if within five years he appeared before the Disciplinary Committee for any disciplinary action for professional misconduct involving client's money, is an act of interference with the dispensation of justice by the Law Council and thus, is inconsistent with and made in*
20 *contravention of Articles 2(2), 28(1), 42, and 44(c) of the Constitution.*

25 c) *The act of directing the Law Council on what kind of punishment to impose on the petitioner by disbarring and having his name struck off the roll for good in the event that he appears before it on cases involving client's money is inconsistent with and made in contravention of*
Articles 2(2), 28(1), 42, and 44(c) of the Constitution.

30 d) *That the act of interfering with the independence of the Disciplinary Committee of the Law Council impinges on the impartiality of the Disciplinary Committee towards the Petitioner and is inconsistent with and made in*
contravention of Article 28(1) of the Constitution.

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30] Each party shall meet their costs of the petition.

Dated at Kampala this^{25th}..... day of*March*....., 2024.

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EVA K. LUSWATA

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

15

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
[CORAM: Egonda-Ntende, Bamugemereire, Mugenyi, Luswata & Kihika,
JJCC]

Constitutional Petition No. 001 of 2021

BETWEEN

Geoffrey Nangumya=====Petitioner

AND

Attorney General=====Respondent No.1

Law Council===== Respondent No.2

Emmy Tumwine===== Respondent No.3

JUDGMENT OF FREDRICK EGONDA-NTENDE, JCC

- [1] I have had the benefit of reading in draft the judgment of my sister, Luswata, JCC. I agree with it and having nothing useful to add.
- [2] As Bamugemereire, Mugenyi and Kihika, JJCC, agree with her too, this petition is allowed in part, and dismissed in part, with the orders proposed by Luswata, JCC.

Signed, dated, and delivered at Kampala this 25th day of March 2024


Fredrick Egonda-Ntende
Justice of the Constitutional Court

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO.001 OF 2021**

BETWEEN

GEOFFREY NANGUMYA ::::::::::::::::::::::::::::::: PETITIONER

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3. EMMY TUMWINE::::::::::::::::::::::::::::: RESPONDENTS

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HON LADY JUSTICE MONICA MUGENYI, JCC

HON LADY JUSTICE EVA K. LUSWATA, JCC

HON MR. JUSTICE OSCAR JOHN KIHKA, JCC

JUDGMENT OF CATHERINE BAMUGEMEREIRE JCC

I have had the opportunity to consider, in draft, the Judgment of my learned sister Eva Luswata JCC. I agree with her reasoning, conclusion and the declarations she proposes.



**Catherine Bamugemereire
Justice of the Constitutional Court**

25th/03/2024



THE REPUBLIC OF UGANDA

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

(Coram: Egonda-Ntende, Bamugemereire, Mugenyi, Luswata & Kihika JJCC)

CONSTITUTIONAL PETITION NO. 1 OF 2021

GEOFFREY NANGUMYA PETITIONER

VERSUS

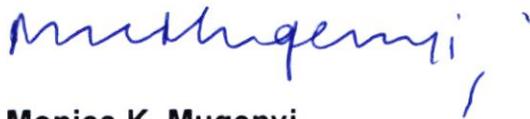
- 1. THE ATTORNEY GENERAL**
- 2. LAW COUNCIL**
- 3. EMMY TUMWINE RESPONDENTS**

JUDGMENT OF MONICA K. MUGENYI, JCC

I have had the benefit of reading in draft the lead judgment of my sister, Eva Luswata JCC in this matter.

I concur with her decision that the Petition partially succeeds and I agree with the orders she has issued.

Dated and delivered this *25th* day of *March*, 2024.



Monica K. Mugenyi

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO.001 OF 2021

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- 1. ATTORNEY GENERAL**
- 2. LAW COUNCIL**
- 3. EMMY TUMWINE::::::::::::::::::::::::::::::::::::: RESPONDENTS**

CORAM:

- HON MR. JUSTICE F.M.S EGONDA-NTENDE, JCC**
HON LADY JUSTICE CATHERINE BAMUGEMEREIRE, JCC
HON LADY JUSTICE MONICA MUGENYI, JCC
HON LADY JUSTICE EVA K. LUSWATA, JCC
HON MR. JUSTICE OSCAR JOHN KIHKA, JCC

JUDGMENT OF OSCAR JOHN KIHKA JCC

I have had the benefit of reading the draft Judgment of my sister Lady Justice Eva K. Luswata. I agree that the petition partially succeeds.

I, for emphasis, would add that the petition, in so far as it sought a declaration that the High Court's order ordering the Petitioner to remit to the 3rd respondent Ugx 59,900,000/= (Uganda Shillings Fifty-Nine Million Nine) is inconsistent with and/or in contravention of Article 26, 28, 42 and 44(c) of the Constitution, is in my view totally misconceived.

It is clear to me that the petition was crafted to challenge a legitimate judicial decision in HC Civil Appeal No. 93 of 2018 insofar as it ordered the Petitioner to remit money belonging to his client and therefore raises no question for constitutional interpretation as provided for under Article 137 of the Constitution. That decision did not infringe upon the rights of the petitioner as stipulated in Articles 26, 28, 42 and 44(c) of the Constitution.

The Petitioner, being an advocate of the Courts of Judicature, ought to know that decretal sums are in the first place property of the decree owner. The Petitioner relied on the Supreme Court decision of **Gavin Edmondson Solicitors Limited Versus Haven Insurance Company Limited, (2018) UKSC 21** for the proposition that he had the benefit of a lien on the sum decreed and that by the committee ordering that he remits it to Mr. Tumwine, was deprivation of his property in contravention of Article 26 of the Constitution.

However, as I understand it, the position of the law in Uganda is somewhat different. Section 55 of the Advocates Act provides as follows;

“Nothing in section 50, 51, 52, 53 or 54 shall give validity to

—
(a) any purchase or acquisition through other means by an advocate of the interest, or any part of the interest, of his or her client in any suit or other contentious proceedings;

(b) any agreement by which an advocate retained or employed to prosecute any suit or other contentious proceeding stipulates for payment only in the event of success of that suit or proceeding; or

(c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or composition.

(2) An advocate may, with respect to any contentious business to be done by him or her, take security from his or her client for his or her costs to be ascertained by taxation or otherwise.”

Thus in the first place, the Advocates Act specifically prohibits an advocate from acquiring any interest in the subject matter of a suit, in this case, the decretal sum which the Petitioner had retained. Section 55(2) however permits the advocate to take *security* from his or her client for costs with respect to contentious business *to be done* by him or her. My reading of Section 55(2) is that the advocates may take security from the client *before* the contentious action is instituted.

If I be right in my interpretation, it would seem to me that the Petitioner did not in the first place have the right to retain the decretal sum. The right course of action would have been to pursue his costs as against his client by initiating action under the provisions of Section 57 of the Advocates Act which provides as follows;

“57 Action to recover advocate’s costs

(1) Subject to this Act, no suit shall be brought to recover any costs due to an advocate until one month after a bill of costs has been delivered in accordance with the requirements of this section; except that if there is probable cause for believing that the party chargeable with the costs is about to quit Uganda, or to become a bankrupt, or to compound with his or her creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence a suit to recover his or her costs and may order those costs to be taxed.

(2) The requirements referred to in subsection (1) are as follows—

(a) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his or her own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

(b) the bill must be delivered to the party to be charged with it, either personally or by being sent to him or her by registered post to, or left for him or her at, his or her place of business, dwelling house, or last known place of abode, and where a bill is proved to have been delivered in compliance with these requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill (which shall be presumed until the contrary is shown) to be a bona fide bill complying with this Act.”

I therefore find that the Petitioner had no business bringing the matter of recovery of his costs to this court for constitutional interpretation. His remedy is well provided for in the Advocates Act.

Just to be clear, the equitable remedy of an advocate's lien on a decretal sum may not apply in our jurisdiction. Section 14 (2) of the Judicature Act of Uganda provides as follows;

“(2) Subject to the Constitution and this Act, the jurisdiction of the High Court shall be exercised—

(a) in conformity with the written law, including any law in force immediately before the commencement of this Act;

(b) subject to any written law and insofar as the written law does not extend or apply, in conformity with—

(i) the common law and the doctrines of equity;

(ii) any established and current custom or usage; and

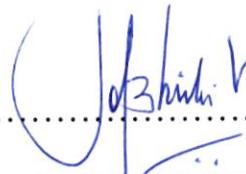
(iii) the powers vested in, and the procedure and practice observed by, the High Court immediately before the commencement of this Act insofar as any such jurisdiction is consistent with the provisions of this Act; and

(c) where no express law or rule is applicable to any matter in issue before the High Court, in conformity with the principles of justice, equity and good conscience.

In the matter brought before this court, there is express law by way of the aforementioned provisions of the Advocates Act which delineate the extent of an advocate's interest in a decretal sum, thus the principals of equity would not apply.

In the result, I agree that the petition partially succeeds. Each party to bear their costs.

Dated at Kampala this.....^{25th}.....day of^{March}.....2024



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OSCAR JOHN KHIKA

JUSTICE OF APPEAL/CONSTITUTIONAL COURT