

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT – 01 – CV – CS – 0012 OF 2013**

**GEORGE KUSEMERERWA..... PLAINTIFF**

**VERSUS**

**1. HIS MAJESTY OMUKAMA OYO**

**NYIMA KABAMBA IGURU**

**2. OMUKAMA OF TOORO .....DEFENDANTS**

**3. STEPHEN KALIBA**

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE**

**Judgment**

The Plaintiff instituted a suit against the Defendants for a declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' abrogation of the Constitution of the Kingdom of Tooro was *ultra vires*, null and void and against the agreed and consent judgments entered in Civil Suits HCT – 01 – CV – CS – 006 of 2011 and HCT – 01 – CV – CS 0036 of 2010, and that the Appointment of the 3<sup>rd</sup> Defendant as Prime Minister was null and void.

The Defendants on the other hand denied all the contents of the Plaint and stated that they would raise a preliminary objection at the commencement of the suit to the effect that the Plaintiff lacks locus standi to institute this suit as a representative action without leave of Court.

The Defendants averred that the Constitution was not abrogated but was suspended pending a constitutional review process in consultation with the Orukurato.

**Issues:**

1. Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were right to abrogate the Constitution or/and whether the Tooro Kingdom Constitution could be abrogated?
2. Whether the Prime Minister of Tooro Kingdom could be appointed without a Constitution?
3. What are the remedies available?

**Summary of evidence:**

The Plaintiff swore a witness Statement that was admitted as evidence in chief and no cross-examination was conducted since the Defendants upon being served several times failed to appear in Court. The Plaintiff produced one witness Karamagi Christopher who also swore a witness Statement that was admitted as evidence in chief. The suit proceeded exparte. Counsel prayed that all the annexures to the Plaint be admitted as exhibits.

The Plaintiff stated that on the 17<sup>th</sup> August 2012 the 1<sup>st</sup> Defendant in a meeting in report read on his behalf by Mussuga stated that the 1999 Constitution of Tooro Kingdom was removed and asked the Council to appoint a committee to make a new Constitution. The Council then went ahead and did what the king had said by forming a committee and since then no Constitution was put in place and the old one was removed. That this jeopardised Tooro property that was being illegally sold.

Karamagi Christopher stated that on the 17<sup>th</sup> august 2012 the 1<sup>st</sup> Defendant in a meeting in report read on his behalf by Mussuga stated that the 1999 Constitution was removed and asked the Council to appoint a committee to make a new Constitution. That after the report being read, him as an elder he was unhappy because the decision would destroy the kingdom if managed without a Constitution.

### **Representation:**

Counsel Victor A. Businge appeared for the Plaintiff and filed written submissions.

### **Resolution of issues:**

#### **Issue 1: Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were right to abrogate the Constitution or/and whether the Tooro Kingdom Constitution could be abrogated?**

Counsel for the Plaintiff submitted that in the Constitution of Tooro Kingdom, there is no provision for abrogation or suspension of the Constitution for purposes of amending it as per **Articles 3** and **4** of the said Constitution. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not follow procedure and the abrogation was communicated to the Registrar General, Ministry of Justice and Constitutional Affairs. The abrogation was against two consent judgments that were to the effect that the Constitution is the supreme law of Tooro and binding upon the parties. That the said consent judgments have never been appealed against and they still stand. Thus, the Constitution of Tooro is the supreme law and binding on its entire people inclusive of the Defendants and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had no power or mandate to suspend the Constitution. That the suspension of the Constitution of Tooro was illegal.

I have addressed my mind to the submissions of Counsel and the provisions of the 1999 Constitution of Tooro Kingdom. The said Constitution laid out a clear procedure to be followed when amending the Constitution.

**Article 3(2)** of the Tooro Constitution provides that;

*“The Constitution shall not be amended except by an Act of Orukurato Orukkuru orwo’Obukama.”*

In the instant case the 1<sup>st</sup> Defendant suspended the Constitution in a bid to have an alleged “Constitutional review process.” The Plaintiff in his evidence stated that the 1<sup>st</sup> Defendant delivered this decision in a report that was read on his behalf by Mussuga. The 1<sup>st</sup> Defendant did not follow the laid out procedure in the Tooro Constitution.

The institution of traditional or cultural leaders under which the 1<sup>st</sup> and 2<sup>nd</sup> Defendants fall was created by the Constitution of the Republic of Uganda, 1995 under **Article 246 (1)** which provides that;

*“Subject to the provisions of this Constitution, the institution of traditional leaders or cultural leaders may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.”*

**Article 246 (3)** provides;

*“The following provisions shall apply in relation to traditional leaders or cultural leaders—*

*(a) The institution of traditional leader or a cultural leader shall be a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned;*

*(b) Nothing in paragraph (a) shall be taken to prohibit a traditional leader or cultural leader from holding any asset or property acquired in a personal capacity;*

*(c) A traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred by the Government and local government or as that leader may be entitled to under culture, custom and tradition;*

*(d) Subject to paragraph (c) of this clause, no person shall be compelled to pay allegiance or contribute to the cost of maintaining a traditional leader or cultural leader;*

*(e) A person shall not, while remaining a traditional leader or cultural leader, join or participate in partisan politics;*

*(f) A traditional leader or cultural leader shall not have or exercise any administrative, legislative or executive powers of Government or local government.”*

**Article 246 (6)** provides;

*“For the purposes of this article, “traditional leader or cultural leader” means a king or similar traditional leader or cultural leader by whatever name called, who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that traditional or cultural leader.”*

The King is therefore the supreme and his decisions cannot be questioned and he has the liberty to make any decision. The traditional leader is therefore a corporate sole who can sue or be sued.

I therefore find that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had the mandate to suspend the 1999 Constitution of Tooro Kingdom for purposes of being reviewed without following the procedure as laid out in the said Constitution. The decision as was taken by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were therefore not null and void.

The Constitution of Tooro Kingdom can therefore not override the Constitution of the Republic of Uganda, 1995.

**Issue 2: Whether the Prime Minister of Tooro Kingdom could be appointed without a Constitution?**

Counsel for the Plaintiff submitted that the appointment of the 3<sup>rd</sup> Defendant was null and void as it contravened the provisions of **Article 27** of the 1999 Constitution of Tooro Kingdom. That at the appointment of the 3<sup>rd</sup> Defendant there was no Constitution in place, and that the appointment was to be approved by the Supreme which was not the case here.

In the instant case the pronouncement of the appointment of the 3<sup>rd</sup> Defendant was made by the 1<sup>st</sup> Defendant in a meeting without approval of the Traditional Assembly as provided under **Article 27** of the 1999 Constitution of Tooro Kingdom as alleged by the Plaintiff.

The 1<sup>st</sup> Defendant being the Supreme has the power to appoint anybody he feels will be instrumental in helping him with his duties. Thus, the appointment was legal however; the Traditional has the duty of approving the person so appointed.

I therefore, find that the 3<sup>rd</sup> was legally appointed by the 1<sup>st</sup> Defendant same as the President of Uganda can appoint any one save that the duty to approve is vested in Parliament.

**Issue 3: what are the remedies available?**

The instant case lacks merit and is therefore dismissed. I make no order as to costs given the nature of the case. Each party therefore bears its own costs.

In the case of **Prince J. D. C Mpuga Rukidi versus Prince Solomon Kioro and Others, Civil Appeal No. 15 of 1994 (S.C)**, it was held that;

*“That however, where Court is of the view that owing to the nature of the suit, the promotion of harmony and reconciliation is necessary, it may order each party to bear his/her own costs.”*

Right of appeal explained.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**31/10/2017**

Judgment read and delivered in the presence of;

1. Counsel Victor A. Businge for the Plaintiff.
2. Counsel Timothy Atuhaire holding brief for the Defendants.
3. Court Clerk – James
4. Court Clerk – Beatrice
5. In the absence of both parties.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**31/10/2017**