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Supporting Judgment  
of Arach-Amoko  
JSC

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**THE REPUBLIC OF UGANDA**

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

**CONSTITUTIONAL APPEAL NO. 02 OF 2016**

**[CORAM: TUMWESIGYE, KISAAYE, ARACH-AMOKO, NSHIMYE, MWANGUSYA,  
OPIO-AWERI AND TIBATEMWA-EKIRIKUBINZA]**

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**BETWEEN**

**ATTORNEY GENERAL:..... APPELLANT**

**AND**

**GLADYS NAKIBUULE KISEKKA:.....RESPONDENT**

*(Appeal from the judgment of Justices Kavuma, Ag. DCJ, Kasule, Mwondha, Bossa and  
Kakuru, JJA/JJC dated 22<sup>nd</sup> October 2014 in Constitutional Petition No. 55 of 2013)*

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**JUDGMENT OF ARACH-AMOKO, JSC**

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I have had the advantage of reading in draft the judgment of my learned sister Professor Tibatemwa-Ekirikubinza, JSC and I agree that the appeal must be allowed. I also agree that each party bears its or her cost.

The facts of the case which are not in dispute are set out in her judgment and I do not need to recapulate them here except where necessary for my purpose.

5 In the Constitutional Court, the respondent filed eight grounds and only two were upheld. The Court declared that:

(i)The act and/or conduct of the JSC of preferring charges against the Respondent in respect of acts/or omissions involving the recall of a warrant, which are judicial acts is inconsistent with and in  
10 contravention of Articles 2, 20, 28, 42 and 44 of the Constitution of the Republic of Uganda.

(ii)The act/or conduct of the JSC of lifting the judicial immunity accorded to the Respondent and holding her personally liable for her judicial act of recalling the warrant in the discharge of her judicial work  
15 is inconsistent with and in contravention of Articles 2, 20, 28, 42, 44, 128(4) and 173 of the Constitution of the Republic of Uganda.

### **Grounds of Appeal**

It is from the above declarations that the following grounds of appeal arise.

20 **1. The Justices of the Constitutional Court erred in law and in fact in declaring that the act and/or conduct of the Commission of preferring charges against the petitioner in respect of acts/ or omissions involving the recall of a warrant, which are judicial acts, is inconsistent with and in contravention of Articles 2, 20, 28, 42 and 44  
25 of the Constitution of the Republic of Uganda.**

**2. The Justices of the Constitutional Court erred in law and in fact in declaring that the act and/or conduct of the Commission of lifting the judicial immunity accorded to the petitioner and holding her personally liable for her judicial act of recalling the warrant in the  
30 discharge of her judicial functions is inconsistent with and in**

5 **contravention of Articles 2, 20, 28, 42, 44, 128 (4) and 173 of the  
Constitution of the Republic of Uganda.**

In my view, there are two main issues for decision in this appeal. The first one is whether the act of preferring charges against the Respondent with respect of a judicial act of recalling a warrant of arrest  
10 was inconsistent with and in contravention of Articles 2,20,28,42 and 44 of the Constitution. This issue arises from ground 1 of the appeal.

The Judicial Service Commission (JSC) is a constitutional organ established under Article 146 of the Constitution. The functions of the JSC are clearly provided under Article 147 and 148 of the Constitution  
15 as well as section 5 of the Judicial Service Act, Cap 14, and Laws of Uganda. Article 147(d) specifically enjoins the JSC to: *“receive and process peoples’ recommendations and complaints concerning the judiciary and the administration of justice and to also act as a link between the people and the judiciary.”*

20 The JSC, in line with its mandate and in the spirit of Article 147(d), has constituted a Disciplinary Committee to receive and process complaints from the public concerning the judiciary and the administration of justice. The Committee activities are regulated by the **Judicial Service (Complaints and Disciplinary Proceedings) Regulations, S I No.88 of  
25 2005.**

It is further in line with this mandate that the JSC received a complaint against the Respondent, alleging unprofessional conduct in the course of her judicial duties. On the 25<sup>th</sup> June 2013, the JSC informed the Respondent about the complaint and requested her to submit a  
30 response. On the 26<sup>th</sup> June, the Respondent responded to the complaint. In line with Regulation 10(2) of the **Judicial Service**

5 **(Complaints and Disciplinary Proceedings) Regulations, S I No.88 of 2005**, the JSC determined that the complaint had established a *prima facie* case against the Respondent. The JSC consequently prepared a charge sheet and invited the Respondent to appear before the JSC to take plea on the 3<sup>rd</sup> October 2013.

10 The contention by Counsel for the Respondent is that this act was inconsistent with and in contravention of **Articles 2,20,28,42 and 44** of the Constitution. Counsel for the Appellant disagreed with him.

I have carefully perused the record of appeal and the submissions of counsel for the Respondent, and I must say that I have not found any  
15 evidence of such contravention or inconsistency. In matters of such grave accusation, it is incumbent upon the petitioner to demonstrate the inconsistency or contravention complained of, otherwise, a bare allegation, which I think this one is, does not suffice to support such a declaration as the one made by the learned Justices of the  
20 Constitutional Court.

I also note that the learned Justices of the Constitutional Court did not discuss how the said Articles were contravened by the JSC when it preferred charges against the respondent and invited her to take plea so that the process of investigation would continue. The declaration  
25 was, with due respect without any basis at all.

I therefore agree with counsel for the Appellant that the act of preferring charges against the Respondent for a judicial act was not inconsistent with or in contravention of **Articles 2,20,28,42 and 44** of the Constitution. It was therefore an error for the learned Justices of  
30 the Constitutional Court to make such a declaration.

5 Ground I of the appeal would succeed for this reason.

The second issue is whether the act of the JSC of lifting the judicial immunity accorded to the Respondent and holding her personally liable for her judicial act of recalling a warrant in discharge of her judicial functions is inconsistent with and in contravention of **Articles**  
10 **2,20,28,42,44,128(4) and 173** of the Constitution. This issue arises from ground 2 of the appeal.

There is no doubt in my mind that the Respondent's act of recalling the warrant of execution is indeed a judicial act. The question then is, was it covered by the judicial immunity accorded to judicial officers under  
15 Article 128(4) of the Constitution?

Article 128(4) of the Constitution provides that:

***"A person exercising judicial power shall not be liable to any action or suit for any act or omission by that person in the exercise of judicial power."***

20 Counsel for the Respondent contended that the act of the JSC fell within the ambit of Article 128(4) above and it was inconsistent with and in contravention of this Article. Counsel for the Appellant maintained the opposite view. I agree with Counsel for the Appellant for the following reasons.

25 First, the expression "**any action or suit**" is not defined in Article 128(4) or anywhere in the Constitution. I have consulted a number of legal dictionaries for the definition. For instance, according to **Black's Law Dictionary 9<sup>th</sup> edition, page 32**, the word "**action**" means "**a civil or criminal proceeding... the terms 'action and 'suit' are nearly if not**

5 ***quite synonymous. But lawyers speak of proceedings in courts of law as 'actions' and in courts of equity as 'suits'.***

The same Dictionary defines judicial immunity at page 818 as:

***"The immunity of a judge from civil liability arising from the performance of his judicial duties."***

10 According to **Halsburys Laws of England 3<sup>rd</sup> Edition at page 706**, the subject is clearly addressed in the following paragraphs as follows:

***"1351. Persons Protected. Persons exercising judicial functions in a court are protected from all civil liability whatsoever for anything done or said by them in their official capacity."***

15 In the following paragraph the reason for such protection is given as follows:

20 ***" 1352. The Reasons for protection. The object of judicial privilege is not to protect malicious or corrupt judges, but to protect the public from the danger which the administration of justice would be exposed if the persons concerned therein were subjected to inquiry as to malice, or to litigation with those whom their decisions might offend. It is necessary that such persons should be permitted to administer the law not only independently and freely and without favour, but also without fear."***

25 From the foregoing, it is safe to conclude that the immunity referred to in Article 128(4) of the Constitution is in respect of actions or civil suits instituted in Courts of law in respect of judicial duties by judicial officers that are likely to lead to monetary damages. It does not extend to disciplinary actions by the JSC which is an independent body set up  
30 under the Constitution because disciplinary proceedings are not the

5 ***“actions or suits”*** envisaged under Article 128(4) of the Constitution. The question of lifting judicial immunity does not in my view arise, for that reason.

I am fortified in my conclusion by Principle No. 16 of the Bangalore Principles on Judicial Conduct which reads as follows:

10 ***“16. Without prejudice to any disciplinary procedure or to any right of appeal or compensation from the state, in accordance with national law, judges should enjoy personal immunity from civil suits of monetary damages for improper acts or omissions in the exercise of their judicial functions.”***

15 Principle number 16 of the UN Basic principles On Independence of The Judiciary is also couched in exactly the same words.

It is clear from the above that judicial officers are not immune from disciplinary proceedings. They are immune from civil suits. It is also clear to me that judicial immunity is not absolute.

20 The conduct of judicial officers in the execution of their duties can be investigated. Judicial officers are accountable to the people. Objective xxvi of the Constitution is entitled ***“Accountability”***. It provides as follows:

***“(i) All public offices shall be held in trust for the people.***

25 ***(ii) All persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people.***

***(iii) All lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices.”***

5 Article 126 (1) provides that:

***“(1) judicial power is derived from the people and shall be exercised by the courts established by this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.”***

10 If these Articles are read and interpreted using the rule of harmony, the end result is that they actually support each other. While Article 128 provides for judicial independence, Articles 147 (1) (d) and 148 provide the bridge between judicial independence and accountability.

Notably, even under ground 2 of the appeal, counsel for the  
15 Respondent did not canvass and even the learned Justices of the Constitutional Court never clearly demonstrated how the act of the JSC complained of contravened or was inconsistent with the rest of the Articles mentioned in this ground before coming to their conclusion in their judgment. It was therefore an error for the said Articles to be  
20 included in the declarations by the learned Justices of the Constitutional Court as the Articles that had been contravened by the JSC.

The second ground would also succeed for this reason.

Before taking leave of this matter, I would like to state that a judicial  
25 officer who has been summoned by the JSC to respond to complaints against him or her should comply and place his or her defence(s) before the JSC. Claims of judicial immunity should not be used to block investigations by the JSC. The Commission should be allowed to carry out its constitutional mandate as far as possible. Decisions of the JSC

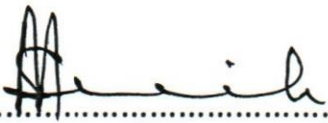


5 can then be referred to court under judicial review proceedings or by reference to the Constitutional Court in appropriate cases.

In view of the above, I would allow the appeal and would set aside the judgment and orders of the Constitutional Court. I make no order as to costs.

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Dated this.....11<sup>TH</sup>.....day of.....July.....2018

  
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15 M.S.ARACH-AMOKO  
**JUSTICE OF THE SUPREME COURT.**