

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT**  
**KAMPALA**  
**CONSTITUTIONAL PETITION NO. 13 OF 2010**

**NYUMBA YA CHUMA LTD:..... PETITIONER**

**VERSES**

**1.UGANDA LAND COMMISSION & Another**

**2.THE ATTORNEY GENERAL} ;;;;;;;;;;;;;;;RESPONDENTS**

**CORAM:**

**HON. JUSTICE S.B.K.KAVUMA, DCJ**

**HON. JUSTICE, ELDAD MWANGUSYA, JA**

**HON. JUSTICE RUBBY AWERI OPIO, JA**

**HON. LADY JUSTICE SOLOMY BALUNGI BOSSA, JA**  
**BUTEERA, JA**

**HON. JUSTICE RICHARD**

**JUDGMENT OF THE COURT**

**Introduction**

This Petition was instituted under **Article 137 (3)** of the Constitution of the Republic of Uganda as amended and the Constitutional Court (Petitions and References) Rules, 2005.

The petitioner was granted a lease on the land comprised in Leasehold Register Volume 172, Folio 24 Plot M. 468 at Bugolobi, Kampala by Kampala District Land Board. The lease expired on 31<sup>st</sup> March 2002. An application for extension of the lease was granted by the Board on October 14th 2009.

However, by this time the Uganda Land Commission 8<sup>th</sup> September 2009 created a freehold title known FVR 668 Folio 25 over the same Plot of land as the owner and registered proprietor.

The petitioner, as a company having interest in, and affected by the acts of the Uganda Land Commission, felt aggrieved in that:-

- 1.** The allocation of the land and the grant of a freehold estate/interest in plot M 468 at Bugolobi by

the Uganda Land Commission to itself as owner and registered proprietor is inconsistent with and in contravention of **Articles 239** and **241** of the Constitution.

2. The allocation of Plot M468 at Bugolobi and acquisition of a freehold title over the same plot/land for itself is inconsistent with and contravenes **Article 239** of the Constitution.
3. The allocation and grant of a freehold estate and acquisition of title over plot M 468 at Bugolobi by the Uganda Land Commission amount to expropriation of the petitioner's estate and interest therein and is inconsistent with or contravenes **Article 26** of the Constitution.
4. The allocation of the petitioner's land and the grant of freehold estate/interest by the Uganda Land Commission to itself as owner are unconstitutional as hereunder:-
  - (i) The Uganda Land Commission has no mandate under the Constitution to allocate land to itself or any other person.
    - (ii) The land in question was originally under the control and management of the City Council of Kampala as the controlling Authority with a statutory lease thereon whose powers and mandate were transferred to the Kampala District Land Board.
    - (iii) The land in question was the petitioner's as the beneficial and equitable owner with a registerable interest in law.
    - (iv) It creates a parallel authority to the District Land Boards with the same authority, power and mandate to allocate land which is the constitutional mandate of the District Land Boards, (sic)

**The petitioner prayed for the following redress:-**

- (a) Nullification of the allocation and grant of freehold estate and tenure over plot M 468 at Bugolobi by the 1<sup>st</sup> respondent to itself.
- (b) Cancellation of the certificate of title and entries of the 1<sup>st</sup> respondent as the proprietor and owner of plot M468 at Bugolobi registered as freehold register volume 668 Folio 25.
- (c) Declaration that the petitioner is the proprietor and owner of plot M 468.
- (d) A permanent injunction against the 1<sup>st</sup> respondent, its officials, agents or servants, restraining and preventing them from interfering with the petitioner's property rights and interests in plot M 468 at Bugolobi.
  - a) Compensatory damages
  - b) Costs of the petition.

The Petition was supported by the affidavit of Abid M. Alarm, the Managing Director of the petitioner

which exhaustively re-echoes the above grounds.

The respondents opposed the Petition on the following

grounds:-

- 1) That the act of the 1<sup>st</sup> respondent in allocating and acquiring a freehold interest in the suit land at Bugolobi is consistent with the provisions of **Articles 239 and 241** of the Constitution.
- 2) The 1<sup>st</sup> respondent is empowered by the Land Act as part of its function to hold land on behalf of the Government of Uganda and also to acquire and or procure certificates of title of land to that effect.
- 3) The land comprised in LRV Folio 24 plot M. 468 at Bugolobi, in Kampala has never been the property of Kampala City Council as the former controlling Authority and therefore, the extension of the expired lease interest of the petitioner on the suit land was done in error and with glaring want of jurisdiction by Kampala District Land Board. The extension of the lease to that extent had no legal effect.
- 4) The suit land was at all material times Crown Property and it automatically, upon Uganda attaining independence, vested in the Government of Uganda.
- 5) That the Petition does not raise any Constitutional issues for interpretation by this Court.
- 6) That the issues being raised and the reliefs being sought from this court can safely be handled, investigated determined by a court of competent jurisdiction.

The above grounds were echoed in and supported by affidavits deponed by Mr. K.S.B Mubbala, the then secretary of the Uganda Land Commission, Mr. Kajumbula the then Commissioner for Surveys and Mappings and **M / S Bonabana Caroline** then, of the Attorney General's Chambers.

Issues for determination.

The agreed issues for determination are:-

- 1) Whether the Petition raises any question for Constitutional interpretation.**
- 2. Whether the allocation and grant of freehold by the 1<sup>st</sup> respondent and acquisition of the title over the Subject land by the 1<sup>st</sup> respondent amounts to expropriation contrary to Article 26 of the Constitution.**
- 3. Whether the impugned acts of the 1<sup>st</sup> respondent are inconsistent with and contravene Articles 239, 241 and 26 of the Constitution.**
- 4. What are the reliefs and remedies available to the parties? (sic)**

## **Representation**

At the hearing of this Petition, learned counsel Mohammed Mbabazi, (counsel for the applicants) appeared for the Petitioner while, Mr. Bafilawala Elisha a Senior State Attorney from the Attorney Generals' Chambers (counsel for the respondents) represented the respondents.

## **The applicant's case**

Counsel for the applicant argued grounds two and three together first and then ground one separately. Counsel referred to **Article 239** of the Constitution which provides that the Uganda Land Commission shall hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the provisions of the Constitution and shall have such other functions as may be prescribed by Parliament.

Counsel contended that the Uganda Land Commission does not have the mandate to allocate land although it can hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the law. He argued that the function of allocating land is vested in the District Land Board under **Article 241** which provides that the function of a District Land Board is to hold and allocate land which is not owned by any person or authority. Therefore, the Uganda Land Commission, sitting and allocating to itself land, moreover of a free hold interest, was unconstitutional as it was acting outside its mandate.

Counsel contended further that it was true that the Uganda Land Commission owns land. However, just as there is a Buganda Land Board or the various mailo land owners, the Uganda Land Commission could not, after the Constitution came into force, allocate itself land as it did in 2009, when it sat and allocated itself the freehold interest in land which had prior been the legal property of the petitioner which, upon the expiry of the leasehold, became the equitable property of the petitioner pending the formalization of the extension of the lease over it.

Counsel submitted that the Constitution could not set parallel bodies to allocate land namely; the Uganda Land Commission and the District Land Board. According to **Article 241(2)** of the Constitution, the District Land Board in the performance of its functions, shall be independent of the Uganda Land Commission and shall not be subject to the direction and control of any person or authority but shall take into account national and district council policy on land.

Therefore, counsel submitted, **Article 241** of the Constitution cautions against interference from the Uganda Land Commission and thereby claiming prudence to the submission that the Constitution could not have put up two parallel bodies to do the same thing. This is because if we say the Uganda Land Commission allocates land, the question would be which land as opposed to where the boundary is between the land to be allocated by the land boards and the land to be allocated by the Uganda Land Commission.

It was the contention of counsel for the petitioner that the act of allocating itself a freehold is inconsistent with **Article 239** of the Constitution which only mandates the Commission to hold and manage land leaving the function of allocation to be done by the District Land Boards.

Additionally, Counsel argued, given the fact that the land in question already belonged to someone, it amounted to expropriation contrary to **Article 26** of the Constitution which provides *inter alia* that:- **“every person has a right to own property either individually or in association with others”** It follows therefore that no persons shall be compulsorily deprived of property or any interest in or right over property of any discretion except where the following conditions are satisfied namely:-

**(a) “the taking of possession is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for-**

**(i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and**

**(ii) A right of access to a court of law by any person who has an interest or right over the property”.**

Counsel submitted that the impugned act does comply with the above article, because the land was not acquired in the public interest and there was no compensation that was given. In the Act invoked for the allocation itself, there was no provision for going to court.

Counsel submitted that in the instant case, the petitioner woke up in the morning and found that there was a freehold title in the names of the Uganda Land Commission. All that as stated is clearly borne out in the affidavits supporting the Petition and in that regard there is evidence of the petitioner’s leasehold title **Annexure “A”**.

The lease was to run from 1<sup>st</sup> April 1987 for 15 years. The petitioner was not the first registered proprietor as is clearly shown from the title itself. The first owner was the African Clay Products Ltd. The petitioner became of the land on the 15<sup>th</sup> of April 1989 and the next lease was granted by the then City Council of Kampala which was the Controlling Authority under the earlier regime. According to counsel, the petitioner had clearly shown that as way back as 1989, he had a lease which had been granted to him by the City Council of Kampala as the Controlling Authority. Counsel contended that **Annexure “B”** to the Petition, a letter from Kampala District Land Board granting an extension of the lease to the petitioner, clearly showed that this land was under the mandate of Kampala District Land Board. This was in line with the Constitution in that what used to be the mandate of the City Council or Urban Centres became the mandate of the District Land Board.

Counsel for the petitioner referred to **Annexure “B”**, a letter from Kampala District

Land Board as evidence of payment of rent to Kampala City Council amounting to shillings thirty nine million six hundred thousand.

Counsel further referred to **Annexure “C”**, the new freehold title that was allocated and granted by the Uganda Land Commission and observed that at the top most, there is the minute of allocation, Uganda Land Commission/151/4028.

The plot is the same except the acreage; instead of 10.117 the certificate is showing 10.008. The date is 8<sup>th</sup> September 2009 and the owner is the Uganda Land Commission. Counsel argued that it is in that respect, basing on those documents, that the petitioner submits that the Constitution could not have put two parallel bodies to allocate land. The petitioner submits that the proper bodies to allocate land are the District Land Boards not the Uganda Land Commission.

Counsel for the applicant further commented on the defence by the Uganda Land Commission that this land belonged to them from a long time ago. He contended that the issue was not whether the land belonged to them from a long time ago but was on the allocation of land and that the question would be, why then would they allocate the land to themselves in 2009 if this land belonged to them earlier as contended by them.

Counsel concluded that the evidence of the respondent does not support the argument that the Land Commission had the mandate to allocate land more so with a title which came out in 2009. This would only be possible if there was no title issued in 2009 and they proceeded with the 1962 one which did not happen because already the City Council of Kampala, as way back as 1987 had allocated this land to the first transferee who then transferred it to the next one, who is the petitioner now.

In view of the above analysis, counsel contended that the petitioner has shown that the acts of the respondent contravene **Articles 239** and **241** of the Constitution and that that is sufficient to found a cause of action in a Constitutional Petition under **Article 237** of the Constitution. He submitted that the moment it is shown that there is inconsistency between an act or the law with the Constitution, the cause of action is founded. He prayed Court to find that there is a cause of action. He also urged Court to find on issues number two and three in favour of the petitioner and that Court makes the declarations sought by the petitioner.

Counsel also prayed Court to find that the allocation and grant of the Uganda Land Commission of the suit land to itself amounted to expropriation of the petitioner's land and is inconsistent with **Article 26** of the Constitution. He **concluded** by asserting that under **Article 50** of the Constitution the Court should make orders for nullification of the allocation and cancellation of the title deed coupled with a permanent injunction as pleaded.

## **The respondents' Case**

### **Ground One.**

10 Counsel for the respondent submitted that this Petition is incompetent, a disguised ordinary plaint, and has no merit at all to require this Court to interpret any of the above provisions of the Constitution. He submitted that the acts being complained of by the petitioner relate to enforcement or establishment of proprietary rights over the disputed plot number M468 located at Bugolobi. To demonstrate that this is a disguised plaint, page 3 of the Petition shows the prayers the petitioner seeks from this Honourable Court which are basically three.

1. Nullification of the allocation.
2. Cancellation of the title and interest of Uganda Land commission as the proprietor.
3. Declaration that the petitioner is the owner of M468.

Counsel submitted that for there to be cancellation of a title one need to prove fraud pursuant to Section 176 of the Registration of Titles Act. He submitted that it was not surprising that the petitioner could not bring any attributes of fraud because there were none. The only conclusion, he contended, is that this Court is being dragged into hearing matters that can easily be disposed of by any other court of competent jurisdiction. Counsel realized on **Mugoya Kyawa Gaster V. Attorney General Constitutional Petition No. 9 of 2008** where this Court observed that rights which can easily be enforced elsewhere by other courts cannot be a preserve of this Court and the Court further held that rights and freedoms of individuals guaranteed and protected by the Constitution can be enforced elsewhere under **Article 50**.

Counsel prayed that this Court finds that the petitioner is using the Constitutional Petition to enforce rights which are clearly granted under **Article 50** and other provisions of the Constitution and other laws which can safely be investigated and adjudicated over and remedies given in form of the prayers the company is seeking. He prayed that Court dismisses the Petition, even on this ground alone.

### **Grounds Two and Three**

Counsel for the respondent submitted that **Article 26** relates to ownership of property while **Article 239** lays out the functions of the Uganda Land Commission. On the other hand **Article 241** lays out the functions of District Land Boards. These are the provisions of the Constitution which the petitioner is asking this Court to declare that they had been infringed by the acts of the respondent.

Counsel argued that the land in question is owned by Government of Uganda as is clearly set out in the supplementary affidavit of one Kajumbura, the then Commissioner for Surveys and Mappings in the

Ministry of Lands, Housing and Urban Development, the affidavit of Mubala, the then Secretary of the Uganda Land Commission and the affidavit of Carol Bonabana, then a State Attorney in the Ministry of Justice and Constitutional Affairs. Counsel contended that the suit land had never been wholly or partly of Kampala District Land Board or any district body. Counsel referred to the 1962 Public Lands Act Cap. 201 Section 11 thereof the import of which is the vesting of all land in the Uganda Land Commission. It states that:

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***“subject to the provisions of the Constitution and of this Act all crown lands which immediately prior to the commencement of this act had not been demise by way of lease under the provisions of the crown lands ordinance and were occupied by government for public purposes shall be vested in the Land Commission in freehold to be held and enjoyed, sued for, recovered, maintained, dealt with and disposed of or in the manner provided for by the Constitution and by this Act”.***

On the other hand, Section 15, the marginal note states:

***“leases to urban authorities”*** where by operation of this Act either at the commencement thereof or any time thereafter land which is situated in an area over which an urban authority exercises jurisdiction is vested in or transferred to a land board shall be the responsibility of the land board.

The Land Reform Decree of 1975 Section 1 declared all land in public land to be administered by the Commission in accordance with the Public Lands Act of 1969 subject to such modification as may be necessary to bring the Act into conformity with the law.

Finally, the Public Lands Act of 1969 referred to in the Land Reform Decree Section 23 (2) provides that the Commission shall grant to the Urban Authorities of designated areas such lease and on such terms and conditions as the Minister may direct and any lease so granted shall be deemed to be a statutory lease. The Urban Authority to have a lease in this case ought to have been granted the lease by the Uganda Land Commission. Counsel argued that there is no material evidence that has been brought by the petitioner to show that there was a lease granted by the Uganda Land Commission to Kampala District Land Board to own it or to Kampala City Council as the Controlling Authority.

The 1995 Constitution under **Article 286** abolished Statutory Leases and all such leases devolved to District Land Boards. It is the respondent’s submission that the devolution could only happen where that land was not owned by any person or authority in the district. In the instant case, the land in dispute was owned by the Uganda Land Commission. It couldnot, therefore, be affected by the provisions of **Article 286** of the Constitution. The learned counsel denied the allegation by the petitioner that allocation by the Uganda Land Commission in the instant case amounts to expropriation and therefore a contravention of Article 26.

Counsel submitted that the documentation on record shows that the petitioner’s lease expired on 31<sup>st</sup> March 2002. When the title of the petitioner expired in 2002, it was purportedly extended in



October 2009. However, the said extension was invalid because at the time of the same, the Uganda Land commission had taken over its own land in September 2009 following its function to own and manage all land that is vested in government. The Government of Uganda can own land whether surveyed or unsurveyed. In this particular case, the land was surveyed and placed into the hands of the Uganda Land Commission. It was the submission of counsel that even at the time when Kampala District Land Board extended the lease of the petitioner in October 2009, the same was not available for that purpose.

Counsel accordingly submitted that the petitioner never acquired any proprietary interest by virtue of that extension and hence no proprietary rights enforceable under **Article 26** of the Constitution of Uganda and the Act. The 1<sup>st</sup> respondent; the Uganda Land Commission, acquired this land in compliance with its constitutional functions laid out under **Article 239** of the Constitution of Uganda. **Article 239** read together with Section 53 of the Land Act which gives the Uganda Land Commission power to own and manage land vested in Government and that was how the Uganda Land Commission performed its function by registering this land in its names for and on behalf of the Government of Uganda.

The functions of District Land Boards, particularly Kampala District Land Board, which are set out in **Article 241** of the Constitution, when scrutinized, are to hold and allocate land in the district which is not owned by any person or authority and this is also reproduced in Section 59 of the Land Act.

Is the respondent's submission that Kampala District Board had no mandate to allocate land that belonged to Government of Uganda to the petitioner.

Finally, counsel prayed that this petition be dismissed as it is a disguised plaint only seeking enforcement of proprietary rights. That this Court finds that the petitioner did not bring any material evidence to justify the grant of the prayers being sought. Finally he prayed that, costs for this petition be granted to the respondents.

### **Rejoinder**

**Counsel for the petitioner in his rejoinder referred to Article 137 of the Constitution which states:-**

**"where upon the determination of a petition under clause 3 of this article, the Constitutional Court considered that there is need for redress in addition to the declaration sought the Constitutional Court may grant an order of redress or refer the matter to the High Court for determination".**

With reference to the prayers, counsel submitted that the act of the Uganda Land Commission was inconsistent with **Articles 239, 241** and subsequent to that, they sought redress. Counsel urged court to

be guided by **Article 137**

**(4).**

On the expiry of the title, counsel contended, *inter alia*, that the petitioner was alive to the fact that ownership is not confirmed by only legal documents like title but also equitable beneficial interests. In that regard, the Petition clearly stated under paragraph 3 that the petitioner had always been the owner with interest and estate both legal and equitable and in physical possession and occupation of plot 464.

Counsel for the petitioner reiterated his earlier prayers.

### **Court's Findings**

#### **Ground 1:**

**Whether the petitioner raises any question for constitutional interpretation.**

**Article 137** of the Constitution, *inter alia*, provides that:-

**“a person who alleges that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court for a declaration and for redress”**

It is now well settled that not every violation of the Constitution requires Constitutional interpretation. In other words it is not enough merely to show that there was a violation of a provision of the Constitution. To move this Court under **Article 137** of the Constitution, the petitioner must show that the allegations made to the Constitutional Court give rise to the interpretation of the Constitution and seek declarations in support of his/her allegations.

The petitioner also may or may not seek redress. Once those requirements are satisfied, then the Constitutional Court has jurisdiction to entertain the matter presented before it by the petitioner irrespective of whether or not the petitioner eventually succeeds at the conclusion of the Court” consideration of the Petition.

This Court and the Supreme Court have deliberated on this issue in a number of Constitutional Petitions and appeals.

**In Phillip Karugaba Vs the Attorney General, Constitutional Petition No. 11 of 2002, this court had this to say:-**

**“It is necessary to internalize the jurisdiction of this court under Article 137 of the Constitution in order to decide whether Rule 15 is unconstitutional as alleged.**

*The Supreme Court and this Court have held that the jurisdiction of this court under Article 137 of the Constitution is to interpret and or grant redress? See Ismael Serugo Vs Kampala City Council and Another Constitutional Appeal No. 2 of 1998 and the Attorney General of Uganda Vs David Tinyefunza Constitutional Appeal No. 1 of 1998, Charles Kabagambe Vs. Uganda Electricity Board. Constitutional Petition No. 2 of 1999.*

*In its ruling on the preliminary objection in Constitutional Petition No. 2 of 2001, Joyce Nakachwa Vs. the Attorney General and two Others, this Court dwelt at length on the subject quoting from the decisions of the Supreme Court and its own decisions. This Court stated thus:*

*“First we deal with the issue of jurisdiction. This Court has recently pronounced itself on this matter in the case of Alenyo Vs. The Attorney General and 2 Others (supra) in which we followed the Supreme Court decisions in Serugo (supra) and David Tinyefunza (supra). We stated:- Article 137 (1) provides: “Any question as to the interpretation of this Constitutions shall be determined by the Court of Appeal sitting in the Constitutional Court. The Constitution does not define the word “interpretation” However, Article 137 (3) gives a clear indication of what the word means. It states:*

*137(3) a person who alleges that:-*

- (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 declaration to that effect, and for redress where appropriate.*

*We hold the view that the allegations made to the Constitutional Court, if they are in conformity with Article 137(3), give rise to the interpretation of the Constitution and the Court has the jurisdiction to entertain them.*

*In the instant petition, the petitioner alleges that the Law Council is guilty of commissions and omissions, which are inconsistent with or in contravention of the Constitution. He has petitioned this court for a declaration to that effect. In our judgment these are the type of actions envisaged by Article 137 (3)(b). He is not stating as a fact that he has a definite right that should be enforced. He is alleging that the conduct of Law Council has violated his rights guaranteed by specified provisions of the Constitution and this court should so declare. In order to do that Court must determine the meaning of the specific provisions of the Constitution allegedly violation and whether the conduct complained of has actually violated those provisions. The carrying out of the*

*exercise by the court is an interpretation of the Constitution. It is not an enforcement of rights and freedoms...The Court are being called upon to interpret the Constitution. It can make a declaration and stop there or it can grant redress if appropriate. Whether the alleged acts and omissions of the Law Council contravene or are inconsistent with the Constitution is not relevant to the issue of jurisdiction. It is what the Court is called upon to investigate and determine after it has assumed jurisdiction not relevant either, that there is a remedy available to the petition somewhere else. That alone cannot deprive the Court of the jurisdiction specifically conferred on it by Article 137<sup>99</sup> (sic).*

This Court held that it deals with matters of redress under **Article 50** only when this is done in the process of constitutional interpretation.

In the instant case, the petitioner is alleging that the acts of the respondent contravene **Articles 239, 241 and 26** of the Constitution. The acts being complained of by the petitioner go beyond mere enforcement or establishment of proprietary rights over the suit property. In our view, the acts complained of fall under **Article 137 (3) (b)**; of the Constitution which provides as follows:-

**"Any person who alleges that-**

**(b)Any act or omission by any 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".**

In the instant Petition this Court is being called upon to determine the meaning of **Articles 239, 241 and 26** of the Constitution alleged to have been violated and whether the conduct complained of has actually violated those Articles.

The Court is also being asked for a declaration and redress to that effect. We conclude that the carrying out of the above exercise by this Court amounts to an act of interpretation of the Constitution. The Court is not being asked to merely enforce those rights.

The petitioner further asks Court to make certain declarations in support of his allegations. He also seeks orders of redress although the aspect of redress is not relevant to the jurisdiction of this court.

In the premises we find that the Petition raises questions for constitutional interpretation as envisaged under **Article 137 (3) (b)** of the Constitution. This Court, therefore, has jurisdiction to entertain the matters laid before it in the instant Petition. We accordingly answer the 1<sup>st</sup> issue covered in ground one in the affirmative.

### **Grounds two and three**

Whether the acts of the 1<sup>st</sup> respondent contravene **Article 26, 239 and 241** of the Constitution.

The above grounds were, correctly in our view, argued together.

**Article 26** is about protection from deprivation of property.

It states as follows:

“26 (1) Every person has a right to own property either individually or in association with others.

**(2) (1) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied:-**

**a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and**

**b) The compulsory taking of possession or acquisition of property is made under a law which makes provision for:-**

**i) Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and**

**ii) A right of access to court of law by any person who has an interest or right over property.**

**Article 239** lays out the functions of the Uganda Commission; it provides:-

**“The Uganda Land Commission shall hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the provisions of this Constitution and shall have such other functions as may be prescribed by Parliament”**

Section 53 of the Land Act Cap 227 provides further functions of the Uganda Land Commission as follows

Uganda Land Commission may:

- a) Acquire by purchase or exchange or otherwise hold land rights easements or interest in land;**
- b) Evict, alter, enlarge, improve or demolish any building or other erection on any land held by it;**
- c) Sell, lease or otherwise deal with the land held by it;**
- d) Cause surveys, plans, maps, drawings and estimates to be made by or through its offices or agent; and**
- e) Do such other things as may be necessary for or incidental to the exercise of those powers and the performance of the functions”**

On the other hand, **Article 241** of the Constitution lays out the functions of the District Land Boards; it provides:

**Functions of district land boards**

“241 (1) The functions of a district land board are:-

- a) To hold and allocate land in the district which is not owned by any person or authority.**
- b) To facilitate the registration and transfer interests in land, and**
- c) To deal with all other matters connected with in the district in accordance with laws made by Parliament.**
- d) 1. “In the performance of its functions, a district board shall be independent of the Uganda Land Commission and shall not be subject to the direction or control of any person or authority but shall take into account national and district council policy on land”**

The above Article should be read together with Sections 59 and 60 of the Land Act.

Section 59 (1) provides for the functions of the board as follows

- a) hold and allocate land in the district which is not owned by any person or authority;*
- b) facilitate the registration and transfer of interests in land;*
- c) take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority;*
- d) cause surveys, plans, maps, drawings and estimates to be made by or through its officers or*

*agents;*

*e) compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed;*

*j) review every year the list of rates of compensation referred to in paragraph (e) of this subsection;  
and*

*g) deal with any matter which is incidental or connected to the other functions referred to in this subsection.*

Section 60 of the Land Act is about powers of the board, provides as follows:

*“60 (1) In the performance of its function, a district land b shall be independent of the Uganda Land Commission and shall not be subject to the direction or control of any person or authority but shall take into account the national and district council policy on land and the particular circumstances of different systems of customary land tenure within the district.*

2) A board shall have power to \_\_\_\_\_

*a) acquire by purchase or otherwise rights or interests in land and easements;*

*b) erect, alter, enlarge, improve or demolish any building or other erection on any land held by it;*

*c) sell, lease or otherwise deal with the land held by it; and*

*d) do and performance all such other acts, matters and things as may be necessary for or incidental to the exercise of those powers and the performance of those is functions.*

*1. In the performance of its functions, a district land board shall prepare and publish an annual report and shall have regard to any comments that the district council may make on that annual report. ”*

The provisions of the Constitution mentioned above are those the petitioner has alleged that the 1<sup>st</sup> respondent has infringed.

As far as **Article 26** of the Constitution is concerned, the petitioner has to prove that there was a statutory lease granted by the Uganda Land Commission to Kampala City Council as the Controlling Authority. Apart from stating that the petitioner got registered as a proprietor and owner of the suit property comprised in Leasehold Register Volume 1727 Folio 24 plot M. 468 at Bugolobi, there is no evidence from Kampala Land Board, the successor to KCC then a Controlling Authority that the land belonged to them. On the contrary, the affidavits of Mr. Kajumbura, the Commissioner For Surveys and Mappings in the Ministry of Lands, Housing and Urban Development; and of Mr. Mubbala, the then Secretary of the Uganda Land Commission and the affidavit of Ms. Carol Bonabana, a then State Attorney in the Ministry of Justice and Constitutional Affairs, all point to the fact that the land in question is owned by the Government of Uganda and that it has never been either wholly or in part owned by Kampala District Land Board or any district body.

The supplementary affidavit of Mr. Kajumbura shows that the land in question has always belonged to the Government of Uganda and to demonstrate this, he attached, among other things, the cadastral prints showing the bigger Mpanga plantation; originally called Nakivubo Forest Reserve, which later turned into Mpanga plantation located at Bugolobi and Namuwongo. The affidavit of Mr. Mubbala is to the effect that the land in question is owned by the Government of Uganda accommodating so many Government bodies including Uganda Broadcasting Council, among others, and that the land in issue was surveyed way back in the 1960s for the use of the Government of Uganda.

There is no evidence whatsoever to show that the then Kampala City Council, now Kampala Capital City Authority, has ever had a statutory lease over the suit property from which it could have legally



granted a lease to the petitioner or its alleged predecessor in title.

In the premises, it cannot be justifiably said that the dealings in land by the Uganda Land Commission, was in contravention of the impugned Articles of the Constitution. We also find that, the purported extension of the lease by the Kampala District Land Board in October 2009 in favour of the petitioner was invalid and without any legal basis.

We also conclude that according to the evidence on record from the affidavits of Mr. Kajumbula and Ms. Bonabana which we accept, the 1<sup>st</sup> respondent, the Uganda Land Commission, acquired this land in total compliance with its Constitutional functions laid out in **Article 239** of the Constitution and in Sections 59 and 60 of the Land Act. The Uganda Land Commission performed its functions under the above law by registering the suit land into its names for and on behalf of the Government of Uganda under a Freehold Title.

The logical conclusion from the above analysis of the evidence and the law is therefore, that whereas the mandate, functions and powers of the Uganda Land Commission are in respect of land owned by the Government of Uganda, those, of District Land Boards, including that of the former Kampala City Council, now Kampala Capital City Authority are in respect of land within such board's territorial jurisdiction which is not owned by any person or authority, The two bodies act independently of each other in the execution or exercise of their respective mandates, functions and powers.

It is our conclusion, therefore, that with regard to the land the subject of this Petition, it was and is the Uganda Land Commission, and not the Kampala District Land Board, with the authority to deal with the said land as the Uganda Land Commission did.

For the above reasons, we find that the petitioner is not entitled to the declarations he seeks from Court. We therefore, decline to make any. We further decline to give any of the redresses prayed for. The Registrar of Titles is hereby directed to cancel the petitioner's Certificate of Title in respect of Lease hold Register Volume 1727 Folio 24 Plot M 468 at Bugolobi erroneously issued to it. The petition is accordingly dismissed with costs to the respondents.

**We so Order.**

**Dated at Kampala this 9<sup>th</sup> day of December 2015**

**HON. JUSTICE.S B K KAVUMA**

**DEPUTY CHIEF JUSTICE**

**HON.JUSTICE .ELDAD MWANGUSYA**

**JUSTICE OF APPEAL**

**HON.JUSTICE RUBBY AWERI OPIO**

**JUSTICE OF APPEAL**

**HON.JUSTICE SOLOMY BALUNGI BOSSA**

**JUSTICE OF APPEAL**

**HON.JUSTICE. RICHARD BUTEERA**

**JUSTICE OF APPEAL**