

**THE REPUBLIC OF UGANDA**

**IN THE CONSTITUTIONAL COURT OF**

**UGANDA**

**AT KAMPALA**

**CORUM:** HON. JUSTICE L.E.M MUKASA-KIKONYOGO, DCJ  
HON. JUSTICE G.M. OKELLO, JA  
HON. JUSTICE S.G. ENGWAU, JA  
HON. JUSTICE A. TWINOMUJUNI, JA  
HON. JUSTICE C.K. BYAMUGISHA, JA

**CONSTITUTIONAL PETITION NO. 19 OF 2006**

**JOHN KEN-LUKYAMUZI .....PETITIONER**

**V E R S U S**

- 1. THE ATTORNEY GENERAL )**
- 2. ELECTORAL COMMISSION ) ..... RESPONDENTS**

**JUDGMENT OF THE CONSTITUTIONAL COURT:**

**On the 12<sup>th</sup> July 2006, the petitioner filed in this court the following petition :-**

**"THE HUMBLE PETITION OF JOHNKEN-LUKYAMUZI**  
of C/O M/S Kibeedi & Co. Advocates, Plot No. 17/19 Nkrumah  
Road, P. O. Box 5780 Kampala whose names are stated at the foot  
of this petition showeth as follows:

1. That your petitioner is a male adult Ugandan of sound mind who, at all times material to this action, was the Member of the 7<sup>th</sup> Parliament of Uganda representing Lubaga South Constituency and one of the persons

affected by the implementation of the Leadership Code Act. No.17 of 2002. That your 1<sup>st</sup> respondent is the Attorney General of Uganda and the constitutional legal representative of Government in all proceedings to which Government is a party pursuant to Articles 119(4)(c) and 250 of the Constitution whereas the 2<sup>nd</sup> respondent is a body corporate established by Article 60 of the Constitution of the Republic of Uganda, 1995 and the Electoral Commission Act, Cap.140 of the laws of Uganda and whose presence is necessary for the effective and final adjudication upon the matters raised in this petition. That your petitioner is interested in and/or aggrieved by the following matters being inconsistent with the Constitution whereby your petitioner is aggrieved:

- a) **That the removal of the petitioner from his seat as the Member of Parliament representing Lubaga South Constituency in the 7<sup>th</sup> Parliament of Uganda before the expiry of his tenure of office as prescribed by Articles 77(3), 96 and 289 of the Constitution (as amended) was inconsistent with Articles 2 & 83 (1) (e) of the Constitution.**
- b) **That the Inspector General of Government (IGG) acted contrary to Articles 2, 3(4), & 83 (1)(e) of the Constitution when by her report dated 30<sup>th</sup> September 2005, she required the Speaker of Parliament to take action against the Petitioner to vacate his seat in Parliament on the ground of alleged breach of the Leadership Code Act, 2002.**
- c) **That the Speaker of the Parliament, in the course of his duties as an official of the 1<sup>st</sup> respondent, acted contrary to Articles 2, 3(4) & 83(1) (e) of Constitution when he implemented the decision of the IGG contained in her report dated 30<sup>th</sup> September 2005 requiring the petitioner to vacate his seat in Parliament on the ground of alleged breach of the Leadership Code Act, 2002.**
- d) **That the Chairperson of the 2<sup>nd</sup> respondent, while acting as an official and/or agent and/or servant of the respondent, acted contrary to Articles 2, 3(4), 62, 80 83(1)(e) of the Constitution when he declared that the petitioner was not eligible for nomination as a candidate to contest**

**for election as the Member of Parliament representing Lubaga South Constituency in the 8<sup>th</sup> Parliament of Uganda on the sole ground of breach of the Leadership Code well aware that the procedure for removal from the 7<sup>th</sup> Parliament did not meet the standard set out in the Constitution.**

- e) That the application of Sections 5(2)(b), 5(2)(c), 12(2), 14(3)(c), 14(3)(d), 35(b) and 35(d) of the Leadership Code Act No. 17 of 2002 (hereinafter called "*the Leadership Code*") to Members of Parliament renders them inconsistent with Articles 2 & 83 (1)(e) of the Constitution which has provided specific procedure for removal of a Member of Parliament on the ground of violation of the Leadership Code of Conduct.**
- f) That Section 34(2) (b) of the Leadership Code Act No.17 of 2002 is inconsistent with Articles 2, 20(2) and**

**42 of the 1995 Constitution which confer an unconditional right to any person who has appeared before any administrative official or body to apply to a court of law in respect of any administrative decision taken against him or her."**

The petition contained prayers that the court should grant the following reliefs:

- a) A declaration that the removal of the petitioner from his seat as the Member of Parliament representing Lubaga South Constituency in the 7<sup>th</sup> Parliament of Uganda was null and void for being inconsistent with Article was 2 & 83(1)(e) of the Constitution.**
- b) A declaration that the removal of the petitioner from his seat as the Member of Parliament representing Lubaga South Constituency in the 7<sup>th</sup> Parliament of Uganda was contrary to Articles 77(3), 96 and 289 of the 1995 Constitution (as amended) which provided for the expiry of the term of the 7<sup>th</sup> Parliament.**

**c) An order directing the 1<sup>st</sup> respondent to immediately compute and pay the petitioner all the emoluments and payments the petitioner would have earned as a Member of Parliament from the time he was unlawfully removed from his seat until the expiry of the tenure of the 7<sup>th</sup> Parliament of Uganda as prescribed by Articles 77(3), 96 and 289 of the Constitution (As amended).**

**d) A declaration that the disqualification of the petitioner by Chairperson of the 2<sup>nd</sup> respondent from being nominated as a candidate to contest for election as the Member of Parliament representing Lubaga South Constituency in the 8<sup>th</sup> Parliament of Uganda on the sole ground of breach of the Leadership Code was inconsistent with Articles 2, 3(4), 62, 80, 83 (1) (e) of the Constitution.**

**e) A declaration that the petitioner is not legally barred from contesting for a seat in the 8<sup>th</sup> Parliament of Uganda or being elected or appointed to any public office for the next five(5) years after his illegal removal from the 7<sup>th</sup> Parliament of Uganda.**

**f) A declaration that the application of Sections 5(2)(b), 5(2)(c), 12(2), 14(3)(c), 14(3)(d), 35(b) and 35(d) of the Leadership Code Act No. 17 of 2002 to Members of Parliament renders them inconsistent with Articles 2 & 83(1)(e) of the Constitution.**

**g) A declaration that Section 34(2)(b) of the Leadership Code Act No. 17 of 2002 is inconsistent with Articles 2, 20(2) and 42 of the Constitution to the extent to which it restricts the procedure for challenging the inquiry, proceedings, process or report of the Inspectorate of Government to appeals only.**

**h) Costs of the petition with a Certificate for two (2) counsel."**

The petition was accompanied by a lengthy affidavit of the petitioner in which he gave a historical development of the dispute which forms the background to this petition. We shall deal with it in due course of this judgement.

On the 5 October 2005, the petitioner filed an amended petition in which he amended paragraph 3(g) and paragraph (h) of the prayers as follows:-

Paragraph 3 (g)

"The omission and/or failure by Parliament and/or Government to establish a Tribunal to try the petitioner and any other MPs for alleged violation of Leadership Code contravened Articles 83(1)(e), 28(1), 44(c), 20(2) & 225(d) of the Constitution."

Paragraph (h) of the prayer:

"A declaration that the omission and/or failure by Parliament and/or Government to establish a Tribunal to try the petitioner and any other MPs for alleged violation of Leadership Code contravened Articles 83(1) (e), 28(1), 44(c), 20(2) & 225(d) of the Constitution."

**This** amended petition was supported by another affidavit of the petitioner and that of his daughter, **Hon.** Susan Nampijja Lukyamuzi, MP.

The respondents filed a joint answer to the petition on 20<sup>th</sup> July 2006 accompanied by the affidavits of Dr. Badru M. Kiggundu, the Chairperson of the Electoral Commission and that of Carol Bonabana of the Attorney General's Chambers. The Inspector General of Government, Hon. Justice Faith Mwendah, also filed a lengthy affidavit in support of the 1<sup>st</sup> respondent's answer to the petition. The gist of all these affidavits will be considered later.

As a result of the affidavit of Hon. Faith Mwendha, the petitioner filed a rejoinder on 3<sup>rd</sup> November 2006. In it he disputed most of the matters deposed to by the respondents witnesses.

On 10<sup>th</sup> November 2006 the parties to this petition filed the following Memorandum of agreed facts and agreed issues:-

**1. AGREED FACTS:**

**The petitioner was a Member of the 07<sup>th</sup> Parliament representing Lubaga South Constituency. The petitioner lost his seat as a Member of Parliament on 05<sup>th</sup> December 2005, following the report of the Inspector General of Government in which she found the petitioner guilty of breach of S.4(8) of the Leadership Code Act and required the petitioner to vacate his seat in Parliament. Implementation of the decision of the Inspector General of Government (IGG) requiring the petitioner to vacate his seat was done by the Speaker of Parliament. In January 2006, the 2<sup>nd</sup> respondent barred the petitioner from being nominated citing his preceding vacation of seat in Parliament for breach of the Leadership Code.**

**2. AGREED ISSUES:**

- (i) Whether the removal of the petitioner from Parliament by the IGG and Speaker of Parliament was contrary to Articles 2, 3(4) & 83 (I) (e) of the Constitution.
- (ii) Whether the disqualification of the petitioner by the Chairperson of the Electoral Commission from being  
nominated to contest as a Member of the 8<sup>th</sup> Parliament breached Articles 2, 3(4) 62, **90** and 83(1)(e) of the Constitution.
- (iii) Whether the application of Sections 5(2) (b), 5(2) (c), 12(2), 14(3)(c), 14(3)(d), 35(b), 35(d) of the Leadership Code

Act to Members of Parliament is inconsistent with Articles 2 and 83(1)(e) of the Constitution.

(iv) Whether Section 34(2) (b) of the Leadership Code Act contravenes Articles 20(2) and 42 of the Constitution.

(v) What remedies are available to the petitioner.

At the trial before us, Mr. Muzamiru Kibedi and Mr. James Akampumuza appeared for the petitioner. Mrs. Robinah Rwakojo, a Principal State Attorney and Ms Kahwa, a Senior State Attorney, appeared for the **15** respondents. Mr. Kibedi, learned counsel for the petitioner, set the pace and argued the petition following the order in which the issues appeared in the memorandum of agreed facts and issues alluded to above. We shall also deal with the issues in the same order.

Before we deal with the main issues, we wish to dispose of a preliminary objection which was raised by counsel for the petitioner at the beginning of the trial. He wanted us to try this petition mainly on the issue of whether the IGG had the power to dismiss the respondent from Parliament, but not whether the petitioner had breached the Leadership Code. Mrs Robinah Rwakojo for the respondents replied that there was a violation of the Leadership Code and that is how the IGG came into the picture. This court held that the issues as agreed at the scheduling conference were wide enough to cover the matters raised in the petition and we ordered the trial to proceed. Mr. Muzamiru Kibedi then applied for leave to appeal against our ruling that the trial proceeds on the issues as framed. We did not see any issue of substance that could justify this case to go to the Supreme before any evidence on the substance of the petition was received. We do not consider that our ruling had the effect **5** of blocking the petitioner from canvassing any matter he had raised in the petition.

It is for this reason, that we overruled the application to appeal against our order and held that the application be overruled and the trial proceeds **10** on its

merits. We maintain that, that was the appropriate order in the circumstances of this case being a Constitutional Petition where the Constitution commands us to hear and finalise expeditiously.

Now we turn to the merits of this petition.

ISSUE NO.1

*Whether Removal of The Petitioner from Parliament was contrary to Articles 2 and 83(1) (e) of the Constitution of Uganda.*

This issue was argued by Mr. Muzamiru Kibedi. He contended that the power to discipline a Member of Parliament for alleged breach of the Leadership Code is enshrined in Article 83(1) (e) of the Constitution which states:-

**"Article 83(1) A Member of Parliament shall vacate his or her office in Parliament**

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(a).....

(b).....

(d) .....

(e) If that person is found guilty by the appropriate tribunal of violation of the Leadership Code of Conduct and the punishment imposed is or includes the vacation of the office of a Member of Parliament.

(f) .....

**(g)** .....

(h) .....

(i) .....



Mr. Kibedi submitted that the resolution of issues No.1, 2 & 3 above depended on the interpretation of the phrase "appropriate tribunal" which is used in Article 83 of the Constitution. He pointed out that in paragraph 5(a) of the supplementary affidavit of Hon. Justice Faith Mwendha, she averred that the IGG is the appropriate tribunal referred to in Article 83 of the Constitution. He invited us not to accept such an interpretation because in his view the tribunal and the Inspector General of Government [IGG] are not synonymous. He argued that if they were synonymous, then:-

- (a) The framers of the Constitution would have said so.
- (b) The interpretation would breach Article 225(1) (a) & (d) of the Constitution by making the IGG Investigator, prosecutor and judge contrary to principles of natural justice.
- (c) The power of the IGG under Article 225(1) (d) of the Constitution is subject to the Constitution which means that the IGG cannot supervise Members of Parliament mentioned in Article 83(1) (e) of the Constitution.
- (d) The Constitution enjoins the IGG to promote and uphold the rights enshrined in Chapter IV of the Constitution and in particular those in Articles 28(1) and 44(c) of the Constitution. In his view, the same person or authority should not be investigator, prosecutor and judge in the same cause.

Mr. Kibedi submitted that the office of the IGG was a very powerful one and that there was need to check the powers of that office in order for the office to play its proper constitutional role. He invited us to hold that the office of the IGG is not the "**appropriate tribunal**" referred to in Article 83(1) (e) of the Constitution.

In reply, Mrs Robinah Rwakojo, contested all Mr. Kibedi's arguments. She submitted that the power to discipline a Member of Parliament for breach of the

Leadership Code was vested in the IGG by Article 83(1) (e) of the Constitution. The petitioner is one of the leaders who was required to declare his wealth under the Leadership Code of Conduct. He failed to do so. The IGG had to act in accordance with the Constitution. As to the meaning of the phrase "**appropriate tribunal**" Mrs. Rwakojo submitted that the Constitution should be interpreted as a whole in order to give it a wholistic meaning. She submitted that the provisions of Article 83(1) (e) of the Constitution, those of Article 234 and Chapters 13 and 14 of the Constitution left no doubt whatsoever that the expression could not have been intended to refer to anyone else other than the IGG. She invited us to hold that until Parliament decides to constitute another appropriate tribunal, the power conferred by Article 83(1) (e) of the Constitution is exercised by the IGG.

The case for the petitioner is that the IGG is not the appropriate tribunal referred to in Article 83(1) (e) of the Constitution and therefore, she has no power to discipline the petitioner for breach of the Leadership Code of Conduct or the order for the removal of the petitioner from Parliament. The case for the respondents is that the IGG is the appropriate tribunal referred to and that until Parliament sets up another tribunal, the IGG remains the enforcement authority for the Leadership Code under Article 83(1) (e) of the Constitution.

It is trite that when interpreting the Constitution, a wholistic approach has to be taken and the Constitution should be looked at as a whole. The relevant provisions of the Leadership Code of Conduct and those of the Inspectorate of Government Act have to be taken into account. We have already quoted above the provisions of Article 83(1) (e) the Constitution. To this we must add the provisions of Article 234 of the Constitution which states:-

**"The Leadership Code of Conduct shall be enforced by the Inspectorate of Government or such other authority as Parliament may by law prescribe."**

From these constitutional provisions, it appears plain to us that the power to enforce the Leadership Code of Conduct is vested in the office of the IGG. Mr. Muzamiru Kibedi did not seek to challenge this literal interpretation of the phrase "**appropriate tribunal.**" Instead his main point is that the Constitution and the law give the IGG too much power which is dangerous and which should be curtailed. He argued that the IGG is made an investigator, prosecutor and judge in the same cause contrary to the rules of natural justice and this court should not allow such powers to stand.

With respect, we do not agree with learned counsel. We do not accept that the powers of the IGG under the Constitution are contrary to rules of natural justice. It is true that the IGG has power to investigate, prosecute and make judgments but these are not necessarily exercised simultaneously. The Constitution and the Leadership Code Act contain safeguards to ensure that the powers conferred on the IGG are not abused. For example, section 26 of the Leadership Code Act provides that when inquiring into an allegation under the Code, the IGG shall observe the rules of natural justice. Section 33 of the Code also provides that any person aggrieved by the decision of the IGG has a right to appeal against the decision to the High court of Uganda. The Constitution guarantees the independence of the office of the IGG but through periodic reports, the IGG is accountable to Parliament. These provisions are designed to ensure that the IGG does not become sole actor in performance of his duties.

We wish to observe that the word tribunal is wide enough to apply to an individual person with quasi-judicial power or a body of persons with similar powers. The word tribunal is defined in Oxford Advanced Learner's dictionary of current English sixth Edition as "**a type of court with the authority to deal with a particular problem or disagreement**" and sights examples of a disciplinary tribunal and an Industrial tribunal. In WORDS AND PHRASES LEGALLY DEFINED, a statutory tribunal is defined as "**any** government

department, authority or person entrusted with the judicial determination as arbitrator or otherwise of questions arising under an Act of Parliament."

It is further stated therein "**tribunal** includes the **person constituting 5** a tribunal **consisting of one person.**"

We have carefully considered- all the arguments advanced to support either side in this petition. We have no doubt, and we so hold, that the IGG is indeed the "**appropriate tribunal**" under Article 83(1) (e) of the Constitution.

We are aware of a recent amendment to our Constitution contained in Article 235 A of the Constitution. It was introduced and enacted by the Constitutional (amendment) Act, 2005, Act 11 of 2005. The amendment is states :-

**There shall be a Leadership Code Tribunal whose composition, jurisdiction and functions shall be prescribed by Parliament by law."**

As we write this judgment, we are not aware that such a tribunal has been set up and constituted as prescribed above. This amendment was passed on 30<sup>th</sup> September 2005 by which time this petition had already been filed in this court. The amendment does not affect the subject matter of this petition. Meanwhile the IGG remains the enforcement authority of the Leadership Code of Conduct until Parliament directs otherwise. We decide this issue in the negative.

ISSUE NO.2

*Whether the Inspector General of Government, the Electoral Commission and the Speaker of Parliament of Uganda breached Articles 2, 3(4) of the Constitution.*

The gist of this issue is that in ordering the removal of the petitioner from Parliament, the IGG, the Electoral Commission and the Speaker of Parliament acted in contravention of the Constitution. Both counsel addressed this issue only briefly. Learned counsel for the petitioner did not explain how the conduct of the IGG, Speaker and Chairperson of the Electoral Commission contravened articles 2 and 3 of the Constitution. Article 2 of the Constitution is about the Supremacy of the Constitution and article 3(4) makes it a duty of every citizen to defend the Constitution at all times. It is implicit in our findings on the first issue discussed above that the IGG has the power under the Constitution to order for removal of a Member of Parliament who is found guilty of breach of the Leadership Code of Conduct. All that the Speaker and the Chairperson of Electoral Commission have to do is to comply with the order of the IGG. That is exactly what was done in this case. We are not persuaded that the IGG, the Speaker and the Chairperson Electoral Commission committed any breach against Articles 2 and 3(4) of the Constitution or any other article of the Constitution. We resolve this issue in the negative.

### ISSUE NO. 3

*Whether the application of Sections 5(2)(b), 5(e)(c), 12(2), 14(3)(c), 14(3)(d), 35(b) and 35(d) of the Leadership Code act to Members of Parliament is inconsistent with Articles 2 and S3(1)(e) of the Constitution.*

Mr. Muzamiru Kibedi submitted that once the IGG makes a finding that a Member of Parliament is in breach of the Leadership Code, the Member of Parliament must vacate his seat. In his view, this contravened Article 83(1) (e)

of the Constitution which provides that the decision of the IGG must be scrutinised by an appropriate tribunal before it is carried out. With respect to counsel, this matter has already been disposed of. The IGG is the appropriate tribunal and once he/she makes the order, it is binding and must be complied with. There is no contradiction between the Leadership Code and the Constitution. This issue is resolved in the negative.

#### ISSUE NO.4

*Whether Section 34(2) (b) of the of the Leadership Code Act contravenes Articles 20(2) and 42 of the Constitution. Section 34(2) (b) of the Leadership Code Act provides:-*

**"No inquiry, proceedings, process or report of the Inspectorate shall-**  
(a).....  
**(b)be liable to be questioned, reviewed or quashed in any court except on appeal under Section 35 of this Code."**

Article 20(2) of the Constitution states:-

"The rights and freedoms **of** the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons."

Article 42 provides:

**Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her."**

Mr. Muzamiru Kibedi argued that Article 42 of the Constitution and section 34(2) (b) of the Leadership Code Act are in conflict and therefore section 34(2) (b) must be unconstitutional. He did not relate his submission to the facts of this case and in our view, his arguments were academic. We have already stated that when enforcing the Leadership Code, the IGG exercises quasi judicial powers. He/she is, therefore, not acting as administrative official or body. We are unable to pronounce 15 ourselves on this issue which is not related to the petition before us. It is therefore academic in nature.

#### ISSUE NO. 5

#### ***Whether there are any remedies available to the petitioner.***

In our judgment, the IGG, the Speaker of Parliament and the Chairperson, Electoral Commission acted within their constitutional powers to remove 25 the petitioner from Parliament. The petitioner had a right to appeal to the High Court against the decision of the IGG but he chose not to. In our view, the petitioner has no other available remedy against his dismissal from Parliament.

#### **CONCLUSION**

The IGG is the appropriate tribunal mentioned in Article 83(1) (e) of the Constitution. He/she has the power to discipline/remove a Member of Parliament under that article. That is exactly what she did in the instant case. The petitioner could have appealed against her decision. He chose not to. We find no merit in this petition which we accordingly dismiss with costs to the respondents.

Dated at Kampala this 26<sup>th</sup> day of March 2007.

Hon. Justice L.E.M Mukasa-Kikonyogo

DEPUTY CHIEF JUSTICE

Hon. Justice G.M. Okello

JUSTICE OF APPEAL

Hon. Justice S.G. Engwau

JUSTICE OF APPEAL

Hon. Justice A. Twinomujuni

JUSTICE OF APPEAL

Hon. Justice C.K. Byamugisha

JUSTICE OF APPEAL