

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

•• [Coram: E.Mwangusya, R.Aweri Opiyo, R.Buteera, G Kiryabwire
& F. Egonda-Ntende, JJA]

CONSTITUTIONAL PETITION NO. 34 OF 2010

BETWEEN

Center for Public Interest Law Ltd

Salima Namusobya = -

— - Petitioners

AND

The Attorney General ----- Respondent

JUDGMENT OF THE COURT

Introduction

1. The petitioners seek the interpretation of the Constitution in the manner we shall set out below expressed in their own words.

1 (a) that Article 12(2)(c) of the Constitution (read together with section 14(2) of the Uganda Citizenship and Immigration Control Act and section 6(1) (d) of the Refugee Act) confers citizenship by registration of refugees in Uganda where such refugees satisfy the requirements under the provisions of section 15 of the Uganda Citizenship and Immigration Control Act.

(b) that the ineligibility of persons born in Uganda whose parents and or grandparents were refugees at the time of their birth to citizenship by registration under Article 12(a) (ii) of the Constitution (and section 14(1) (a) (ii) of the Uganda Citizenship and Immigration Control Act.) has no legal effect as regards the eligibility of refugees to citizenship by registration under Article 12(2)(c) of the Constitution (and section 14(1) (a) (ii) of the Uganda Citizenship and Immigration Control Act) as -

- (i) The ineligibility under Article 12(1)(a)(ii) of the Constitution and section 14(1)(a)(ii) of the Uganda Citizenship and Immigration Control Act

related and is limited to persons born in Uganda before the 9th October 1962;

- (ii) (ii) The ineligibility is not expressly provided for under (nor is it capable of being implied into article 12(2) of the Constitution (and - - — section 14(2) of the Uganda Citizenship and ~ - Immigration Control Act.);

WITH the consequence that Article 12(2) of the Constitution (and section 14(2) of the Uganda Citizenship and Immigration Control Act) is exclusive of, and should be construed and applied in separation from, Article 12(1) of the Constitution (and section 14(1) of the Uganda Citizenship and Immigration Control Act).

(c) That Article 13 of the Constitution (read together with sections 6(1)(d) and 45 of the Refugee Act) confers citizenship by naturalization to refugees in Uganda where such refugees satisfy the requirements under the provisions of section 16 of the Uganda Citizenship and Immigration Control Act.)’

2. The petitioners seek the following declarations,

‘(a) That a refugee resident in Uganda and who satisfies the requirements under the Laws of Uganda is eligible to apply for citizenship by registration under Article 12(2) of the Constitution.

(b) That a refugee resident in Uganda and who satisfies the requirements under the laws of Uganda is eligible to apply for and acquire citizenship by naturalization under Article 13 of the Constitution.’

3. The petitioners further seek the following order,

‘That the relevant government departments and or agencies process applications for citizenship by registration and or naturalization by refugees who satisfy the requirements for citizenship under the relevant legislation and regulations.’

4. This petition is supported by 4 affidavits sworn by petitioner no. 2, Ms. Harriet Pachuto, Mr. Bodwe Mugeni, Mr. Laurent Ngabidongo and Sheila Gloria Atim.
5. The affidavit of petitioner no.2, an advocate of the High Court of Uganda, is essentially to the effect that there has

been controversy captured in the media over whether the qualifications for registration as a citizenship under Article 12(1) apply to registration of citizens under Article 12 (2) of the Constitution. One view is that those qualifications apply while another view is that they do not apply. She prays that the Constitutional Court should determine this controversy.

6. MS Pachuto, Mr. Mugeni and Mr Ngabidongo, are all refugees who have lived in Uganda for considerable periods of time and have expressed an interest to apply for citizenship but have not done so. No reason is advanced why they have not done so.
7. The respondents did not file an answer or supporting affidavit though we have seen copies of respondent's conferencing notes and list of authorities.
8. **Mr.** Francis Gimara, learned counsel, appeared for the Petitioners at the hearing of this matter. The respondent was unrepresented though it had been notified of the hearing date for this matter. We have considered the oral arguments of counsel, the conferencing notes of both sides and the legal authorities provided to us for which we are grateful and shall now proceed to consider each declaration sought.

‘(a) That a refugee resident in Uganda and who satisfies the requirements under the Laws of Uganda is eligible to apply for citizenship by registration under Article 12(2) of the Constitution.’

9. One of the cardinal rules of constitutional interpretation is that all provisions of the Constitution must be read together, one provision not negating the other, especially provisions touching on the same subject. This is the rule of harmony. See Attorney General v Major General Tinyefuza S C Constitutional Appeal No. 1 of 1997 un reported. It has been contended for the Petitioners that Article 12(1) should be read exclusive of Article 12(2) of the Constitution and that Article 12(2) be considered in isolation of Article 12(1) in order to make those not eligible for citizenship under Article 12(1) be eligible for citizenship under Article 12(2). This is the import of the declaration sought under this head.

10. No compelling reason is advanced as to why we should ignore the rule of harmony in this case. In any case from a reading of the whole Article 12 it is clear that it is touching on one subject, citizenship by registration. Article 12 creates a right in favour of certain categories of people who would be entitled to registration as citizens of Uganda upon application. If one does not fall within the categories

of people expressed to be entitled to registration on application by the Constitution then one cannot become a citizen by virtue of registration.

11 .The Constitution has provided for another category of citizenship or route to citizenship that people who do not qualify under either birth or registration can take. This is naturalisation under Article 13. It is not the end of the world for persons who do not qualify under Article 12 or are .
Specifically excluded by Article 12(1) not to be entitled to be registered as citizens on application.

12.For the foregoing reasons we are unable to grant the declaration sought under this head.

(b) That a refugee resident in Uganda and who satisfies the requirements under the laws of Uganda is eligible to apply for and acquire citizenship by naturalization under Article 13 of the Constitution.'

13.This court has jurisdiction under Article 137 (1) to determine 'any question as to the interpretation of the Constitution.' It is this jurisdiction that we are seized with in construing the declaration sought. Article 13 states, 'Parliament shall by law provide for the acquisition and loss of citizenship by naturalization.'

14. In compliance with the foregoing provision Parliament has made the requisite law in the form of section 16 of the Uganda Citizenship and Immigration Control Act [hereinafter referred to as 'the Act'].

15. In our view there is no question for constitutional interpretation of Article 13 in relation to section 16 of the Act, even where the words, 'any alien' in section 16(1) of the Act are construed as either including or excluding a refugee living in or outside of Uganda or a refugee denied citizenship by registration under Article 12(1) of the Constitution. The word 'alien' is defined in section 2, the interpretation section of the Act, in the following manner.

'(a) **"alien" means any person who is not a citizen of Uganda.**' This would therefore include any person, whether
or not such person is a refugee, who is not a citizen of Uganda. Naturalisation provides an opportunity for those who may not qualify for citizenship by birth or registration to be eligible for consideration for citizenship.

16.From the foregoing it is clear that we are interpreting, not the Constitution but the Act

in relation to naturalization. We therefore decline to issue the declaration sought as outside our jurisdiction though we agree refugees resident in Uganda are eligible to be considered for citizenship on application for naturalization under section 16 of the Act.

‘That the relevant government departments and or agencies process applications for citizenship by registration and or naturalization by refugees who satisfy the requirements for citizenship under the relevant legislation and regulations.’

17. We have been asked to make the above order. We think this is spurious given the lack of evidence before us that any application for either registration as a citizen or naturalization as a citizen of Uganda has ever been made to the concerned agency and was rejected or not processed. We must assume unless the contrary is shown to be the case that Government departments and Agencies are carrying out their statutory duties in accordance with the law.

18. Secondly no single Government ‘Department or Agency is named or cited in these proceedings that is alleged to be dealing with this matter. We cannot issue orders at large to bodies not identified. That is simply not the way courts entertain disputes and or offer relief to parties that come before them. See Legal Brains Trust (LBT) Limited v The Attorney General of Uganda Appeal No. 4 of 2012 [East African Court of Justice (Appellate Division)] [unreported].

19. Article 137 (3) of the Constitution permits this court to offer redress where it is appropriate in cases where the **declaration** sought has been granted. None of the declarations sought on this petition have been granted. It follows that the petitioner is not entitled to any redress.

Decision

20. We refuse to grant the order sought. This petition fails. As the respondent did not appear at the trial no order for costs shall be made.

Signed, dated and delivered at Kampala this 6th day of October 2015.

Eldad Mwangusya

JUSTICE COURT OF APPEAL

Rubby Aweri Opio

JUSTICE COURT OF APPEAL

Richard Buteera

JUSTICE COURT OF APPEAL

Geoffrey Kiryabwire

JUSTICE COURT OF APPEAL

Fredrick Egonda Ntende

JUSTICE COURT OF APPEAL

