

THE REPUBLIC OF UGANDA

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

**(CORAM: ODER, KAROKORA, MULENGA, KANYE1HAMBA, AND
MUKASA-KIKONYOGO, JJSC.)**

MISCELLANEOUS CIVIL APPLICATION NO.2 OF 2000

BETWEEN

UGANDA POLYBAGS LTD..... APPLICANT

AND

**DEVELOPMENT FINANCE CO. (LTD)..... RESPONDENT
AND 3 OTHERS.**

(Arising from Constitutional Petition No.1 of 2000).

REASONS FOR THE RULING

We heard the application and dismissed it on 13/7/2000. We intimated that we would give our reasons later. We now do so.

This was an application seeking leave to appeal to this court under Article 132(3) of The Constitution and Order 40 Rules (1) (2) of The Civil Procedure Rules, against the ruling of Hon. Justice Twinomujuni, dated 23rd February 2000, refusing to step down from the Coram of the court to hear Constitutional Petition No.1 of 2000.

The background to the application is that Uganda Polybags Ltd, hereinafter to be referred to as the applicant, filed petition No.1 of 2000 in the Constitutional Court. The petition was brought against Development Finance Company of Uganda Ltd, Stanbic Bank of (U) Ltd, Christopher Homby, and Attorney General, hereinafter to be referred to as Respondent, 2nd Respondent, 3rd Respondent and 4th Respondent, respectively.

It was seeking inter alia grant of declarations that the following acts were unconstitutional, namely; the extra judicial appeal of the 1st 2nd and 3rd Respondents, for protection and intervention by some judicial officers and top administrators in concluded and pending cases between the petitioner and the three Respondents; the entertainment and disposal of the pending cases in the Court of Appeal in response to the extra judicial appeal; the investigation into the taxation procedure followed by the Registrar of the Court of Appeal and the reason for his decision in Civil Appeal No.24 of 1999; and the issue of the oral orders in Civil Appeal No.88 of 1999 between the parties without a written and reasoned ruling were all unconstitutional acts. It was contended that those acts were inconsistent with, and contravened Articles 128(1) and (2); 126(2)(a); 128(1), (2) and (4); 133(1); 135(2); 136(1); of the Constitution. The petitioner also prayed for issue of, an order that all acts and court proceedings that were found unconstitutional were null and void.

Before the hearing of the petition started, Mr. Muhwezi, counsel for the applicant who was the petitioner, raised objection to one member of the Coram of the court. He asked Hon. Justice Twinomujuni to disqualify himself from sitting on the Coram for reasons to be stated later.

The learned Justice of Appeal, in a well reasoned ruling, refused to step down as requested. The full Bench of the Constitutional Court refused to entertain an appeal against the refusal and rejected the application for leave to appeal against Justice Twinomujuni's ruling, but granted an adjournment to enable the applicant to make the application to this court. The application came before this court on 13-07-2000. It was based on two main grounds namely:

- a) *That the Hon. Justice erred in law in refusing to disqualify himself from being a member of the Coram to hear and determine Constitutional Petition No.1 of 2000 in which some of the questions requiring interpretation of the constitution are contained in a ruling in*

Miscellaneous Application No.88 of 1999 where he was one of the three Justices who heard and determined it in the Court of Appeal.

- b) *That the learned Justice erred in law and in fact in failing to address himself to the issues raised in the application.*

Mr. Muhwezi submitted that the applicant feared bias or likelihood of bias on the part of Justice Twinomujuni, because Petition No. 1 of 2000 challenged some of the holdings made in *Miscellaneous Application 88 of 1999* (supra) the decision in which, Justice Twinomujuni participated. Mr. Muhwezi maintained that for Justice Twinomujuni, hearing the petition would be more like hearing a review of the earlier decision than a petition. As far as Mr. Muhwezi was concerned for Justice Twinomujuni to be on the Coram to hear the petition, would contravene the rules of natural justice, for a **“man must not be a judge in his own cause”**. Surprisingly no objection was raised against Justice Kitumba who had also participated in the decision in *Miscellaneous Application No.88 of 1999* (supra). The explanation given for the inconsistency that if she was also made to step down the Court of Appeal would not raise the necessary quorum shows, to say the least, that the objection was not principled.

Mr. Mubiru Kabenge who represented the 1st Respondent and 3rd Respondent opposed the application and supported the reasons given by Justice Twinomujuni in his ruling for refusal to step down. In support of his submissions, he cited *Constitutional Petition No. 1 of 1997 Attorney General v. Major General David Tinyefuza*. He asked us to dismiss the application with costs. The 4th Respondent had no representation although he had notice of the hearing so the hearing proceeded in his absence. The 2nd Respondent did not participate in this application because the petition against it was withdrawn.

Upon listening to the submissions of the counsel for the parties and on perusal of the evidence on record we did not find any merit in the application.

First and foremost following our practice in *Constitutional Petition No.1 of 1997 Attorney General v. Major General Tinvefuza* (supra) and more recent in *Civil Application No.9 of 2000 G.M Combined (U) Ltd. A.K Detergent (U) 4. (SC)* we hold the view that the decision whether a Judge should disqualify himself or herself from sitting in a case where charges of bias or likelihood of bias are levelled against him or her, must be left entirely in his or her

discretion. It would be improper for the rest of the members of the Coram to determine that issue, as to do so would be tantamount to trying him or her in respect of his or her integrity which they have no jurisdiction to do.

Secondly it is important to note that the decision, against which the appeal is intended, is not a decision of the Constitutional Court, but rather that of a single Judge of that court. This Court has jurisdiction to entertain only an appeal to which Article 132 of the Constitution is applicable. The provisions of Article 132 read as follows:-.

Article 132(1)

(1) The Supreme Court shall be the final Court of appeal.

(2) An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may be prescribed by law

(3) Any party aggrieved by a decision of the Court of Appeal sitting as a Constitutional Court is entitled to appeal to the Supreme Court against the decision, and accordingly, an appeal shall lie to the Supreme Court under Clause 2 of this Article.

Clearly, the intended appeal in the instant case is out of the ambit of the provisions of Article 132. The applicant does not intend to appeal against a decision of the Constitutional Court. It proposes to appeal against a decision of single judge in the exercise of his discretion. It has no right to do so. Since the intended appeal would not be competent, it would be pointless to grant leave to appeal. Accordingly the application failed.

Before we take leave of this matter we would like to reiterate our concern which was expressed in Constitutional Petition No.1 of 1997 Tinyefuza v. Attorney General and Civil Application No.9 of 2000 G.M Combined (U) Ltd v. A.K Detergent (U) Ltd. over the growing tendency to level charges of bias or likelihood of bias against judicial officers. We would like to make it clear that litigants in this country have no right to choose which judicial officers should hear and determine their cases. All judicial officers take the oath to administer justice to all manner of people impartially, and without fear, favor, affection or ill will. That oath must be respected.

Dated at Mengo this8th day ofAugust 2000.

A.H.O. ODER
JUSTICE OF THE SUPREME COURT

A.N. KAROKORA
JUSTICE OF THE SUPREME COURT

J.N. MULENGA
JUSTICE OF THE SUPREME COURT

G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT

L.E.M. MUKASA-KIKONYOGO
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS
A TRUE COPY OF THE ORIGINAL

.....

W. MASALU MUSENE
REGISTRAR, THE SUPREME COURT