

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

**(CORAM: ODOKI, CJ; ODER, TSEKOOKO, KAROKORA, MULENGA,
KANYEIHAMBA & KATO, JJ.SC.)**

CONSTITUTIONAL APPEAL No.2 OF 2003

BETWEEN

ATTORNEY GENERAL APPELLANT

AND

1.	DR. JAMES RWANYARARE]
2.	HAJI BADRU KENDO WEGULO]
3.	HON. YUSUF NSAMBU-NSUBUGA.]
4.	HON. KEN. LUKYAMUZI]
5.	JAMES.G. MUSINGUZI]
6.	MAJOR RUBARAMIRA RURANGA]
7.	FRANCIS GUREME]
8.	KARUHANGA CHAAPA]
9.	HUSSEIN KYANJO.]
10.	DR. JOHN JEAN BARYA.]

] ... RESPONDENTS

[“Appeal from the Ruling of the Constitutional Court at Kampala (Okello, Mpagi-Bahigeine, Engwau, Twinomujuni and Kitumba, JJ.A) dated 5TH November, 2002 in Miscellaneous Application No.3 of 2002].

JUDGMENT OF THE COURT: This is an interlocutory appeal arising from the ruling of the Constitutional Court which rejected the Attorney General’s objection to the competence of Constitutional Petition No.7 of 2002. The Attorney General is the respondent in the petition.

The background to this appeal is brief. In May 2002, the Parliament of Uganda enacted the Political Parties and Organisations Act, 2002 (hereinafter referred to as the PPOA). The President

assented to it on 2/6/2002. It was gazetted on 17/7/2002. Dr. James Rwanyarare and the other nine respondents felt aggrieved by some of its provisions. So on 31/7/2002, they instituted the petition in the Constitutional Court seeking for a variety of declarations. The main ground of the petition was that the PPOA is inconsistent with and in contravention of the Constitution. The Attorney General filed an answer to the petition and in that answer raised some points of law concerning the competence of the petition. In the Constitutional Court, the Attorney General filed a notice of motion (Miscellaneous Application No.3 of 2002), under Rules 4 and 13 of the Rules of the Constitutional Court (Petitions For Declarations Under Article 137 of the Constitution) Directions, 1996 and Order 6 Rules 27 and 28 and Order 48 Rule 1 of Civil Procedure Rules (CPR). By the motion, the Attorney General moved the court to hear and determine legal issues he raised in his answer, the substance of which was that the petition was filed out of time.

The Attorney General anticipated that if the preliminary points of law were upheld by the Constitutional Court, the petition would be disposed of without hearing it on merit.

The Constitutional Court heard and dismissed the application on grounds that the petition filed on 31/7/2002 was filed in time and that, therefore, the petition was competent. The Attorney General appealed against that ruling and his memorandum of appeal contains three grounds.

The respondents filed a Notice of Grounds for Affirming the Decision of the Constitutional Court pursuant to Rule 87 of the Rules of this Court. Mr. Joseph Matsiko prosecuted the appeal on behalf of the Attorney General. The respondents' lead counsel was Mr. Peter Walubiri. He was assisted by Messrs. Kiyemba -Mutale, J. Matovu and Yusuf Nsibambi. The three grounds of appeal revolve around one and the same point namely whether or not the petition was filed in time. However the learned Principal State Attorney argued the grounds separately. The first and the second grounds which can conveniently be considered together are framed this way: -

1. The learned Judges of the Constitutional Court erred in law and in fact in holding that the thirty days of limitation under Legal Notice No.4 of 1996 begin to run from the date of perception of the breach of the Constitution complained of:

2. The learned Judges of the Constitutional Court erred in law and in fact in holding that the Constitutional Petition No.7 of 2002 was not time barred.

When arguing these two grounds, Mr. Matsiko submitted substantially the same arguments which were raised by the Attorney General and his team in the court below. Mr. Matsiko referred to the Acts of Parliament Act (Cap 2) and to Legal Notice No.4 of 1996 whose Rule 4 provides that a petition shall be filed within 30 days. He opined that a Bill of Parliament becomes law on the day it is assented to by the President, but not when it becomes operational. He therefore contended that PPOA became law when it received Presidential Assent on 2/6/2002 and not on 17/7/2002 when it was gazetted and submitted that the period of 30 days began to run from 2/6/2002 which was the date of the breach of the Constitution complained of. He maintained that if the PPOA breached the Constitution, it did so upon becoming law. He also contended that breach of the Constitution and perception of a breach of the Constitution are two different things. He argued that Rule 4 of Legal Notice No.4 of 1996 does not curtail human rights. We understood him to also submit that the petitioners did not plead, as required by Order 7 of the Civil Procedure Rules, circumstances which show that the petition is exempt from the 30 days limitation period.

Mr. Walubiri for the respondents, supported the decision of the Constitutional Court. According to him, the critical issue to address in this appeal is whether under Rule 4(1) of the Legal Notice, 30 days begin to run from the date of presidential assent to the bill or from the date of publication of the bill in the Uganda Gazette. Learned counsel referred to passages in the ruling of the Constitutional Court and to various sections of Cap 2 which set out a scheme of how a law is made in Uganda. He pointed out that under Article 91(8) of the Constitution, publication of an Act of Parliament is a constitutional requirement. Under section 19(2) of Cap. 2, any Act of Parliament is judicially noticed upon being gazetted and in this case the PPOA was gazetted on

17/7/2002 which is the date of its commencement. He argued that therefore by filing the petition on 31/7/2002, the Respondents lodged it in court within the prescribed time.

With respect, we are not at all persuaded by the arguments of the learned Principal State Attorney. Article 91 (8) of the Constitution and the provisions of Cap 2 and of PPOA support the proposition that the petition was indeed instituted in time.

In the ruling from which this appeal arose, the Constitutional Court posed the question. "**When does perception that an Act of Parliament has breached the Constitution take place?**"

The court then put forward the following five possible alternative answers: -(a). As soon as the President assents to the bill; (b). On the date designated by the Act itself as the commencement date. (c). On the date the Act is gazetted.

(d). On the day the petitioner actually becomes aware of the existence of the law; and
(e). On the day the petitioner actually becomes aware that the law breaches the constitution.

The learned Justices of the Constitutional Court then held correctly, in our opinion, that in the instant case, section 15 (now S.14) of Cap 2 provides the answer. The section is produced later in this judgment. Before dismissing the objection, the Court cited that section and concluded its ruling with the following words: -

"In the instant case and on its own facts, we hold that the petitioners ought to have perceived of the breach of the constitution allegedly posed by the Political Parties and Organisations Act on 17th July, 2002. They had up to around 16th August, 2002 to file the petition. On 31st July, 2002 when they filed the petition they were clearly in time and the petition is therefore competent."

We are unable to find any fault with this conclusion and we find no sound foundation upon which Mr. Matsiko contended that the court erred when it held that the petitioners ought to have perceived the breach on 17th July, 2002.

Article 91 regulates the exercise of legislative power. In terms of clause (8) of the Article,

"A bill passed by Parliament and assented to by the President shall be an Act of Parliament and shall be published in the Gazette."

This provision shows that the process of gazetting an Act of Parliament is a constitutional requirement. The purpose and reasons for gazetting an Act of Parliament are set out in Cap.2. In its various sections, Cap 2, in Part II thereof, sets out forms of Acts of Parliament and Bills. In Part III, it sets out the procedure to be followed in passing Bills. Subsections (1) and (2) of section 14 refer to the commencement of an Act. These read as follows: -

"(1) Subject to this section, the commencement of an Act shall be such date as is provided in or under the Act, or where no date is provided, the date of its publication as notified in the Gazette.

(2) Every Act shall be deemed to come into force at the first moment of the day of commencement." (Underlining supplied).

Clearly, according to these provisions, an Act of Parliament passed following the normal parliamentary law enacting process, becomes a law when it is assented to by the President. However, we understand subsection (2) to imply that a law remains dormant until the day upon which it becomes enforceable and that day is the date of commencement which may be set out in the Act itself or upon publication of the Act in the Gazette. Needless to say a dormant law cannot breach the constitution, because it is ineffective. In our view, the provisions of subsections (4) and (5) further clarify the time of commencement of an Act of Parliament for these provisions state: -

(4) When an Act is made with retrospective effect, the commencement of the Act shall be the date from which it is given or deemed to be given that effect.

***(5) Subsection (4) shall not apply to an Act until there is notification in the Gazette as to
the date of its publication:***

and until that date is specified, the Act shall be without effect." (emphasis is supplied).

These provisions re-inforce the view that an Act becomes operational either on a date specified by the Act itself or upon notification in the Gazette. Where an Act itself stipulates that it will come into force on the day of presidential assent, an Act comes into force on the day on which it receives presidential assent.

In the present case both the date of presidential assent and the date of commencement are printed clearly in the Act itself as 2nd June, 2002 and 17th July, 2002 respectively. Therefore, the Constitutional Court was right in holding that the petition, which by virtue of Rule 4(1), was expected to be filed within 30 days from 17/7/2002 was filed within time because it was lodged in Court on 31st July, 2002. Mr Matsiko's contention that the Constitutional Court erred either in law or in fact in so holding has no foundation. Art 91(1) of the Constitution and sections 9 (2), 19(2) and 20 (1) of Cap.2 upon which he relied do not support any of his arguments that the petition was filed out of time. There was therefore no need for the respondents to plead circumstances of exemption as required by Order 7 Rule 6 of CPR. Accordingly grounds 1 and 2 must fail.

This conclusion would dispose of this appeal. We will, however, discuss ground 3 which is framed this way -

The learned Judges of the Constitutional Court erred in law and in fact in holding that the petitioners ought to have perceived the breach of the Constitution on the date of publication of the Political Parties and Organisations Act, 2002.

The effect of this complaint is no different from that in the first ground. Mr. Matsiko referred us to the conclusions of the ruling of the Constitutional Court and contended that the court speculated. Earlier in this judgment we pointed out the substance of Mr. Walubiri's arguments. In summary learned counsel supported the reasoning and conclusions of the Constitutional Court.

We have already reproduced the portion of the ruling of the Constitutional Court which Mr. Matsiko described as speculative. For the sake of easy reference we quote it again: -

" In the instant case and on its own facts, we hold that the petitioners ought to have perceived of the breach of the constitution allegedly posed by the Political Parties and Organisations Act on 17th July, 2002. "

The description of this passage by Mr. Matsiko as speculative is, with respect wrong. The provisions of Cap.2 to which we have referred, more especially Ss.13 and 14, are clear on the purpose of publication and on the date of commencement of an Act of Parliament.

The purpose of publication is to let every body be aware of the contents of the Act, its number and the date of presidential assent [S.13(2)]. Commencement date appears either in the Act itself or is notified in the Gazette [S.13 (1) (b)]. The PPOA itself mentions the date of commencement as 17th July, 2002. The Act was gazetted on the same day. The presumption is that upon publication every body becomes aware of the commencement of the law. So where did the court err either in law or in fact when it concluded that the petitioners should have perceived the alleged breach of the constitution by 17th July, 2002? Obviously, that is the day when the petitioners are presumed to have become aware of the existence and the contents of the law. Or they became aware on 23/7/2002 after reading the Gazette. The Court did not speculate. Ground three must, therefore, fail.

Because of the conclusions we have reached on the three grounds, we do not find it necessary to discuss the contents in the notice of grounds for affirming the decision of the Constitutional Court and arguments thereon. In conclusion we dismiss this appeal and order that costs of the Appeal will abide the results of trial of the Petition. The respondent asked for certificate for two counsel. We are not persuaded that this is an appeal in which to make such an order. Costs will be for only one counsel.

We direct that the hearing of the petition in the Constitutional Court proceeds expeditiously as required by law.

Dated at Mengo this 21st day of April 2004.

**B.J. ODOKI
CHIEF JUSTICE**

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

**J.W.N. TSEKOOKO
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**