THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: ODOKI, CJ, TSEKOOKO, OKELLO, KITUMBA, TUMWESIGYE, JJ.S.C.)

CIVIL APPEAL NO.08 OF 2010

BETWEEN

HIS WORSHIP AGGREY BWIRE::APPELLANT

AND

1. ATTORNEY GENERAL
2. JUDICIAL SERVICE COMMISSION } :::::::::::::::::: RESPONDENTS

[Appeal against the judgment of the Court of Appeal at Kampala (Mpagi-Bahigeine, Engwau and Twinomujuni JJA) dated 14th December 2009 in Civil Appeal No.9 of 2009]

Second Appeal-Judicial review-application dismissed with costs-matter of discipline-section 9(6) of the Judicail service commission act

JUDGMENT OF C.N.B. KITUMBA JSC

This is a second appeal against the judgment of the Court of Appeal which dismissed the appellant's appeal. The background to the appeal as agreed upon by both parties is as follows:

The appellant, His Worship Aggrey Bwire, was at the material time stationed at Nabweru court as Magistrate Grade1. He was in-charge of the station. On 25-02-08 the Chief

Registrar, acting on the directive of the Judicial Service Commission, hereafter referred to as the 2nd respondent, interdicted him. The disciplinary committee of the 2nd respondent, hearing the matter, leading to his interdiction was constituted by three members. The appellant being aggrieved by the act of interdiction and the way the Judicial Service Commission was proceeding, applied for a judicial review in the High Court. The application was dismissed with costs.

He appealed to the Court of Appeal which dismissed his appeal. Hence this appeal to this Court on the nine grounds:

When the appeal came up for hearing before this Court, learned Counsel, David Ssempala of Kigozi Ssempala Mukasa Obonyo (KSMO) Advocates appeared for the appellant. The respondents were represented by, Ms Margaret Nabakooza, Principal State Attorney. Counsel for the parties had already filed written submissions and requested Court to rely on the same, which this Court accepted.

In his written submissions counsel for the appellant argued the grounds of appeal in the following order. Ground 1 alone, grounds 2 and 3 together, ground 4 alone, then grounds 5 and 7 together, ground 6 alone and lastly grounds 8 and 9 together. The respondent argued grounds 1,2,3 and 4 together grounds 6 and 5 together, ground 7 alone and grounds 8 and 9 together. In this judgment I will deal with grounds 1, 2, 3 and 4 together ground 7

alone 6 and 5 jointly and grounds 8 and 9 together and in that order.

Ground 1

The Learned Honourable Justices of Appeal erred in law when they completely failed to rule on whether or not interdiction or removal of the Appellant from his judicial function was a matter of discipline within the meaning of S.9(6) of the Judicial Service Act thus arrived at wrong conclusion.

Submitting on ground 1 counsel for the appellant contended that the learned Justices of the Court of Appeal failed to exhaustively deliberate on whether the interdiction of the appellant or his removal from the performance of his judicial function was a matter of discipline as envisaged by section 9(6) of the Judicial Service Act. By reason of that failure they came to three aboard conclusions.

Firstly, they did not correctly determine the requisite quorum and composition of the Commission in disciplining judicial officers.

Secondly they failed to reconcile sections 9(2) and 9(6) of the Judicial Service Act and Regulation 14(1) of the Judicial Service (Complaints and Disciplinary Proceedings) Regulations 2005 (SI 88/2005).

Thirdly, they failed to address the right question whether it was proper delegation for the Commission to delegate to the Disciplinary Committee in terms of quorum and composition in view of the provisions of section 9(6) of the Judicial Service Act.

Appellant's counsel criticized the High Court and the Court of Appeal for accepting the respondent's submission that interdiction is not a matter of discipline envisaged under section 9(6) of the Judicial Service Act but merely an interim disciplinary measure taken against an officer pending further determination of the complaint against him or her by the Commission.

Counsel argued that if the Court of Appeal had held that interdiction is a disciplinary measure they would have not gone wrong about the quorum and composition of the second respondent sitting on 14/02/2008. Counsel submitted that Article 148 of the Constitution gives the second respondent powers to appoint, confirm and to exercise disciplinary control over judicial officers and to remove such persons from office. He contended that the word discipline used in section 9(6) of the Judicial Service Act is generically derived from Article 148 of the Constitution. Apart from the contextual meaning of the word "*interdiction*" appellant's counsel referred to the following dictionary meaning of the same.

"Black's Law Dictionary, 6th Edition, St Paul Minn West Publishing Co. 1990 it defines word "interdiction" thus; "Civil Law, a judicial decree by which a person is deprived of the exercise of his civil rights;" the same Black's Law Dictionary 8th Edition defines the word "discipline" thus "..3 types of discipline are common: disbarment, suspension and reprimand". While according to Macmillan Dictionary for Students "interdict (4) means "….exclude from certain rights".

Counsel argued that since the appellant was removed from the performance of his judicial duties that was "***deprivation***" or ***"exclusion***" which is synonymous with the removal envisaged under sections 9(1), 9(2) and 9(6) of the Judicial Service Act. He argued that, therefore, interdiction as provided for under Regulation 25 of the Judicial Service Commission Regulations 2005 (SI 87/2005) means removal and must have been effected according to Sections 9(2) and 9(6) of the Judicial Service Act which is couched in mandatory terms by using the word "***shall***"

In support of his submission that interdiction is disciplinary action counsel relied on the case of ***Cheborion Barishaki Vs AG. Misc. App. No. 851 of 2004*** in which Katutsi J stated as follows:

> ***"In any case in interdicting the applicant, the learned Solicitor General was carrying out a disciplinary action."***

Counsel further relied on the following statement from ***Barnwell Vs AG of Guyana*** (1994) 3 LRC 30 at 83 wherein suspension, which in counsel's view, is synonymous with interdiction was given a liberal interpretation and equated to dismissal.

"While equating suspension and dismissal may be debated, the observation serves to emphasize two important features that suspension and dismissal have in common: in each case, the officer is deprived of his entitlement to perform his duties in the public service so long as the suspension or dismissal stands…."

In conclusion he submitted that when the disciplinary committee of the second respondent directed the appellant's interdiction it was handling a substantive matter of discipline within the meaning of section 9(6) of the Judicial Service Act and not a ***"Preliminary matter***" as there is no room for "***Preliminary disciplinary matter***" in the Act

In reply, counsel for the respondents supported the finding of the Court of Appeal that interdiction was merely an interim disciplinary measure, taken against an officer pending further determination of the complaint against him or her by the Judicial Service Commission.

Grounds 2 and 3

I now consider grounds 2 and 3 which read:

2. The Learned Honourable Justice of Appeal erred in law

when they failed to hold that Regulation 14(1) of the Judicial Service (Complaints and Disciplinary Proceedings) Regulations 2005 (SI 88/2005) is ultra vires the provisions of S.9(2) and 9(6) of The Judicial Service Act in terms of quorum and composition

3. The learned Honourable Justices of Appeal grossly misdirected themselves in law when they failed to identify that the issue in contention was whether or not there was proper delegation by the Second Respondent when enacting Regulation 14(1) of the Judicial Service (Complaint and Disciplinary Proceedings) Regulations 2005 (SI 88/2005) and not whether the Second Respondent was empowered to make regulations or delegate its functions to the Disciplinary Committee.

The submissions by the appellant's counsel on these grounds were mostly a repetition of his arguments on ground 1. Appellant's counsel, complained further that Regulation 14(1) of the Judicial Service (Complaint and Disciplinary Proceedings) Regulations 2005 (SI 88 of 2005) is ultra vires section 9(1) 9(2) and 9(6) of the Judicial Service Act in terms of quorum and composition. Additionally, by the same regulation 14(1) there was improper delegation by the second respondent to the Disciplinary Committee.

The appellant's counsel vehemently argued that in matters of discipline or proposal to removal a judicial officer from office, section 9(1) and 9(6) of the Judicial Service Act must be adhered to.

According to section 9(1) of the Act the meeting had to be presided over by the Chairperson or the Deputy Chairperson of the Commission and in the absence of both the Justice of the Supreme Court.

Section 9(6) of the Act makes the presence of the Attorney General mandatory in any matter of discipline or proposal to remove a judge or any other judicial officer from office. Besides, the decision at that meeting must be carried by at least six members of the Commission.

Counsel argued further that although by section 27 of the Act the Commission is empowered to make its own regulations, regulation 14 (2) of The Judicial Service (Complaints and Disciplinary Proceedings) Regulations 2005 (SI. 88 of 2005) which delegated the full Commission's powers to the Disciplinary Committee and altered the composition of the Commission when dealing with disciplinary matters was ultra vires the Act. Consequently, the actions of the Disciplinary Committee which sat on 14/2/2005 and purported to interdict the appellant were null and void as the said Disciplinary Committee lacked the legal capacity. According to Regulation 14(1) The Disciplinary Committee of the Commission is comprised of at least three members who constitute a quorum.

Appellant's counsel quoted the following authorities **Equator Inn Ltd Vs Tomasyan [1971] E.A 405**, **Halbury's Laws of England**, 3rd Edition, volume 11 paragraphs 268 and 269, **John Kurahire Vs Elizabeth Rwentoro, High Court**, **Civil Appeal No.5 of 1994 (unreported)** in support of his submission that a court which is improperly constituted or acts in excess of jurisdiction, whatever it does is a nullity.

Counsel for the respondent disagreed with the submissions by counsel for the appellant and supported the decision of the Court of Appeal that Regulation 14(1) of the Judicial Service (Complaints and Disciplinary Proceeding) Regulations (SI 88 of 2005) is intra vires the Act. According to section 27 of the Judicial Service Commission Act, the Commission has powers to delegate its functions. It properly delegated its functions to the Disciplinary Committee which interdicted the appellant. The respondents' counsel submitted that, therefore, the complaint by the appellant's counsel about the composition and quorum of the Disciplinary Committee were not justified. She further submitted that the arguments by the appellant's counsel lacked merit because he did not take into account the functions of the 2nd respondent.

Ground 4

4. The Learned Honourable Justices of Appeal erred in law and fact when they failed to rule that investigations into the alleged misconduct of the

Appellant by the Second Respondent should have proceded his interdiction in view of Reg. 25(2) of the Judicial Service Commission Regulations (S.1 87/2005)

Submitting on ground 4 appellant's counsel contended that the learned Justices of Appeal erred in law and in fact when they failed to rule that the investigations into the alleged misconduct of the appellant should have preceded his interdiction in view of Reg.25 (2) of the Judicial Service Commission Regulations (SI 87/2005).

Appellant's counsel complained further that the Disciplinary Committee did not follow the rules of natural justice as is provided for by section 11 of the Act. The appellant was not given the opportunity to defend himself before he was interdicted. Additionally, non-members took part in the proceedings of the Commission. He submitted that because of the above reasons the decision that was made by the committee was null and void.

Appellant's counsel criticized the learned Justices of Appeal for concurring with the decision of the learned trial judge when both courts reasoned differently.

Counsel stated that the holding of the learned trial judge was that interdiction is an ordinary step in the process of disciplinary action. Its aim is to pave way for the investigations and it is not a final decision. When the hearing is concluded by the Disciplinary Committee it is the Judicial Service Commission which decides on the sentence as per regulation 31 of the Judicial Service

Commission Regulations 2005 (S.1 87 of 2005). However, the learned Justices of Appeal held that under regulation 12 it is the Commission which conducts investigations and when they are completed delegate the hearing to the Disciplinary Committee.

The Learned Justices then held that the decision taken to interdict the appellant was interim pending a final determination of the complaint against him by the Commission.

Replying to ground 4 the respondents' counsel disagreed with all appellant's arguments. She submitted that the appellant was rightly interdicted. Regulation 25(2) of the Judicial Service (Complaints and Disciplinary Proceedings) Regulations (SI 88 of 2005) did not provide for a full investigation before a judicial officer could be interdicted. Respondents' counsel denied the appellant's allegation that non-members took part in interdicting the appellant. Counsel also refuted the contention that the minutes of meeting of 14/2/2008 were full of contradictions and inconsistencies.

I have carefully perused the record and read the submissions of counsel for both parties. The argument by appellant's counsel which overlap were argued in the Court of Appeal as grounds 1,2,3 and 4 can be grouped into three issues.

Firstly that interdiction is discipline within the meaning of section 9(6) of the Judicial Service Act, therefore, interdiction had to be effected in compliance with sections 9(2) and 9(6) of the Judicial

Service Act. Secondly, that Rule 14(1) of the Judicial Service Regulations was ultra vires the Act and thirdly, that before interdiction of the appellant, by reason of rule 25 investigations had to be completed and the appellant had to be given a hearing.

Counsel for the respondents supports the judgment of the Court of Appeal on all grounds.

Appellant's counsel has vehemently argued that interdiction is with or analogous to suspension because the officer concerned is barred from work and other privileges attached to the office. Counsel has quoted from the dictionaries the meaning of suspension. Counsel has also heavily relied on the following statement from the decision of in ***Barnwell Vs AC of Guyana*** (1993) 3 LRC 30 at 83.

> *While equating suspension and dismissal may be debated the observation serves to emphasize the important feature that suspension and dismissal have in common. In each case the officer is deprived of his entitlement to perform his duties in public service as long as the suspension or dismissal stands.*

The above case is only of persuasive authority and not binding on this Court. The Court of Appeal of Guyana clearly stated that equating suspension to dismissal is debatable. The two may have similar features but are not exactly the same.

I agree with the decision of the Court of Appeal that interdiction is simply a step in the disciplinary process. Iam unable to fault the Court of Appeal when it upheld the learned trial judge's finding that interdiction is step in disciplinary proceedings to pave way for investigations. It is preliminary disciplinary matter before the actual trial of the judicial officer. The argument that there is no preliminary disciplinary matter is not tenable. The Commission must take preliminary steps before the actual trial of the judicial officer.

The argument by the appellant's counsel in the two courts below and in this court was that Rule 14 (1) changed the composition and the quorum of the members who have to be present when 2nd respondent is handling disciplinary matters as provided by the Act and therefore changed the requirement of composition and quorum and is ultra vires the Act is not tenable.

I agree with the decision of the Court of Appeal that under section 27(1) of the Judicial Service Act, the Commission may by statutory instrument make regulations in respect of the discharge of its functions under the Constitution and under the Act. By section 27(2) of the Judicial Service Act, the 2nd respondent is authorized to regulate the manner in which matters shall be referred to it , such regulations may provide for the conduct of disciplinary proceedings and prescribe disciplinary penalties.

Pursuant to section 27 of the Judicial Service Act, The Judicial Service (Complaints and Disciplinary Proceedings) Regulations

2005 (No 87 of 2005 (SI No 88/2005) and the Judicial Service Commission Regulations were made. Regulation 2 of (SI No 88/2005) defines Disciplinary Committee as the Disciplinary of the Commission.

"Commission" means the Judicial Service Commission established under Article 146 of the Constitution. I, therefore, agree with the submissions of counsel for the respondents' and the holding of the Court of Appeal that the Disciplinary Committee is part and parcel of the Commission.

Regulations 13(2) empowers the Commission to delegate its function to the Disciplinary Committee. Regulation 14(1) states that three members of Disciplinary Committee shall constitute the quorum. When the appellant was interdicted according to the available evidence on record in the affidavit of Kashaka there was the necessary quorum. There was no improper delegation and regulation 14 is not ultra vires the Act.

The requirement of those members with the Attorney General present is only necessary for the final decision at the end of the disciplinary proceedings. Interdiction is not a final decision and is not a matter of discipline envisaged by S.9 (6) of the Act.

Regulation 25 of The Judicial Service Commission Regulations, 2005 (SI No 87/2005) states:

"Where the Commission has facts relating to the misconduct it may direct the Chief Registrar or the responsible officer to interdict that judicial officer."

It is my considered view that what the Commission requires before interdiction are facts relating to the misconduct. The argument by counsel for the appellant that investigations should have preceded interdiction is not tenable. Regulation 25 (2) is not restricted to facts after investigations. It is from the period when complaints are instituted and any time thereafter to pave way for investigations. There is no need for person to be heard before interdiction. The discretion to interdict is with Judicial Service Commission.

In instant appeal, there were very many complaints against the appellant which necessitated his interdiction in public interest, pending the disposal of those complaints. The Commission had the powers to delegate its functions under Regulation 13(2) of the Judicial Service (Complaint and Disciplinary Proceedings) Regulations 2005 (S I 88/2005), therefore, the decision of the Disciplinary Committee to interdict the appellant was a decision of the Commission though not a final one.

After hearing has been concluded by the Disciplinary Committee it is the Judicial Service Commission under Regulation 31 of the Judicial Service Commission Regulations,2005 (S I No.87/2005) that decides on the appropriate sentence to be given to the offending judicial officer. Interdiction is not sentence.

Regulation 14(1) of SI.88/2005 is for specific purpose and is independent of S 9(2) and 9(6). These sections are for different purposes as above stated:

The Court of Appeal rightly relied on the following statement from ***Commission for Customs and Excise Vs Cure & Deeley Ltd (1962) 1 Q B.***

> ***"Whether the regulation is inter vires one must examine the nature, object and scheme of the piece of legislation as a whole and in the light of that examination to consider exactly what is the area over which powers are given by the section under which the competent authority is purporting to act".***

The Court of Appeal correctly examined the nature and the object of the Judicial Service Act. In the light of that it held that the fears which were expressed by the appellant were unwarranted because of its wide mandate it is empowered by Section 27 of the Act to make regulations to facilitate the prompt and speedy discharge of its functions.

Ground 1, 2, 3 and 4 are devoid of merit and therefore should fail.

Ground 7

I now consider ground 7 which reads as below,

> ***The Learned Honourable Justice of Appeal erred in law and fact when they failed to consider and scrutinize the Appellant's contention that the second Respondent was in breach of rules of natural justice***

when it allowed the prosecutor and non members of the Commission to attend the 14th February, 2008 meeting which interdicted the Appellant in the absence of the Appellant.

The complaint by the appellant's counsel is that rules of natural justice were not followed because prosecutors and non members attended the meeting that interdicted the appellant. Besides the appellant was not at that meeting which interdicted him.

Counsel for the respondent disagreed and repeated her arguments in the Court of Appeal that the appellant did not have to be present at that meeting. Additionally, listing of the people in attendance at the meeting does not mean that they participated in the decision making.

I have looked at the record of appeal which shows that members present at that meeting were Prof. Ssempebwa E.F (Chairperson) Hon. Justice C.M. Kato member, Hon. Peter Jogo Tabu member. This was the required quorum of the three members stipulated by rule 14(1) The Judicial Service Commission, Regulations 2005 (S1 No 87 of 2005)

There is no evidence whatsoever to show that non members took part in the decision- making. The record simply shows that they were in attendance. I have already agreed with the decision of the Court of Appeal that it was not necessary for the appellant to

be present because interdiction is a preliminary measure. Ground 7 lacks merit and should, therefore, fail.

Grounds 6 and 5

6. The Learned Honourable Justices of Appeal erred in law and fact when they concurred with the Learned Trial Judge that she was right to strike out the supplementary affidavit of the Appellant without putting into consideration the special circumstances under which it was made.

5. The Learned Honourable Justices of Appeal misdirected themselves in law and fact when they failed to rule that the minutes of 14th February, 2008 under which the Appellant was interdicted were, on the face of it, tainted with grave contradictions, inconsistencies and fundamentally irreconcilable flaws, thereby occasioning miscarriage of justice to the Appellant.

Grounds 6 and 5 which were grounds 7 and 8 in the Court of Appeal. The complaints by appellant's counsel in these grounds are:

Firstly, that the Court of Appeal was wrong to concur with the trial judge that she was right to strike out the appellant's supplementary affidavit.

Secondly, that the Justices of the Court of Appeal erred in fact and law when they failed to rule about the accuracy of the minutes of 14th February 2008 whereby the appellant was interdicted. This caused a miscarriage of justice to the appellant. Counsel for the appellant contended that the Learned Justices of the Court of Appeal erred when they concurred with the learned trial judge that she was right in striking off the appellant's supplementary affidavit without considering the special circumstances under which it was were made.

Appellant's counsel further submitted that the first appellate court failed to consider the minutes under which the appellant was interdicted. Counsel submitted that minutes of the 14th February 2008 where by the appellant was interdicted were tainted with grave contradictions inconsistencies and are irreconcilable which caused a miscarriage of justice to the appellant.

In reply, counsel for the respondent disagreed. She contended that the appellant was trying to smuggle on the record what was not there.

I note that the appellant's supplementary affidavit was struck out by the learned trial judge on the ground that he had filed it after the close of all written submissions by both parties. According to the learned the judge that was outside the known rules of Civil Procedure. In the affidavit, new matters had been raised and the respondents had had no chance to answer them. The Learned judge stated that the basic rule of procedure is that there must be

an end to litigation. The Court of Appeal agreed with the ruling of the trial judge. The Court of Appeal further stated that counsel for the appellant should have made an application to Court before filing the supplementary affidavit.

The arguments by appellant's counsel about the inaccuracy of the minutes of the disciplinary committee are based on the annextures to the supplementary affidavit which is not part of the record. I agree with the Court of Appeal that litigation must come to an end. The appellant could not be allowed to file a supplementary affidavit after the close of all submissions without obtaining permission from Court. In case permission had been granted the respondent would also have been permitted to reply. Permission to file the supplementary affidavit was not sought. It was, therefore, rightly struck out. The issue of inaccuracy of the minutes can not therefore, be considered in this appeal. Grounds 6 and 5 have no merit and must fail.

Grounds 8 and 9

8. The Learned Honourable Justices of Appeal erred in law and fact in finding that the Appellant did not merit judicial immunity in an omnibus, generalized and summary manner without considering the Appellant's particular complaints which were to do with granting and cancellation of bail in his judicial capacity.

9. The Learned Honourable Justices of Appeal erred in law and fact when they reached conclusions of fact that the* Appellant, *by his own conduct, disqualified himself from the protection of judicial independence and immunity without pointing out those particular facts that disentitled him from such protection.

I now consider grounds 8 and 9 which were ground 11 in the Court of Appeal. The complaint by appellant's counsel is two fold. Firstly, that the Court of Appeal erred in law and fact when they held that the appellant was not entitled to judicial immunity. Secondly, that the appellant by his own conduct disqualified himself from judicial independence and immunity without pointing out the particular facts that disentitled him from such protection.

Appellant's counsel contended that the second respondent had no mandate to call upon the appellant to account for his judicial decisions. According to counsel the charges which were laid against the appellant in **Ntale Andrew Vs Aggrey Bwire G1** were not maintainable in view of judicial immunity provided for by Article 128(4) of the Constitution. Counsel argued that whatever the appellant did was not interference with judicial work of another magistrate. Appellant's counsel criticized the Court of Appeal for relying on the case of Nanteza Nakate which was not the basis of his interdiction.

Counsel further attacked the Justices of Appeal for the statement that:

"Judicial independence or immunity is not a privilege of the individual judicial officer."

In reply, counsel for the respondents reiterated the submissions made in the Court of Appeal. She argued that the appellant misconducted himself. He was subjected to disciplinary proceedings in accordance with the law and judicial immunity was not absolute in the circumstances.

The record of appeal indicates that the appellant was not interdicted simply because of one case but several. Thus the letter from the Secretary of the second respondent to the Chief Registrar reads in part.

"Mr. Bwire has eight (08) cases against him of which two (02) have reached disciplinary level and these are as indicated below:

1. PR/67/95/84/03 by Nanteza Nakate (Complainant)

He is charged with being untrustworthy and lacking integrity in private and public transactions contrary to Regulation 23(g) of the Judicial Service Commission Regulations, 2005.

2. PRI/67/95/84/106 by Ntale Andrew (Complainant)

He is charged with among others, conducting himself in a manner prejudicial to the good image, honour, dignity and reputation of the service contrary to

Regulation 23(a) of the Judicial Service Commission Regulations, 2005.

The remaining six cases are for further investigation and trial.

<u>After considering all the cases against the officer</u>, the Commission is of the view that Mr. Bwire's continued stay in office will interfere with investigations and therefore, public interest requires that the officer be interdicted from the performance of the functions of his office as Magistrate G1 in accordance with regulations 25(2) of the Judicial Service Commission Regulations,2005."

(Underlining for emphasis)

I am of the considered view that the second respondent was justified in directing the Chief Registrar to interdict the appellant. The issue of whether what the appellant did in the case of Ntale Andrew entitled him to judicial immunity does not matter. The appellant had eight cases against him.

In my view, the plea of judicial immunity and independence in the case of Ntale Andrew would only come in as a defence at his trial by the second respondent.

The Court of Appeal correctly considered the principles of judicial immunity and judicial independence. In her lead judgment, Mpagi-Bahigeine, JA, as she then was, stated thus:

"Judicial independence or immunity is not a privilege of the individual judicial officer. It is the responsibility imposed on each officer to enable him or her to adjudicate a dispute <u>honestly and impartially</u> on basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone. The core of the principle of judicial independence is the complete liberty of the judicial officer to hear and decide the cases that come before the courts and no outsider be it government, individual or even another judicial officer should interfere, with the way in which an officer conducts and makes a decision –RV Beauregard, Supreme Court of Canada, (1987) LRC(Const) 180 at 188 per Chief Justice Dickson.

Independence and impartiality are separate and distinct values. They are nevertheless linked as mutually reinforcing attributes of the judicial office. Impartiality must exist both as a matter of fact and as a matter of reasonable perception."

I respectfully agree with the statement.

Grounds 8 and 9 should also fail.

I would dismiss the appeal and order that each party bears its own costs, in this court and the courts below.

Dated at Kampala this 10th day of February 2011

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C.N.B. KITUMBA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI CJ, TSEKOOKO, OKELLO, KITUMBA, TUMWESIGYE, JJ.S.C.)

CIVIL APPEAL NO. 08 OF 2010

BETWEEN

AGGREY BWIRE::APPELLANT

AND

1. ATTORNEY GENERAL
2. JUDICIAL SERVICE COMMISSION } :::::::::::::::::::: RESPONDENTS

[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Engwau and Twinomujuni JJA) dated 14th December 2009 in Civil Appeal No.9 of 2009]

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned sister, Kitumba, JSC, and I agree with it and the orders she has proposed.

As the other members of the Court also agree, this appeal is dismissed with an order that each party bears its own costs in this Court and the Courts below.

Dated at Kampala this **10th** day of **February** 2011.

B J Odoki
CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
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(CORAM: ODOKI CJ, TSEKOOKO, OKELLO, KITUMBA, TUMWESIGYE, JJ.S.C.)

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1. ATTORNEY GENERAL
2. JUDICIAL SERVICE COMMISSION } :::::::::::::::::::: RESPONDENTS

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JUDGMENT OF JOHN W.N TSEKOOKO, JSC

I have had the benefit of reading in draft the judgment prepared by my learned sister, the Hon. Lady Justice Kitumba, JSC, which she has just delivered. I agree with her that the appeal lacks merit and the same ought to be dismissed. I agree with the order as to costs.

Delivered at Kampala this **10th** Day of **February**, 2011.

JWN Tsekooko
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI CJ, TSEKOOKO, OKELLO, KITUMBA, TUMWESIGYE, JJ.S.C.)

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JUDGMENT OF OKELLO, JSC.

I have had the opportunity to read in draft the judgment of my learned sister, Justice Kitumba, JSC and I agree with her conclusion that the appeal lacks merit and must be dismissed with an order that each party bears its own costs here and in the two courts below.

Dated at Kampala this **10th** day of **February** 2011

G.M. OKELLO
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI CJ, TSEKOOKO, OKELLO, KITUMBA, TUMWESIGYE, JJ.S.C.)

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JUDGMENT OF TUMWESIGYE, JSC.

I have read the draft judgment of my learned sister, Hon. Lady Justice Kitumba, JSC.

I concur that this appeal should be dismissed. Each party to bear its costs here and in the courts below.

Dated at Kampala this **10th** day of **February** 2011.

JOTHAM TUMWESIGYE
JUSTICE OF THE SUPREME COURT