REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: KATUREEBE; TUMWESIGYE; KISAAKYE; ARACH AMOKO; JJ. SC; ODOKI; TSEKOOKO; OKELLO; AG. JJ.S.C)

CONSTITUTIONAL APPEAL NO: 03 OF 2007

BETWEEN

ISMAIL DABULE MUSTAFHA RAMATHAN KASIM RAMATHAN ::::::::::::::::::::::::::::::::APPELLANTS

AND

ATTORNEY GENERAL BANK OF UGANDA ::::::::::::::::::::::::::::RESPONDENTS

[Appeal from Constitutional Petition No. 02 of 2004 (Mpagi-Bahigeine, Engwau, Twinomujuni, Kitumba, Kavuma, JJ.A) delivered at Kampala on 14th September 2007]

JUDGMENT OF TUMWESIGYE, JSC.

Ismail Dabule, Mustapha Ramathan and Kasim Ramathan (the appellants) filed this appeal against the decision of the Constitutional Court which dismissed their constitutional petition concerning the freezing of their bank accounts by the Minister of Finance. The main complaint in their petition was that the Banking (Freezing of Accounts) Orders, Legal Notice No. 2 of 1982 and Legal Notices No. 2 and 3 of 1984 were unconstitutional as they violated their rights with respect to protection from deprivation of property.

Background:

Following the overthrow of President Idd Amin's government in 1979 by the Uganda National Liberation Front (UNLF), the National Consultative Council (the then Interim Parliament) enacted the Banking Act (Amendment) Statute 18 of 1980 which amended the Banking Act of 1969 to include sections 26A and 26B. Sections 26A provided as follows:

> **"(1) The Minister may, by notice published in the Gazette, issue an order requiring any bank or credit institution to freeze a current or savings account of any person, firm or organization.**
>
> **(2) No order shall be issued under this section to any bank or credit institution unless the Minister has reason to believe that the operator of the account,**

(a) has fled the country as a result of the 1978/79 Liberation War and has not taken steps to return to Uganda; or

(b) has defrauded the Government, bank or credit institution of its funds; or

(c) has acquired his funds on such account through business malpractices or corruption; or

(d) was a non-citizen who left the country as a result of the immigration (Cancellation of Entry Permits and Certificates of Residence) Decree, 1972; or

(e) has been an officer or agent of the State Research Bureau or similar organization or has indulged in any subversive activity during the 1971 to 1979 period to gain any property unfairly.

(3) The Minister may, by notice published in the Gazette cancel any order made pursuant to the provisions of subsection (1).

(4) Any person aggrieved by the order of the Minister issued under subsection (1) may apply to the Committee for a review of the order and shall be afforded the opportunity of being heard by the Committee.”

In accordance with the powers given by the Amendment Statute, the Minister of Finance made Legal Notices No. 2 of 1982 and No. 2 and 3 of 1984 which required commercial banks in Uganda to freeze the accounts of individuals whose names were annexed to the Legal Notices. These accounts included those of the appellants.

The Bank of Uganda took over custody of all the frozen accounts from the commercial banks. However, in 1993 the NRM's National Resistance Council (Interim Parliament) passed the Financial Institutions Statute No. 4 of 1993 which repealed the Banking Act of 1969. Following the repeal, the appellants made several attempts to recover their money from the Bank of Uganda but in vain.

The appellants then filed Constitutional Petition No. 2 of 2004 in which they claimed that the Banking (Freezing of Accounts) Order, Legal Notice No. 2 of 1982 and Legal Notices No. 2 and 3 of 1984 are still in force as laws of Uganda and are inconsistent with the 1995 Constitution. They prayed the Constitutional Court to make declarations to that effect. They also prayed the court to grant them various orders including general damages, exemplary damages, interest and costs against the respondents.

The Constitutional Court heard the petition and held that the Legal Notices complained about were no longer in force, having been repealed by section 54 (2) of the Financial Institutions

Statute No. 4 of 1993; and that having been repealed they were null and void and of no legal effect; and since the repeal took place two years before the coming into force of the 1995 Constitution, they could not be unconstitutional as they were no longer in existence. The court thus dismissed the petition with costs to the 2nd respondent.

Being dissatisfied with the decision of the Constitutional Court the appellants filed this appeal.

Grounds of appeal

The appellants' memorandum of appeal had 11 grounds which were formulated as follows:

1. **The Honourable learned Justices of the Constitutional Court erred both in law and fact when they failed to evaluate and exhaustively scrutinize the evidence on record and the law applicable.**
2. **The Honourable learned Justices of the Constitutional Court erred in law when they found that government reversed the policy of freezing accounts by not re-enacting S. 26A, thereby concluding that legal notices made there under became null and void.**
3. **The Honourable learned Justices of the Constitutional Court erred in law in holding that the Financial**

Institutions Statute No. 4 of 1993 had repealed the Banking (Freezing of Accounts) Orders, Legal Notice No. 2 of 1982, the Banking (Freezing of Accounts) Orders, Legal Notices No. 2 and 3 of 1984 whereas the Act of freezing was saved and is continuous.

4. **The Honourable learned Justices of the Constitutional Court erred in fact in holding that the accounts of the petitioners were defreezed in 1993 and that the petitioners were free to access them whereas the 2nd Respondent still held the same in treasury bills.**
5. **The Honourable learned Justices of Constitutional court erred both in fact and the law by not making a finding on the unconstitutional actions of the respondent in continuing to freeze the appellants' property/Accounts.**
6. **The Honourable learned Justices of the Constitutional Court erred both in law and fact when they acknowledged the act of continued freezing without finding a remedy.**
7. **The Honourable learned Justices of the Constitutional Court erred in law and fact when they contradicted themselves and reached a wrong decision by finding on one hand that the legal notices freezing accounts were not in existence while on the other hand found that the act of freezing was continuing.**

8. **The Honourable learned Justices of the Constitutional Court erred both in law and in fact when they failed to decide on the unconstitutionality of the acts of continued freezing of the accounts of the petitioners by the respondents done under the Legal Notices in question.**
9. **The Honourable learned Justices of the Constitutional Court erred both in law and fact when they failed to find the nexus between the legal notices and the continuous freezing of the accounts by Bank of Uganda.**
10. **The Honourable learned Justices of the Constitutional Court erred in law by not evaluating the inconsistency of the Legal Notices No. 2 of 1982 and No. 2 and 3 of 1984 and their contravention of the Constitution of the Republic of Uganda 1995 as amended.**
11. **The Honourable learned Justices of the Constitutional Court erred in law by awarding costs of the petition to the 2nd respondent.**

The appellants prayed court to allow the appeal, set aside the judgment and orders of the Constitutional Court, and grant costs of the appeal and in the court below.

The appellants were represented by Mr. Richard Omongole and Mr. David Sempala of Omongole & Co. Advocates who filed written submissions. Mr. Masembe Kanyerezi and Mr. Bwogi Kalibala represented the 2nd respondent and also held brief for the 1st respondent. Counsel for the respondents made oral submissions.

The appellants argued grounds 1, 2 and 3 together , 4 and 5 together, 7, 8, 9 and 10 together, ground 6 alone and 11 alone.

The respondents, on the other hand, argued grounds 1-10 together and ground 11 alone.

Submissions of counsel

Learned counsel for the appellants submitted that though Legal Notices No. 2 of 1982 and No. 2 and 3 of 1984 were made under the Banking Act of 1969 (as amended) which was repealed by the Financial Institutions Act No. 4 of 1993, the Legal Notices themselves were not automatically repealed.

He argued that s. 54 (2) of the Financial Institutions Act expressly saved any orders that were made under the repealed Act in so far as they were consistent with Act No. 4 of 1993, and that the said Legal Notices are not in any way inconsistent with the Act and, therefore, they remain in force.

He sought to rely on s. 12 of the Interpretation Act which provides that where any Act or part of an Act is repealed and re-enacted with or without modification, statutory instruments made under it remain in force until they have been revoked or repealed by statutory instruments made under the repealing Act.

He submitted that this position is reinforced by the case of **Attorney General vs. Silver Springs Hotel Ltd and Others** SCCA No. 11/89 in which it was held that the cardinal rule of statutory interpretation is that a specific legislation is not repealed by a general legislation which does not specifically so state, and where no necessary implication can be drawn.

Counsel also sought to rely on **Legislative Drafting and Forms** 4th Ed. by Sir Alison Russel p. 51 where it is stated that the general presumption is against such a repeal as the intention to repeal if it existed should be declared in express terms.

He argued further that Annexture H which was a letter from the Minister of Finance dated 3rd February 1995 and which directed commercial banks to defreeze the accounts did not have the effect of repealing the said legal notices since it was never gazetted as required under s. 14 and s. 16 of the Interpretation Act. Therefore, he contended, the impugned legal notices are still

legally in force and they should be declared unconstitutional since they are inconsistent with the Constitution.

He criticized the Constitutional Court for failing to make a finding on the unconstitutional actions of the 2nd respondent (Bank of Uganda) which had participated in compulsorily acquiring the property of the appellants. He said that the frozen accounts were transferred to Bank of Uganda and any affected account owner who wanted their accounts unfrozen by the Minister had to apply through the Bank of Uganda. Counsel cited the case of **Attorney General of Gambia v. Jobe** [1985] LRC (Const.) 556 in which the court discussed what amounts to compulsory acquisition and held that an executive power which prevents a bank customer from operating his account would amount to compulsory acquisition of that customer's property. In his view, therefore, the freezing of the appellants' accounts amounted to compulsory deprivation of the appellants' property.

He submitted that the respondent had not adduced evidence to show that the 2nd respondent had remitted the money held in treasury bills back to commercial banks for the appellants' use, even after the alleged repeal of the statutory instruments. Therefore, the act of freezing the appellants accounts from the time of issuing the legal notices to date has been continuous, he argued.

He argued further that the acts by the 2nd respondent of continuously freezing and holding the accounts of the appellants on political, religious and tribal grounds was unconstitutional since it contravened Article 21(1) and (2) of the Constitution that guarantees the equality of all persons before the law, and Article 26(1) and (2) that provides protection from deprivation of property. He referred to the case of **Sempebwa vs. Attorney General** Constitutional case No. 1 of 1987, in which the court held that property of whatever nature is protected by the law.

He also argued that s. 26A which gave the Minister of Finance power to freeze the accounts of the appellants without according them the right to a fair hearing violated Article 28 of the Constitution. In this regard, he cited **Bares Principles of Interpretation** 3rd Ed. P. 443 in which it is stated that statutes interfering with individuals property rights must be strictly interpreted against the authority taking away the rights.

Counsel contended that the Constitutional Court erred when it awarded costs to the 2nd respondent and yet the 2nd respondent was responsible for the continued deprivation of the appellants' property. He argued that this was a misuse of the courts' discretion granted under s. 27(1) of the Civil Procedure Act.

Counsel further submitted that the appellants' money has been and is still being held in treasury bills and this money has accumulated interest which requires restitution. He cited the case of **Sureschandra Ghalani vs. Chandrakant Patel**, C.A. 56 of 2004 in which the principle of recovery of money was outlined. He prayed that the 2nd respondent should not be allowed to benefit from the appellants' money and that the appellants should be restored to the original position and get back the true value of the money that was frozen.

Counsel also prayed for interest at commercial rate following the principle laid down in **Kimani v. AG** [1969] EA 502.

He also prayed for exemplary damages as in his view the conduct of the respondents was oppressive, arbitrary, high handed and unconstitutional.

On his part, Mr. Masembe Kanyerezi who submitted on behalf of both respondents said that there were basically two issues which were whether Legal Notices No. 2 of 1982 and 2 and 3 of 1984 are still in force or whether they were repealed, and secondly, if they are still in force, whether they violate the constitutional provisions the appellants' counsel cited.

He submitted that the Legal Notices are no longer in force and, therefore, the question of whether they are unconstitutional for this court to consider does not arise. He argued that the Banking Act 1969 which was the basis for the impugned Legal Notices was repealed by section 54 (1) of the Financial Institutions Statute 1993. Sub-section 2 of s. 54 provided that '**notwithstanding the repeal of the Act all regulations, instructions, licenses, orders and decisions made under the repealed Act shall remain valid and binding and shall be deemed to have been made under the statute in so far as they are consistent with the Statute'**.

He contended that the Financial Institutions Statute contains no provision empowering the freezing of accounts in circumstances mentioned under s. 26A of the repealed Act. And secondly the Orders contained in those Legal Notices are not consistent with the new policy embodied in the Financial Institutions Act 1993. In his view, therefore, they did not remain valid or binding. He cited s. 12 of the Interpretation Act which is to the same effect. He argued that it is possible for Ministers after an Act has been repealed to go repealing each and every Statutory Instrument that was passed under the repealed Act, but it is not necessary as s. 12 of the Interpretation Act can conveniently be used to achieve the same objective.

Concerning the claim by the appellants that the appellants' accounts were frozen, taken to Bank of Uganda and invested in Treasury bills, and therefore, the investment belongs to the appellants, counsel argued that putting to use the money which a customer has deposited in a commercial bank is the right of every bank, and that as long as the bank honours its contractual relationship with a customer, it can invest the customer's money as it wishes. He added, however, that the respondents' position was not to seek to justify the wrongs that may have been committed under the former regimes but to argue that the statutory instruments under which those wrongs may have been committed ceased to be law when the Financial Institutions Act was passed in 1993, and that they could therefore, not be said to be unconstitutional as the Constitution was enacted after their repeal.

On the alleged continued deprivation of the appellants' property even after the repeal of the law in 1993, counsel argued that the Minister of Finance in his letter of 3rd February, 1995 instructed all commercial banks to defreeze the appellants' accounts and this was followed by the 2nd respondent instructing all commercial banks to pay out the money to the claimants. The proper recourse, therefore, is for the appellants to go to the commercial banks with which they deposited their money and require payment. If the banks refuse to pay the money, the appellants

have a right to file an action for breach of contract under the banker/customer arrangement, but not to go to the Constitutional Court.

The truth of the matter, according to counsel, is that the appellants are reluctant to collect their money because the amount they will collect is derisory especially because of the currency reform that reduced the money by 30%. There may be a remedy for this but the remedy lies before an ordinary court and not in the Constitutional court, he argued.

On ground 11 concerning costs which the Constitutional Court ordered the appellants to pay to the 2nd respondent, counsel argued that while costs are in the discretion of the trial court, the general rule is that costs follow the event, and a successful party is entitled to its costs. Counsel cited the case of **Impressa Infortunato Federici vs. Irene Nabwire** SCCA No. 3 of 2000 in which it was held that costs should follow the event unless the court orders otherwise. That the trial court exercised its discretion in an ordinary way by awarding costs to a successful party and the appellants did not show how the court exercised its discretion improperly.

Counsel prayed that the appeal should be dismissed with costs in this court and in the court below.

Consideration of the grounds

The appellants filed 11 grounds of appeal but I find that there are basically three issues for consideration. The first one is whether or not Legal Notices 2 of 1982 and 2 and 3 of 1984 were repealed by the passing of the Financial Institutions Act, 1993 or whether they are still in force.

If the Legal Notices are found not to have been repealed and are still in force, then the second issue for consideration will be whether they are inconsistent with the Constitution in relation to the appellants' constitutional rights to property.

The third issue is whether the 2nd respondent has continued to freeze the appellants' accounts even after the passing of the Financial Institutions Act, 1993, and whether the appellants' redress lies in filing a petition in the Constitutional Court under Article 137 of the Constitution.

The facts of this case are simple and are contained in the background to the appeal. After the removal of Idd Amin's government in 1979 the Banking Act of 1969 was amended in 1980 and s. 26A was added. This section gave the Minister of Finance power to require any bank or credit institution to freeze any account of any person or organization that was deemed by

the Minister to have been associated with, or unduly benefited from, Idd Amin's government.

On 14th May 1993 the National Resistance Council under the NRM which came to power in 1986 passed the Financial Institutions Act, 1993 which repealed the Banking Act of 1969.

Section 52(2) of the Financial Institutions Act, 1993(this Act was also repealed in 2004) provided as follows:

> **"Notwithstanding the repeal under subsection (1) of this section, all regulations, instructions, licences, orders and decisions made under the repealed Act, shall, in so far as they are consistent with this Statute, remain valid and binding, and shall be deemed to have been made under this Statute."**

Learned counsel for the appellants argued that for statutory instruments to be repealed, they have to be expressly repealed by statutory instruments made under the repealing Act, and that this is the principle laid down in section 12 of the Interpretation Act and reinforced in the case of **Attorney General vs. Silver Springs Hotel Ltd and Others** (supra)

Learned counsel for the respondents, on the other hand, argued that section 26A which formed the basis for the Legal Notices was

repealed with the repeal of the Banking Act 1969, and the Orders contained in those Legal Notices are not consistent with the new policy as embodied in the Financial Institutions Act, 1993. He argued further that s. 12 of the Interpretation Act has the same effect as s. 54(2) of the Financial Institutions Act, 1993, and this section makes it unnecessary for ministers to make other statutory instruments to repeal those that should cease to have force as the repealed Acts.

The Constitutional Court was of the same view as that of counsel for the respondent. Justice Twinomujuni, JCA (RIP) who wrote the lead judgment stated:

> "**Since Legal Notices 2 of 1982 and 2 and 3 of 1984 were made specifically to implement the policy contained in section 26A I cannot see how they could survive the repeal of that section. By repealing the whole Act and section 26A, the government decided to reverse the freezing of bank accounts on grounds stated in section 26A(2) of the Act (supra). The Legal Notices were nullified by the Statute because their sole purpose ceased to exist as they became inconsistent with the Statute."**

I respectfully agree with the Constitutional Court. I do not agree with the appellants' counsel's argument that s.12 of the

Interpretation Act supports the position that statutory instruments must be specifically repealed if the parent Act under which they were passed is repealed. Section 12 of the Interpretation Act states:

> "**Where any Act or part of an Act is repealed and re-enacted, with or without modification, statutory instruments made under it shall, unless a contrary intention appears, remain in force, so far as they are not inconsistent with the repealing Act, until they have been revoked or repealed by statutory instruments made under the repealing Act, and until that revocation or repeal, shall be deemed to have been made under the repealed Act**."

My understanding of s.12 above is that a statutory instrument will be saved even if the Act under which it was made is repealed if (1) the repealed Act or part of it is re-enacted and (2) the statutory instrument is not inconsistent with the repealing Act. Having been saved, the statutory instrument remains in force until, according to Section 12 above, it is revoked by another statutory instrument made under the repealing Act.

Section 54(2) of the Financial Institutions Act, 1993 had the same effect as s. 12 of the Interpretation Act in that the former Act provided that statutory instruments under the Banking Act, 1969

would be saved under the Statute only if they are consistent with the Statute.

A Statute or an Act embodies provisions which reflect policy and if the Act is repealed, then it means the policy provisions in the Act are discontinued unless the repealing Act contains a provision or provisions that indicate that the policy has been maintained. If the Interim Parliament which repealed the Banking Act, 1969 had wanted to maintain the policy of freezing accounts as reflected in s. 26A (which was repealed with the Act), it would have re-enacted the provision in the Financial Institutions Act (the repealing Act) to show that that policy was maintained. The fact that it did not do so shows in my view, that the policy was discontinued.

Statutory instruments are based on some provision in an Act. If the Act is repealed and that same Act or any of its provisions is not re-enacted in some way in the repealing Act, and there is no indication in the Act that the Statutory instruments have been saved, then the statutory instruments made under it will be deprived of their statutory base and cease to have the force of law.

In Halsbury's Laws of England Fifth Edition, Volume 44(1), 1526 it is stated:

"**Unless it is the subject of an express saving, subordinate legislation ceases to be in force on the repeal of the enactment under which it was made. The only general saving contained in the Interpretation Act 1978 which applies to prevent subordinate legislation lapsing on the repeal of the enabling power is that which applies where the power is repealed and re-enacted with or without modification.**"

I think the Interpretation Act 1978 referred to above is similar to s.12 of Uganda's interpretation Act which I discussed earlier.

Therefore, when the Banking Act 1969 was repealed by the Financial Institutions Act, 1993, Legal Notices 2 of 1982 and 2 and 3 of 1984 ceased to be in force. S. 26A of the Banking Act was repealed and not re-enacted with or without modification in the Financial Institutions Act, 1993. The policy behind which the Legal Notices were made cannot be said to have been maintained. Counsel for the appellants did not point to any provision in the Financial Institutions Act, 1993 that can be said to be an indication that this policy continued.

To conclude on this issue, it is my view that Legal Notices 2 of 1982, and 2 and 3 of 1984 ceased to be law in 1993 when the

Financial Institutions Act, 1993 was passed and so they are no longer in force.

The second issue was whether the impugned Legal Notices are inconsistent with the Constitution if they are still in force. Since my view is that they are no longer in force, the issue of their inconsistency with the Constitution does not arise.

The third issue is whether the 2nd appellant (Bank of Uganda) has continued to freeze the appellants' account and prevented the appellants from accessing their money, and if so, whether their petition can lie in the Constitutional Court for redress under Article 137 of the Constitution.

From the correspondence attached as annextures to the affidavit of Ismail Dabule, 1st appellant, it is clear to me that since the Banking Act, 1969 was repealed by the Financial Institutions Act, 1963 the appellants have made a lot of effort to be allowed to operate their accounts without success. Through their lawyers, the appellants contacted commercial banks, Bank of Uganda and even the Ministry of finance to be allowed to access their accounts but apparently their efforts proved fruitless. I will reproduce a few of the correspondence in this respect that was exchanged, for clarity.

21st May 2003
The Managing Director
Baroda Bank (U) Ltd
Kampala.

Dear Sir,

Re: <u>Frozen Bank Accounts</u>

We act for and on behalf of our clients the Nubian Community in Uganda in respect of the above captioned matter and on whose instructions we would like to address you as hereunder: -

As you might already be aware, our clients owned and operated accounts in various banks including Bank of Baroda. However, between 16th December 1980 and 4th January 1984, their accounts were frozen by the then President of Uganda/Minister of Finance Apolo Milton Obote.

However, on 3rd February 1995, the then Minister of Finance Joash Mayanja Nkangi, wrote to the banks on behalf of President Yoweri Kaguta Museveni to defreeze the said accounts.

Unfortunately, our clients never got this information until this month when some of the beneficiaries mentioned of having received the money. We would therefore, on behalf of our above named clients, like to know from your bank the status of frozen accounts and money belonging to our clients.

Further, we would like to know the actual amounts given the strength of the currency by 1980, inflation effect and effects of 1987 currency reform in addition to the interest generated.

We will appreciate an early response.
Yours faithfully,

For: KATENDE, SSEMPEBWA AND CO.
Advocates, Solicitors and Legal Consultants.

c.c. The Governor
Bank of Uganda
Kampala.

The above letter is a sample of many letters that were written by the appellants' lawyers to commercial banks on different dates. The following letter is from Bank of Uganda in response to one such letter.

May 21, 2003

M/S Katende, Ssempebwa & Co.
Radiant House
Plot 20, Kampala Road
Kampala.

Dear Sir,
RE: <u>FROZEN ACCOUNTS</u>
We refer to your letter Ref: KS/G/03/2526 dated May 13, 2003 addressed to the General Manager Tropical Africa Bank Ltd and copied to the Governor Bank of Uganda, amongst others on the above subject.

The Minister of Finance and Economic Planning vide his letter Ref: M/MF/6/4 dated February 03, 1995 instructed all commercial banks to defreeze all accounts that had been frozen between December 1980 and January 04, 1984. Consequently, it is the duty of each commercial bank to claim the frozen accounts of its customers that were transferred to Bank of Uganda. You are therefore advised to inform Tropical Africa Bank accordingly.

Yours faithfully,

J Bagyenda (Mrs)

Director Commercial Banking

Copy: Executive Director Supervision

General Manager
Tropical Africa Bank Ltd.

The following is a letter from Tropical Africa Bank Ltd responding to the letter from Bank of Uganda.

Date: 27-06-2003

The Director
Commercial Banking
Bank of Uganda
P.O. Box 7120,
Kampala.

Dear Sir,

RE: <u>FROZEN ACCOUNTS</u>

Thank you for your letter ref: BS/B88/01 dated June 10, 2003 in connection with the above subject and we wish to inform you that since the matter concerns transactions carried out more than twenty years ago, most of the similar old documents were shelved off to the archives and some of them had been destroyed.

As you may be aware of the practice that most documents are securely preserved for a period of only ten years, the success to trace them cannot be guaranteed for the time being, but we are still in the process of searching for those documents in connection with your request.

However, we would like to assure you that any results achieved, will be communicated to you in due course since we need a reasonable period of time for such a task.

Assuring you of your full cooperation in this matter.

Yours faithfully,

M.L Ahmed	*Anne Nandawula*
AG. MANAGER	*MANAGER,*
CENTRAL ACCOUNTS	*INTERNAL AUDIT*

c.c. M/S Katende, Ssempebwa & Co.
Advocates.

In spite of the several correspondence that was exchanged, the appellants failed to access their accounts, and it would appear, Bank of Uganda continued to keep their money.

Counsel for the appellants argued that there is no evidence that Bank of Uganda has remitted the money to commercial banks for transmission to the appellants and that, therefore, the act of freezing is continuous and denies the appellants access to their property contrary to Article 26(1) and (2) of the Constitution. This, according to him, entitles the appellants to petition the Constitutional Court for redress under Article 137(3) of the Constitution. In his view, therefore, the Constitutional Court erred by not making a finding on the unconstitutional actions of the respondent in continuing to freeze the appellants' account.

With respect, I do not agree with this argument. Judging from the correspondence reproduced above from Bank of Uganda and the Minister of Finance's letter of 5th February, 1995 (also annexed to the affidavit of the 1st appellant), it would appear that the Minister and Bank of Uganda called upon commercial banks to claim the frozen accounts from Bank of Uganda for their customers' use. It is not clear why commercial banks did not recover these accounts from Bank of Uganda. In its letter to Bank of Uganda quoted above, Tropical Africa Bank Ltd indicated that because more than 20 years had passed since the accounts were frozen the documents were shelved off to archives and some of them were destroyed, and therefore, the success to trace them cannot be guaranteed.

It is difficult at this stage to know the exact reasons why commercial banks have failed, if they have failed at all, to get the appellants' accounts from Bank of Uganda. This, to me, is a matter that calls for investigation by an ordinary court to know who is to blame. While I appreciate that the appellants have a genuine grievance that calls for redress I do not, with respect, agree that this is a matter that can validly be brought to the Constitutional Court under Article 137 (3) and (4) of the Constitution.

Article 137 of the Constitution establishes the Constitutional Court and gives it jurisdiction to settle questions concerning the interpretation of the Constitution.

Article 137 provides:

"(3) A person who alleges that –

(a) An Act of Parliament or any other law or anything in or done under the authority of any law; or

(b) Any act or omission by any person or authority, is inconsistent with or in contravention of this Constitutional Court for a declaration to that effect, and for redress where appropriate.

(4) Where upon determination of the petition under clause (3) of this article the Constitutional Court considers that there is need for redress in addition to the declaration sought, the Constitutional Court may –

(a) grant an order for redress; or

(b) refer the matter to the High Court to investigate and determine the appropriate redress.

The contention of the appellants' counsel is that since the appellants have been denied access to their accounts Article 26(1) and (2) which is about protection from deprivation of

property has been infringed and therefore, this matter falls under the provision of Article 137(3)(b).

Counsel for the respondents, on the other hand, argues that not every violation of the Constitution qualifies to be brought as a petition to the Constitutional Court under Article 137. I respectfully agree with him.

Whether the Constitutional Court has jurisdiction to entertain a petition merely based on a claim that an act has infringed a constitutional provision has been a subject of a number of decisions of this court.

In the case of **Ismail Serugo vs. Kampala City Council and Attorney General**, Constitutional Appeal No. 2 of 1998 the appellant sought a declaration that the acts of arresting, charging, convicting, sentencing and imprisoning him by the respondents' servants violated his fundamental rights and were inconsistent with the Constitution.

Mulenga, JSC, who wrote the lead judgment of the court stated:

> "**In my view, for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that the interpretation of a provision of the Constitution is required. It is not enough to allege**

merely that a constitutional provision has been violated. If, therefore, any rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent court."

In the case of **Attorney General vs. Major General D. Tinyefuza** Constitutional Appeal No. 01 of 1997, Wambuzi C.J. (as he then was) stated:

"In my view, jurisdiction of the Constitutional Court is limited in Article 137 (1) of the Constitution to interpretation of the Constitution. Put in a different way, no other jurisdiction apart from interpretation of the Constitution is given. In these circumstances I would hold that unless the question before the Constitutional Court depends for its determination on the Constitution, the Constitutional Court has no jurisdiction."

This court has, therefore, laid down the principle that unless a petitioner shows that there is a provision or provisions in the Constitution which requires interpretation by the Constitutional Court, the Constitutional Court has no jurisdiction to entertain the petition. The Constitutional Court was established under Article 137 to interpret the Constitution and to provide redress or give directions where, consequent upon that interpretation, it deems it

appropriate. It was not established merely to enforce the Constitution, as a court of first instance, against infringement of constitutional provisions.

In the instant case, the appellants did not show what provision of the Constitution needed to be interpreted by the Constitutional Court for that court to grant them the redress they were seeking. Their contention was merely that Article 26(1) and (2) of the Constitution which protects a person from deprivation of property was violated and therefore, they are entitled to bring their petition before the Constitutional Court. While the alleged continuous freezing and holding of the appellants' accounts by the 2nd respondent may, if proved, be an infringement of Article 26(1) and (2) of the Constitution, this alone cannot qualify it to be brought as a petition before the Constitutional Court.

I, therefore, find that the Constitutional Court did not err by declining to entertain the appellants' claim that there was an act by the 2nd respondent of continuous freezing and holding of their accounts. In the result, I find no merit in the appellants' appeal and I would accordingly dismiss it.

Since it appears for reasons which should be investigated by a competent court (if the appellants are so inclined to pursue that course) that the 2nd respondent is still holding the appellants

accounts, I would not, for that reason, make an order as to costs both here and in the courts below.

Dated at Kampala this ***30th*** day of ...***October*** 2015.

Jotham Tumwesigye

JUSTICE OF THE SUPREME COURT