THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL APPEAL NO. 06 OF 2011

CORAM: JOTHAM TUMWESIGYE; DR. ESTHER KISAAKYE; AUGUSTINE NSHIMYE; ELDAD MWANGUSYA; RUBBY OPIO-AWERI; FAITH MWONDHA; PROF. DR. LILLIAN TIBATEMWA-EKIRIKUBINZA; JJ.S.C.

BETWEEN

MUWANGA KIVUMBI :::::::::::::::::: APPELLANT

AND

ATTORNEY GENERAL :::::::::::::::::: RESPONDENT

(Appeal against the judgment of the Constitutional Court in Constitution Petition No.9 of 2005 delivered by Mukasa-Kikonyogo DCJ, Okello, Mpagi-Bahigiene, Kitumba and Byamugisha JJC on 27th May, 2008).

JUDGMENT OF HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA.

Background

The appellant appealed to this Court on the ground that the Constitutional Court applied wrong principles of law in denying him costs in a matter where he was a successful litigant.

The brief background to the appeal is that the appellant filed Constitutional Petition N0.9 of 2005 in the Constitutional Court in 2005 challenging the constitutionality of Section 32 of the Police Act (Cap 303). The section empowered the Inspector General of Police (IGP) to prohibit the convening of any assembly or procession on any public road, street or any place of public resort, if the IGP had reasonable grounds to believe the assembly or procession was likely to cause a breach of the peace.

The appellant petitioned the Constitutional Court stating that the above Section contravened Articles 20(1), (2), 21(1), (2), 29(1) (a),(b),(d),(e), 38(2), 42,43(3) (a) (c) of the Constitution.

The Constitutional Court held *inter alia* that there was no doubt that the power given to the IGP was prohibitive rather than regulatory. It was open ended since it had no duration. This meant that the rights available to those who wished to assemble and protest would be violated.

Further, the court found that the powers given to the IGP to prohibit the convening of an assembly or procession were an unjustified limitation on the enjoyment of a fundamental right. Such limitation was not demonstrably justifiable in a free and democratic country like ours.

In her lead judgment, Byamugisha JCC allowed the petition with costs. Learned Justices GM Okello and C.N Kitumba concurred with the judgment of Justice Byamugisha "in its entirety" but made no specific reference to the order of costs therein. Mpagi-Bahigiene, JCC specifically stated that she was in full agreement with Justice Byamugisha's opinion in regard to the impugned section but was silent on the order given in regard to costs.

On the other hand, although Mukasa Kikonyogo, DCJ agreed with the reasons contained in the lead judgment of Byamugisha JCC, she denied costs to the petitioner on ground that the matter was filed in public interest.

Following this, the appellant's counsel wrote a letter to the Deputy Chief Justice to have the award of costs clarified. On behalf of the court, Byamugisha JCC responded to the letter as follows:

"The above matter was referred to me by the Deputy Chief Justice regarding costs of the petition. Only 2 justices awarded costs. The majority of the judges did not. Consequently, the petitioner got no costs. There is nothing to correct under the slip rule."

Dissatisfied with the order of court, the appellant appealed to this Court on two grounds viz:

1. **The Constitutional Court erred to have refused to award costs to the appellant who was the successful party.**

2. **The Constitutional Court based on wrong principles its decision to refuse to award costs to the appellant who was the successful party.**

Representation

Mr. Rwakafuzi appeared for the appellant while Ms. Sandra Mwesigye, State Attorney, Mr. Geoffrey Atwine, Senior State Attorney, Mr. Geoffrey Madete, State Attorney and Josephine Nakimuli, State Attorney appeared for the respondent.

Counsel opened submission by applying to withdraw cross-appeal **No.9 of 2005, Attorney General vs. Muwanga Kivumbi** that had earlier been filed. By the agreement of both parties, court granted the prayer to withdraw the cross-appeal.

Counsel for the appellant proceeded to argue the two grounds of appeal jointly.

Appellant's submission

In regard to ground 1, counsel for the appellant relied on Section 27 of the Civil Procedure Act and submitted that the section gives discretion to the judge or court seized with the matter to award costs to a successful party. That the only instance where a successful party can be denied costs is when that party has by his conduct caused the litigation.

In response to the question of court as to whether the appellant had prayed for costs of the petition in the lower court, counsel admitted that costs were not prayed for. He however submitted that costs are in the discretion of court whether a litigant prays for them or not, the court can award costs. That, indeed three justices pronounced themselves on the issue of costs. Thus, the court was not prevented from awarding costs on account that they were not prayed for.

In regard to ground 2, counsel submitted that the court took into account wrong principles in the exercise of their discretion thereby denying him costs. It was further argued that the court's finding that the matter had been filed in public interest was erroneous.

Counsel contended that the appellant had suffered in his individual capacity by being held in custody in various Police Stations.Therefore, when the appellant went to court to challenge the various correspondence from the police to the effect that it is only the police that would allow him to congregate, hold meetings, rallies, processions and assemblies, he was seeking his personal protection and not protection for the entire public.

In support of the above argument, Counsel referred to **Article 137 (3) of the Constitution** which permits any person to approach the Constitutional Court and challenge an Act of Parliament or any act or omission by any

person or authority for being inconsistent with or in contravention of a provision of the Constitution.

Counsel for the appellant argued that had the Constitutional Court not held the matter to be in public interest, it would have awarded costs.

In conclusion, counsel invited this Court to make a distinction as to when an individual comes to court purely in public interest and when the individual comes to court in a personal capacity.

Respondent's submission

Counsel for the respondent supported the decision of the Constitutional Court not to award costs in this matter because the petition was filed in public interest to enforce fundamental rights and freedoms of individuals to peacefully assemble and associate.

He disagreed with the appellant's argument that the petition was brought in his individual capacity for the reasons that the petition benefited the entire public to freely associate and assemble since the appellant was not going to assemble alone; and that the petition raised very important legal issues which were critical to the political and constitutional development of the country.

The respondent further submitted that the matter being in public interest, the appellant was not entitled to costs. In support of his argument, he relied on the authorities of **Advocates for Natural Resources Governance and Development and 2 Ors vs. Attorney General, Constitutional Petition No.40 of 2013; Rtd. Col. Kizza Besigye vs. Yoweri Museveni and the Electoral Commission, Presidential Petition No.1 of 2001; Prince J Mpuga Rukidi vs. Prince Solomon Iguru and Ors, Supreme Court Constitutional Appeal No.18 of 1994** and **Attorney General vs. Major Gen. David Tinyefuza, Supreme Court Constitutional Application No.1 of 1997.**

Counsel argued that the rationale for the refusal of an award of costs in a public interest litigation matter is that no person should seek to profit from a matter in which he or she does not have an interest beyond that of other members of the public. That if it was otherwise, it meant that a petitioner in a public interest matter would essentially be requiring the same public in whose interest the petition was brought to pay him or her costs.

In addition, counsel submitted that the reverse scenario would also be equally absurd because if the petitioner had lost the petition, then he or she would be condemned to pay costs in the matter which he or she did not have an interest beyond that of other members of the public.

In conclusion, counsel submitted that **Articles 50 and 137 of the Constitution** opened courts' doors for public interest litigation. Courts should therefore not close the doors by condemning parties to costs. That costs in public interest litigation would be against the spirit of the Constitution as enshrined in **Articles 50 and 137** so much that even in matters where litigants had a personal interest, courts have declined to grant costs on the account of the public interest in the matter. Further that it would also be absurd to grant the appellant costs he did not pray for. It was therefore unfair for the appellant to criticize court for not awarding him costs he did not ask for.

In conclusion, counsel prayed that this Court upholds the decision of the Constitutional Court not to award costs in this matter.

Appellant's reply

In reply, counsel for the appellant distinguished the authorities that the respondent relied on to buttress his arguments.

He argued that in **Rtd. Col. Kiiza Besigye vs. Yoweri Museveni and the Electoral Commission (supra)** the Supreme Court declined to award costs because the two parties in court represented the voters and it would

be unfair to condemn one party to costs as against the other especially in a presidential election petition.

For the case of **Mpuga vs. Solomon Iguru (supra)** counsel submitted that the matter concerned succession to the throne of the Bunyoro Kingdom. That, in proceedings dealing with such estates, the principles applied in awarding costs were different from those applied in ordinary cases. That awarding costs to the successful party in an estate case had the effect of reducing the net wealth of the estate.

In the case of **Attorney General vs. Major Gen. David Tinyefuza (supra)**, the Supreme Court refused to condemn the appellant to costs because it gave an opportunity to the court to pronounce itself on matters of great national importance.

That the facts in the present case were distinguishable from those in the authorities cited by the respondent as the appellant went to the Constitutional Court seeking personal protection although the rest of the public benefited from that protection. That as such, the appellant ought to be awarded costs because the litigation had cost him money.

Analysis of Court

Although the 2 grounds of appeal were argued jointly, it is our opinion that effective determination of the matter hinges on 3 issues which must be resolved independent of each other. The issues are:

1. *Whether or not the matter was in public interest.*
2. *Whether costs should never be awarded in Public Interest Litigation cases.*
3. *Whether the Constitutional Court awarded costs to the appellant.*

Issue 1

The appellant argued that the matter was not in public interest even if it had the effect of benefitting the public. On the contrary, the respondent submitted that since the public benefitted from the case, then it qualified as a public interest case.

Public Interest in our jurisdiction is not defined by any Statute. The concept is however introduced into our law by **Article 50 (2**) of the Constitution which provides that:

> **Any person or organization may bring an action against the violation of another person's or group's human rights.**

The **Advanced Law Lexicon-The Encyclopaedic Law Dictionary with Legal Maxims, Latin Terms, Words & Phrases, 4th edition** defines Public Interest Litigation as:

> **A legal action initiated in a Court of Law for the enforcement of Public Interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.**

Justice P.N. Bhagwati the herald of Public Interest Litigation (PIL) in India's jurisprudence articulated the concept of PIL in **S.P. Gupta vs. Union of India AIR 1982 Supreme Court 149** as follows:

> **It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any**

> **burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ … seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons …**

I conclude that Public Interest Litigation is litigation for the protection of Public Interest and it is not required that for the exercise of the court's jurisdiction it is the person whose rights have been violated that brings the complaint to court. The salient ingredient of Public Interest Litigation is that the suit is brought for and in the interest of the Public. Such litigation is initiated only for redress of a public injury, enforcement of a public duty or vindicating interest of public nature.

However, there are instances as was in the present case where a matter brought to court in private interest affects matters that are in the public interest. Should such litigation qualify as Public Interest Litigation?

I do not think so. The mere fact that a court ruling in a case brought by an individual will benefit the public does not place the lawsuit in the category of Public Interest Litigation. The potential of a court decision in a privately pursued lawsuit to benefit a larger community or the public does not in itself situate the claim under the rubric of Public Interest Litigation.

Whereas Public Interest Litigation is brought before the court to vindicate violations of constitutional or legal rights of large numbers of people, private litigation on the other hand is for the purpose of enforcing the right

of one individual as happens in the case of ordinary litigation. **[See for example: People's Union for Democratic Rights vs. Union of India (1983) 1 SCR 456].**

In Public Interest Litigation, the applicant has not his or her own interest and does not struggle for himself or herself whereas in Private Litigation an individual struggles for their own benefit.

Public Interest Litigation can be presented by anybody whether they have suffered or not while in private litigation, the litigation is filed by the aggrieved party only.

Having discussed the salient differences between the two types of litigation, I now turn to the circumstances of the case to determine under which category the suit falls.

The appellant instituted the petition under Article137 (1) and (3) of the Constitution challenging the constitutionality of certain provisions in the Police Act. The petition was supported by the affidavit of the appellant as an aggrieved party.

The detailed acts of violation complained of by the appellant are included in the affidavit in support of the Petition that he filed in the Constitutional Court and are as follows:

The appellant was a member of the Popular Resistance against Life Presidency (PRALP) caucus.

On 15th March 2004 the Permanent Secretary in the Ministry of Internal Affairs declared a planned PRALP an illegal entity since it was not a registered political group. Based on this declaration, the Police refused to grant permission to the appellant to hold any rallies. That this prohibition contravened Article 43 (1), (2) (a) and (c) of the Constitution.

The Police upon receiving information that PRALP was set to hold a rally in Masaka, dispersed the members of PRALP, arrested them and detained them.

That the appellant and other members were refused to peacefully assemble on ground that the Police under Section 32 had power to prohibit demonstrations and rallies of groups that were not registered entities.

He thus prayed that the Court declares Section 32 of the Police Act unconstitutional.

I observe that an aggrieved party can come to Court under **Article 137 (3) (b)** seeking a declaration that an act by any person or authority is inconsistent or in contravention of the Constitution. The party may seek for a declaration from the Constitutional Court that the act complained of is unconstitutional and in addition also seek for redress.

The appellant came to court under Article **137 (3) of the Constitution** because he was complaining of acts of the Police which violated his right to assemble as a member of PRALP.

From the above, it is clear that coming to court under **Article 137** (as opposed to **Article 50**) does not in itself translate the complaint into a Public Interest Litigation case.

The mere fact that a case brought to the court by an individual leads to a declaration by the Court that what was hitherto considered legal by a person in power (such as the Police), is in fact unconstitutional, consequently protecting other would be victims at the hands of the public authority does not turn the case into a Public Interest case.

I therefore find that although the Constitutional Court's decision extended benefit to the whole public by it declaring Section 32 of the Police Act unconstitutional, the suit was not under the rubric of Public Interest Litigation.

Issue 2

Whether costs should never be awarded in Public Interest Litigation cases.

It was the appellant's argument that there was no bar to award of costs solely on the basis that a matter has been brought to court under public interest litigation.

The respondent on the other hand argued that the Supreme Court in its earlier decisions has held that a party that seeks to enforce Public Interest Litigation should not seek to recover legal costs. That the court deemed it necessary that in order to encourage constitutional litigation, parties who go to court should not be saddled with the opposite party's costs if they lost as that would limit them from coming to court in fear of paying costs if unsuccessful.

In support of his argument, he relied on several authorities of this Court: **Besigye Kizza vs. Museveni Yoweri Kaguta and Electoral Commission, Presidential Election Petition No. 1 of 2001**; **Prince J. Mpuga Rukidi vs Prince Solomon Iguru and others – C.A. 18/94 (SC); Attorney General vs. Major Gen. David Tinyefuza, 51. App. No. 1 of 1997 (SC)** and the Constitutional Court's decision in **Advocates for Natural Resources Governance and Development and two others vs. Attorney General Constitutional Petition No.40 of 2013,** which I have carefully studied as indicated below.

In light of the fact that the **Besigye Kizza** case extensively discusses the principles enunciated in **Prince J. Mpuga Rukidi** (Supra) and **David Tinyefuza (Supra)**, I will in my exposition here below, focus on the **Besigye** case.

In the **Besigye Kizza** case, Odoki (CJ) stated:

It is well settled that costs follow the event unless the court orders otherwise for good reason. The discretion accorded to the court to deny a successful party costs of litigation must be exercised judicially and for good cause. Costs are an indemnity to compensate the successful litigant the expenses incurred during the litigation. Costs are not intended to be punitive but a successful litigant may be deprived of his costs only in exceptional circumstances. (See Wambugu vs. Public Service Commission [1972] E.A. 296).

In awarding costs, the courts must balance the principle that justice must take its course by compensating the successful litigant against the principle of not raging poor litigants from accessing justice through award of exorbitant costs.

In the present petition, I am of the considered opinion that the interest of justice requires that the Court exercise its discretion not to award the costs to the Respondents. I agree with Mr. Balikuddembe that this was a historic and unprecedented case in which a presidential candidate who is a serving President was taken to court to challenge his election. The petition raises important legal issues, which are crucial to the political and constitutional development of the country. In a sense, it can be looked at as public interest litigation. It promotes culture of peaceful resolution of disputes …

In several cases of significant political and constitutional nature, this Court has ordered each party to bear its own costs. This was done in the case of Prince

J. Mpuga Rukidi v Prince Solomon Iguru and others – C.A. 18/94 (SC) where right of the King of Bunyoro to succeed to the throne was unsuccessfully challenged. In the case of Attorney General vs. Major Gen. David Tinyefuza, 51. App. No. 1 of 1997 (SC) the court agreed that each party bears their costs.

In the same Presidential Petition, Hon. Justice A. Karokora (JSC) stated:

In order to encourage people like the petitioner to come to court and help in the development of our legal, historical and Constitutional development in Uganda such people should be encouraged. Costs should not be awarded by way of penalizing them so that they should get scared from coming to Court.

Similarly, Justice Mulenga (JSC) held:

In the case of Major Gen. D. Tinyefuza Constitutional Appeal No. 1 of 1997 (SCU) (unreported) this court ordered each party to bear its costs although the appeal was dismissed. The court's reasons for doing so, were that in order to encourage constitutional litigation parties who go to court should not be saddled with the opposite party's costs if they lose. If potential litigants know that they would face prohibitive costs of litigation, they would think twice before taking constitutional issues to court. Such discouragement would have adverse effect on development of the exercise of the court's jurisdiction of judicial-review of the conduct of authorities or individuals, which are unconstitutional. It would also stifle the growth of our Constitutional jurisprudence. The culture of constitutionalism should

> **be nurtured, not stunted in this Country, which prohibitive litigation costs would do if left to grow unchecked. I agree with the principles in the decision. In my view they should equally apply to the instant Petition.**

In **Advocates for Natural Resources Governance and Development (Supra)** the Constitutional Court referred to **Kizza Besigye vs. Yoweri Museveni (Supra); Prince J Mpuga Rukidi vs. Prince Solomon Iguru Supra** and **Attorney General vs. Major Gen. David Tinyefuza** (Supra).

The brief facts in **Advocates for Natural Resources Governance and Development (supra)** were that a Public Interest Litigation petition was brought under Article 137 of the Constitution. The petitioner(s) contended that the respondents' act of taking over and acquiring land prior to payment of compensation was in contravention of the right to property enshrined in **Article 26 of the Constitution.**

The court held *inter alia*:

> **As to costs, a practice has evolved in this and other courts that parties who seek to enforce in courts of law fundamental human rights enshrined in the bill of rights in this country's Constitution should not seek legal costs. This is a good practice that was adopted in this very petition.**
>
> **The rationale for this is that no one should be seen to be profiting from a matter in which he or she has no interest beyond that of other members of the public. Secondly, in every constitutional petition or reference, the Attorney General is a statutory respondent, representing a Government elected by the people. Whenever costs are awarded against the Attorney**

> **General they are paid out of public funds. A person who brings a public interest action would then be requiring the same public to pay him or her costs. In the event that a public interest petitioner or litigant is unsuccessful and is condemned to pay costs, that too would be unfair. One individual would have to pay costs in a matter that he or she has no interest beyond that of the other members of the public. This would create a chilling effect and stifle the enforcement of rights and the growth of constitutionalism.**

The court concluded that where in Public Interest petitions cases, costs are awarded, the actual amounts taxed and allowed **should be nominal** in respect of professional fees, the rest should simply be awarded only in respect of disbursements.

A proper reading of the above cases reveals that the Court re-affirmed the already established legal principles inherent in **Section 27 (2) of the Civil Procedure Act,** which provides:

> **… the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.**

The principles which can be deduced from the Section are that:

1. The award of costs is left to the discretion of the court.

2. Costs normally follow the event – the general rule is that a successful party will be awarded costs.

3. Just as it is in other areas of the law where the court is empowered to make decisions, the court's discretion must be exercised judicially.

However, while accepting that the principles inherent in Section 27 apply to Public Interest Litigation cases, the above authorities emphasized that costs in Public Interest Litigation cases should only be awarded in rare cases, that a court must balance the need to compensate the successful litigant on the one hand with the value (s) underlying Public Interest Litigation such as growth of constitutional jurisprudence which would be stifled if potential litigants know that there is a possibility of being saddled with costs in the event of the case being dismissed.

In other words, in Public Interest Litigation, a court should exercise its discretion to award costs infrequently. Furthermore, where costs are awarded in Public Interest Litigation cases, the award should be nominal.

I therefore do not accept the argument of the respondent that this Court in its earlier decisions established an absolute rule that a party that seeks to enforce Public Interest Litigation should never seek to recover legal costs.

In finding that not every case in which a public interest aspect arises should lead to a departure by the court from the general rule that costs follow the event, I am in agreement with the persuasive unanimous decision of the 5 Panel High Court Bench of Australia in **Oshlack vs. Richmond River Council (1998) 193 CLR 72** wherein McHugh. J in his lead judgment held:

> **The fact that proceedings involve some public interest aspect does not, of itself, warrant departure from the general rule that costs follow the event.**

Issue 3

I now turn to the question: did the Constitutional Court award costs to the petitioner, now appellant?

The award of costs is a legal matter which must be resolved in the same way as any other issue before court. Where the Court determining the matter is a panel bench, the view of the majority regarding the issue

constitutes the decision of the court, as would be the case in regard to other matters calling for the court's resolution.

In the present matter, the Constitutional Court's decision was presented in the form of a lead judgment supported by concurring judgments. I have carefully analyzed the position of each judge regarding the award of costs. Four of the justices addressed their mind to the issue of costs and only Mpagi- Bahigiene, JCC was silent.

I will start with the lead judgment Byamugisha JCC who specifically "allowed the petition with costs". G M Okello JCC in his concurring judgment expressed himself thus:

"I have had the opportunity to read in draft the judgment of Byamugisha JA. I fully agree with her reasoning … I would allow the petition on the terms proposed by Byamugisha, JA." (Emphasis mine)

I interpret the phrase "I would allow the petition on the terms proposed by Byamugisha JA," as concurrence with the lead judgment's award of costs. Similarly, C.N.Kitumba, JCC stated: "I have had the benefit of reading the draft judgment of Byamugisha JA which I entirely agree with." One cannot be said to have read the entire judgment without reading the order as to costs contained therein.

On the other hand, Mpagi-Bahigiene, JCC stated:

"I have read the draft judgment of Byamugisha JA. I entirely agree that the powers given to the Inspector General of Police under Section 32 of the Police Act are unwarranted."

It is my view that Justice Mpagi-Bahigiene's concurrence with the lead judgment was specifically limited to the constitutional stand of the impugned section.

The appellant in his oral submissions conceded that he did not pray for costs when he first lodged the petition. Nevertheless, he argued that the failure to specifically pray for the costs did not bar the court from exercising its judicial discretion to award costs.

I conclude that since the appellant had not prayed for costs, the learned Justice could not be faulted for not pronouncing herself on the matter and thus her silence must be interpreted as an exercise of her discretion not to award the costs.

On the other hand, whereas Mukasa Kikonyogo, DCJ stated that she agreed with the reasons given by Byamugisha JCC for allowing the petition, she specifically stated that "there is no order as to costs since the petition was filed in public interest."

I am inclined to conclude that in the 3 concurring judgments of Learned Justices Byamugisha, Okello and Kitumba, costs were awarded to the appellant. Only Mukasa Kikonyogo JCC declined to award costs while Mpagi-Bahigiene JCC was silent on the issue of costs.

In light of the foregoing, I find that by a majority of 3:2, the learned Justices awarded costs to the appellant. This then was the Court's order regarding costs.

The court's reply to the appellant's letter that there was nothing to correct under the slip rule "because the majority of the Justices did not award costs" was therefore erroneous.

Before I take leave of this matter, I must comment on the manner in which the court responded to the appellant's inquiry as to whether he had been awarded costs.

It is to be noted that following the appellant's inquiry, the Court handled the matter administratively and wrote a letter to the appellant informing him that no costs had been awarded to him and that there was nothing to correct under the slip rule.

As already discussed in this judgment, the award of costs is a legal matter and calls for adjudication. It therefore follows that the panel should have pronounced itself on the matter in a formal court proceeding and not through an administrative process.

Conclusion

In conclusion, I would allow the appeal.

Order of court

The appellant be granted costs in this Court and in the court below.

Dated at Kampala this*14th* day of *February*. 2017.

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HON. JUSTICE PROF. DR. LILLIAN TIBATEMWA-EKIRIKUBINZA.
JUSTICE OF THE SUPREME COURT