

5 **THE REPUBLIC OF UGANDA**

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

[Coram: Buteera, DCJ; Kakuru, Kiryabwire, Musoke, Mugenyi; JJA/JJCC]

CONSTITUTIONAL PETITION NO. 07 OF 2016

10 **1. Peter Odoch**

2. James Esimu Godfrey

3. Lubambula Derrick Stephen

4. Moses Esimu

..... **Petitioners**

15 **Versus**

1. Attorney General

2. Uganda Revenue Authority

3. Mark

20 **4. Nathan Rickets**

..... **Respondents**

JUDGMENT OF THE COURT

25 **Introduction**

This Petition was brought under **Articles 50 and 137 of the Constitution of Uganda** and **Rule 3 of the Constitutional Court (Petition and Reference) Rules** challenging the first Respondent's agents (the Uganda Police force, and the department of International Police (Interpol)) actions of impounding and confiscating the Petitioner's motor vehicles described in annexure "A1" from customs bonded warehouses and authorising the second Respondent to release the said vehicles to the third and fourth Respondents. The Petitioners contend that the said acts were inconsistent and in contravention of **Articles 1, 5 (1), 20(1) (2), 26, 28 and 42 of the Constitution of Uganda**.

35 The Petition was supported by an affidavit sworn by the third Petitioner, Mr. Lubambula Derrick Stephen, dated 12th February 2016.

5 **Brief Facts**

The Petitioners contended that they purchased custom bonded motor vehicles located in various warehouses controlled and managed by the second Respondent, Uganda Revenue Authority (URA), which vehicles had been imported into the country by various importers and sellers upon clearance from the first Respondent's agent, Interpol
10 department and payment of taxes to and assessed by the second Respondent.

The Petitioners averred that the sellers of the various said motor vehicle were in possession of legitimate documents of ownership and shipment under international treaties and conventions and some documents and consignments were in the physical possession, control and management of the second Respondent.

15 They argued that the said vehicles were then confiscated by the first Respondent's agent, Interpol department upon baseless and unpronounced claims. According to the Petitioners, the vehicles were then released to the third and fourth Respondents without any lawful due process.

Being aggrieved by the said acts of the Respondent's, the Petitioners filed this Petition
20 seeking for the following declarations and redress:

a) **"A declaration that all documents and consignments imported into Uganda were genuine and legitimate.**

b) **A declaration that the acts of the 1st and 2nd Respondents of confiscating, impounding and releasing of the said motor vehicles was irregular, illegal
25 and unconstitutional.**

c) **A declaration that the procedure adopted by the 1st and 2nd Respondents leading to the release of the motor vehicles the subject matter hereof, was irregular, unlawful and unconstitutional.**

d) **A declaration that the acts of the 1st and 2nd Respondents to hand over the
30 motor vehicles to the 3rd and 4th Respondents are unlawful, illegal and unconstitutional.**

5 e) A declaration that the decision by the 1st and 2nd Respondents to hand over the motor vehicles to the 3rd and 4th Respondents is null and void and be quashed. (*sic*)

f) A permanent injunction Order to issue against the 2nd, 3rd and 4th Respondents be estopped and restrained from any further confiscation and impounding of the motor vehicles the subject hereof. (*sic*)

10 g) Costs of this petition be awarded to your Petitioners.”

The first Respondent filed an Answer to the Petition dated 29th February 2016. It was supported by an affidavit sworn by Ms. Nabasa Charity, a State Attorney, dated 29th February 2016. The first Respondent denied all the Petitioners allegations and averred
15 that the Respondent’s actions were not inconsistent or in contravention of **Articles 1, 5 (1), 20(1) (2), 26, 28 and 42 of the Constitution**. She emphasised that the Petition does not raise any issues for constitutional interpretation.

The second Respondent filed an Answer to the Petition dated 23rd February 2016. It was supported by an affidavit dated 29th February 2016, sworn by Mr. Golooba Rodney, the
20 supervisor in the Legal Services and Board Affairs Department of URA.

Mr. Golooba denied all the Petitioners’ allegations and noted that during the month of June 2015, URA had conducted a joint operation with Interpol targeting suspected stolen motor vehicles from the United Kingdom (UK).

Mr. Golooba noted that the joint operation recovered 22 vehicles stolen from the UK
25 from different car bonds within Kampala.

He averred that all the motor vehicles mentioned by the Petitioners in annexure “A1” were thoroughly examined and found to have false identification/chassis numbers; had been stolen from unknown registered owners/keepers in the UK, and the crime reference details were furnished to URA and Interpol by the UK Police.

5 Mr. Golooba averred that, following the finding that the said vehicles were stolen from the UK, the second Respondent complied with International Conventions and released the same to the UK Police for onward transmission to their rightful owners.

He concluded that none of the Petitioners are the legal owners of the said motor vehicles and that their claims are baseless.

10 The third and fourth Respondents did not file an Answer to the Petition.

Representations

At the hearing of this Petition, the Petitioners were represented by Mr. Ronald Ewalu; Mr. Geoffrey Wangolo Madete and Mr. Johnson Natuhwera, both State Attorneys, appeared for the first Respondent, and Mr. Aliddeki Ssali Alex appeared for the second
15 Respondent. The third and fourth Respondents were absent and neither were they represented in Court.

Counsel for the Petitioner prayed to Court to withdraw the Petitions against the third and fourth Respondents. Court granted his prayer. The Petitions were dismissed upon withdrawal as against the third and fourth Respondents.

20 Written submissions

Counsel for the parties applied to proceed by way of written submissions. Court directed the Petitioners to file and serve their written submissions by the 14th of May 2021 while the Respondents were ordered to file and serve their written submissions by the 21st of May 2021. The rejoinder, if any, was to be filed by the 27th of May 2021.

25 Both counsel for the Petitioners and counsel for Respondents failed to adhere to the Courts directions to file their written submissions. We urge counsel to always adhere to Courts directions on filing and other orders in order to achieve expeditious disposal of cases. Nevertheless, we shall proceed to determine this Petition using the content in the Petitioners Petition as well as the first and second Respondents' Answer to the Petition
30 discussed earlier in this Judgment.

5 **Resolution of the Petition**

The first and second Respondents raised an objection that the Petition does not raise any issues for constitutional interpretation.

It is important that at the outset, the Court resolves the issue of whether or not it has the jurisdiction to resolve the Petition.

10 The jurisdiction of this Court is derived from **Article 137 of the Constitution of Uganda**. The article provides as follows:

“**137. Article 137 Questions as to the interpretation of the Constitution.**

(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.

15 **(2) When sitting as a Constitutional Court, the Court of Appeal shall consist of a bench of five members of that Court.**

(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

20 **(b) any act or omission by any person or authority is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.”**

Furthermore, a matter started in the High Court may be referred to the Constitutional Court under **Clause (5) of Article 137 of the Constitution**, or any of the parties to a case may request for the matter to be referred to the Constitutional Court.

Hon. Justice Wambuzi, CJ, had occasion to consider the Provisions of **Article 137 of the Constitution**, quoted above in *Constitutional Appeal No. 01 of 1997, Attorney General vs. Major General David Tinyefuza* and held:-

30 *“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*

5 *Constitutional Court depends for its determination on the interpretation or construction of a provision of the Constitution, the Constitutional Court has no jurisdiction.”*

Wambuzi, CJ, had occasion again to consider the same issue later in *Ismail Serugo vs. Kampala City Council and Attorney General, Constitutional Appeal No. 02 of 1998* and he held: -

10 *“In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a Constitutional provision has been violated.*

15 *If therefore any rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent Court. The article provides in so far as is relevant.*

20 *“(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.....”*

25 *Here the appellant alleges his rights were violated and claims compensation. One cannot rule out malicious prosecution, wrongful detention or false imprisonment. These are matters dealt with by specific laws. They can be enforced by a competent court and should a question of interpretation of a provision of the Constitution arise, that question can always be referred to the Constitutional Court. I am aware that the Constitutional court is also a competent court under Article 50 but this Court has already held that the Constitutional Court has no jurisdiction in any matter, which does not involve the interpretation of a Provision of the Constitution. See Attorney General v Tinyefuza Const. App. No.1 of 1997.”*

30 In the instant Petition, the Petitioners merely allege that their rights in Articles 1, 5 (1), 20(1) (2), 26, 28 and 42 of the Constitution of Uganda were violated when ‘their’ vehicles were confiscated by the first Respondent and released to the United Kingdom Police by the second Respondent.

5 The first Respondent's agents, the Uganda Police force and the department of International Police (Interpol), as law enforcement agencies were acting within their mandate when they confiscated the said stolen vehicles. Interpol acted well within its mandate when it shared criminal data and intelligence with the UK Police regarding the said vehicles. Therefore, Interpol had the authority to order the second Respondent to
10 release the identified stolen vehicles to the UK Police.

The Petitioners are aggrieved by the above stated actions of the Respondents and thus argue that their rights were violated. Since they allege that their rights were violated, the Petitioners should have sought for enforcement of their rights under **Article 50 of the Constitution**. This, in our view, does not require Constitutional interpretation.

15 This point was well explained by Justice Kanyeihamba in *Attorney General vs. Major General David Tinyefuza (supra)*, using examples where he held that:-

20 *"Take the case of a pupil who comes late in a primary school. The teacher imposes a punishment upon the pupil who is required to clean the classroom after school hours. Can it have been the intention of the framers of the Constitution that as an alternative to the pupil's right to complain and seek redress from the head teacher or the school board of governors. The pupil would be entitled to petition the Constitutional Court under Article 137 (3) (b) on the grounds that his or her rights under Article 25 (3) have been violated in that he or she has been compelled to do "forced labour"? A prison officer opens and reads a sealed letter addressed to one of the inmates suspecting that the letter contains secret information advising the prisoner how to escape from jail. Would it be reasonable for the prisoner to petition the Constitutional Court on the grounds that the opening of his mail was inconsistent with Article 27 (2) of the Uganda Constitution which provides that no person shall be subjected to interference with the privacy of that persons home, correspondence, communication or other property or should the prisoner's only resort be to the Board of Governors of the institution concerned or should the prisoner complain to the Minister of State responsible for prisons?"*

35 In the instant case, the Petitioners alleged violations would be best addressed by another appropriate Court other than the Constitutional Court, as they do not raise any issue, on

5 the face of it, for constitutional interpretation as required under **Article 137 of the Constitution.**

Final Decision

In our view, the Petitioners ought to have sought remedies for damages for whatever loss they suffered in another appropriate Court.

10 We find that the declarations and orders sought by the Petitioners would be best addressed and settled in another appropriate Court as this Court does not have jurisdiction to entertain the same.

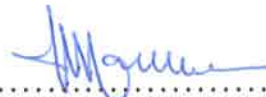
We hereby strike out this Petition and Order each party to bear its own costs.

15 Dated at Kampala this 23rd day of July.....2021



Richard Buteera

DEPUTY CHIEF JUSTICE



Kenneth Kakuru

JUSTICE OF THE CONSTITUTIONAL COURT



Geoffrey Kiryabwire

JUSTICE OF THE CONSTITUTIONAL COURT



Elizabeth Musoke

JUSTICE OF THE CONSTITUTIONAL COURT



Monica Mugenyi

JUSTICE OF THE CONSTITUTIONAL COURT