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THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

*(Coram: Egonda-Ntende, Elizabeth Musoke, Barishaki Cheborion, Muzamiru Kibeedi
& Irene Mulyagonja, JJCC)*

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CONSTITUTIONAL PETITION NO. 32 OF 2014

BETWEEN

ALENYO GEORGE WILLIAM ::::::::::::::::::::::::::::::::::::::: PETITIONER

VERSUS

1. THE CHIEF REGISTRAR, COURTS OF JUDICATURE]

15 **2. THE SECRETARY LAW COUNCIL]**

3. ATTORNEY GENERAL]::::: RESPONDENTS

JUDGMENT OF THE COURT

20 The Petitioner was enrolled as an Advocate of the Courts of Judicature of Uganda
in 1994. But his practice as an advocate appears to have been bedevilled by
many complaints of professional misconduct that were filed against him before the
Law Council. In the proceedings of the Disciplinary Committee of the Law Council
held on 26.08.2005, 19 Complaints against him were Cause listed for hearing on
that single day. The said complaints included one which had been filed by the
25 then Chief Magistrate of Gulu, His Worship Silver Cohens Okullo (RIP) to the
effect that he (the Chief Magistrate) had been physically assaulted by the
Petitioner on 23rd March 2004 within the premises of Gulu Court, Vide LCD
58/2004.

30 The Disciplinary Committee found the Petitioner guilty of Professional Misconduct in LCD 58/2004 and ordered, *inter alia* that the Petitioner “*be and is hereby struck off the Roll of Advocates with effect from the date of this Ruling [18.09.2009]*”.

As a consequence, the Chief Registrar of the Courts of Judicature denied the Petitioner a Practicing Certificate, which is a prerequisite for an advocate to practice his/her profession in Uganda.

35 The Petitioner brought this Petition under *Article 137(3)* of the 1995 Constitution of Uganda alleging that:

- 40 a. ***“The denial by the Chief Registrar of the Courts of Judicature to issue him a Practicing Certificate is inconsistent with and contravenes his right to practice his profession as guaranteed by Article 40(2) of the Constitution.***
- b. ***The purported hearing of a complaint against him by the Law Council without keeping him informed or notified of the proceedings contravened his right to a fair hearing as guaranteed by Article 28(1) of the Constitution and Article 43 of the Constitution.***
- 45 c. ***The purported reliance on the proceedings of the Law Council of 2009 by the Chief Registrar, which proceedings and rulings contravened Section 36 of the Advocates Act, did negate the Petitioner’s right to fair treatment before the Law Council as guaranteed by Article 42 of the Constitution.***
- 50 d. ***The denial of his right to practice while he lawfully remains on the Roll of Advocates and while he has never been lawfully struck off the Roll as provided by the Advocates Act breaches his right to practice his profession.”***

The Petitioner prayed for the following declarations:

- 55 i. *“That the proceedings of the Law Council of 2009 if at all they took place (which is denied) was a nullity for not affording the Petitioner a hearing and hence inconsistent with the Constitution.*
- ii. *That the purported striking of the Petitioner off the Roll of Advocates never lawfully occurred and the Petitioner remains on the Roll of*
60 *Advocates and the unlawful striking off, if at all, was unconstitutional and in contravention of the Constitution.*
- iii. *That the Petitioner be afforded his right to practice as an Advocate.*
- iv. *That the respondents meet the costs of this petition.*

The Petition was supported by the Affidavit of the Petitioner.

65 In the Respondents' Answer to the Petition, which was supported by the Affidavit of the Secretary of the Law Council, Ms Margaret Apinyi, the Respondents denied all the allegations and contended that:

1. The Petition was not sustainable as against the 1st and 2nd respondents who are neither legal entities nor bodies corporate capable of being sued;
- 70 2. The Petition does not raise any issues for Constitutional Interpretation.

At the hearing of this Petition, learned Counsel **Arthur Katongole** appeared for the Petitioner, while the learned Principal State Attorney (PSA), **Mr. Geoffrey Atwiine**, represented the Respondents.

Submissions of the Petitioner

75 Counsel Katongole submitted that the Ruling and act of striking the Petitioner from the Roll of Advocates were done in a manner which was unlawful and unconstitutional in that the Petitioner's right to be heard as guaranteed by the Constitution was breached, the Ruling was not signed by the Chairperson of the

80 Law Council as required by S.36 of the Advocates Act, no final Report was forwarded to the Chief Registrar as prescribed by S.21 of the Advocates Act and the Order was not gazetted as required by S.20 of the Advocates Act.

As a result, the Petitioner has been denied his right to practice his profession for now about 12 years. Counsel prayed that this court does find the procedure and Decision of the Disciplinary Committee to be unconstitutional.

85 **Submissions of the Respondents**

Mr. Atwiine submitted that the Petition against the 1st and 2nd respondents ought to be struck out as the Chief Registrar of the Courts of Judicature and the Secretary of Law Council cannot be sued in their individual capacities. That as public bodies and persons, it is the Attorney General who is their legal
90 representative as provided for under Article 119 (3) of the Constitution. For this submission Counsel referred to the case of Gordon Sentiba and 2 others Vs. IGG, Supreme Court Civil Appeal No. 6 of 2018.

Counsel further submitted that this court has no jurisdiction to entertain the Petition as it did not raise any issue for constitutional interpretation as provided for
95 under Article 137 which confers jurisdiction on this court. That the Petition only raised matters of violation of his right to practice his profession as guaranteed under Article 40, contravention of his right to a fair hearing as guaranteed under Article 28, and violation of his right to fair treatment before the Law Council guaranteed under Article 42. Counsel contended that none of the above matters

100 required constitutional interpretation and ought to be brought before a “competent court” under Article 50 of the Constitution and not the Constitutional Court. For this submission, Counsel referred to the authority of the Attorney General Vs. Gen. Tinyefuza Constitutional Appeal No. 1 of 1997 and Ismail Serugo Vs. KCC and Attorney General Constitutional Appeal No. 2 of 1998.

105 Counsel concluded that for those reasons, this Petition was wrongly before this court and ought to be dismissed with costs.

Petitioner’s Rejoinder

In rejoinder, Counsel Katongole submitted that the “acts” and “omissions” complained about in the Petition are covered under the provisions of Article
110 137(3)(b) and that the Petition was properly before this court.

Consideration by Court

We shall first deal with the two preliminary points of law raised by the respondent.

Whether the Chief Registrar of the Courts of Judicature and the Secretary of the Law Council are proper respondents in this matter.

115 “Legal personality” or “corporate legal entity” is a creature of statute. It is only after non-biological person(s) or bodies have been conferred with legal personality that they become competent to be joined as respondents in Constitutional Petitions commenced in this court. Article 145 of the Constitution of the Republic of Uganda creates the office of the Chief Registrar in the Judiciary and provides for the
120 appointment of the holder of the office by the President on the advice of the Judicial Service Commission. No corporate legal personality is conferred upon that office by the Constitution or any other law.

The Advocates Act, Cap. 267 assigns specific duties to the Chief Registrar in respect of the enrolment and practice of advocates in Uganda which include entering onto the Roll of Advocates the names of persons found eligible by the Law Council (S.7), issuing Practising Certificates to qualifying advocates (S.11), receiving and taking action on the findings and orders of the Disciplinary Committee established under the Advocates Act (S.21), and receiving the prescribed appeal documents filed by an advocate aggrieved by any order of the Disciplinary Committee (S.22). If an advocate is aggrieved by the performance or non-performance of the said statutory duties by the Chief Registrar, it does not attract personal liability on the part of the Chief Registrar nor confer corporate personality on that office to be made a party to proceedings before this court.

Furthermore, the Chief Registrar cannot be sued in exercise of his/her functions as such. As a judicial officer, he/she is protected by Section 46 of the Judicature Act which provides as follows:

46. Protection of judicial officers.

(1) A judge or commission or other person acting judicially shall not be liable to be sued in any civil court for any act done or ordered to be done by that person in the discharge of his or her judicial functions whether or not within the limits of his or her jurisdiction.

(2) An officer of the court or other person bonded to execute any order or warrant of any judge or person referred to in subsection (1) acting judicially, shall not be liable to be sued in any civil court in respect of any lawful or authorised act done in the execution of any such order or warrant.

Likewise, the office of the Secretary of the Law Council is a public office created by Section 5 of the Advocates Act, Cap. 267 to facilitate the Law Council and the Disciplinary Committee in the discharge of their respective mandates under the Act. Nowhere does the Advocates Act confer corporate legal personality to the office of the Secretary of the Law Council or otherwise give a right to a person aggrieved by the Secretary's acts or omissions to make him/her a respondent in a Petition before this court. Instead, Section 39 of the Advocates Act provides for

immunity of the Disciplinary Committee. Suits against the members are prohibited
155 by the same provision.

In the premises, we agree with the submissions of the respondents that the
Petition against the Chief Registrar and the Secretary of the Law Council is
misconceived. Accordingly, it is hereby struck out thereby leaving the Attorney
General as the sole respondent to the Petition.

160 **Whether the Constitutional Court has original Jurisdiction over the subject
matter of the Petition.**

It was the Attorney General's contention that this court has no jurisdiction to
entertain the Petition as it does not raise any issue for constitutional interpretation
as provided for under Article 137. Mr. Atwine, Counsel for the Respondent,
165 submitted that the complaints raised in the Petition relate to violation of rights
which call for enforcement under Article 50 of the Constitution and not
interpretation of the Constitution. He prayed that the Petition be dismissed with
costs for being incompetent.

Learned Counsel Arthur Katongole did not agree. He submitted that the
170 complaints raised in the Petition fall within the ambit of the "acts" and "omissions"
on the part of the respondents which this Court is enjoined to entertain pursuant
to Article 137 (3)(b) of the Constitution.

As far as is relevant to the instant matter, the jurisdiction of the Constitutional
Court is set out in *Article 137* of the Constitution thus -

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

(2) ... (Not relevant).

(3) A person who alleges that-

(a) ... (Not relevant);

180 (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.

185 (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 of redress; or

(b) Refer the matter to the High court to investigate and determine the
appropriate redress.

190 The scope of the jurisdiction of this court has been the subject of numerous
judicial decisions of this court and the Supreme Court. What stands out in all of
them is that for this court to have jurisdiction over any complaint brought before it,
interpretation of a provision of the Constitution must be necessary in the
resolution the of the said complaint. See Attorney General Vs Major General
195 David Tinyenfuzza, Supreme Court Constitutional Appeal No. 1 of 1997, Ismail
Serugo Vs Kampala City Council & Another Constitutional Appeal No. 2 of 1998,
Mbabaali Jude vs Hon. Edward Kiwanuka Ssekandi Constitutional Petition No.
0028 of 2012, Herman Semujju vs Attorney General Constitutional Petition No. 1
of 1998, Charles Kabagambe vs Uganda Electricity Board Constitutional Petition
200 No. 2 of 1999 and Paul Ssemwogerere and 2 others vs Attorney General
Constitutional Petition No. of 2002, Engineer Edward Turyomurugyendo & others
vs Attorney General & others Constitutional Petition No. 25 of 2009.

Wambuzi, C.J. stated it succinctly in Attorney General Vs Major General David
Tinyenfuzza, Supreme Court Constitutional Appeal No. 1 of 1997 thus: -

205 "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

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question before the Constitutional Court depends for its determination on the interpretation or construction of a provision of the Constitution, the Constitutional Court has no jurisdiction.” (Emphasis added).

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In order to determine whether this court has jurisdiction over the complaints set out in the Petition in the instant matter, the criteria set by Wambuzi C.J with the concurrence of the rest of the court in Ismail Serugo Vs Kampala City Council & Another Constitutional Appeal No. 2 of 1998, becomes very instructive. He stated thus:-

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“... 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. If therefore rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent court ...”

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The Petition before us contains alleged breaches of the Constitutional rights of the Petitioner by the Law Council in the process of carrying out disciplinary proceedings against the petitioner and the resultant refusal by the Chief Registrar of the Courts of Judicature to issue him with the Practicing Certificate namely: the right to practice his profession as an advocate (Article 40(2) of the Constitution), the right to a fair hearing (Article 28(1) and 43 of the Constitution) and the right to fair treatment (Article 42 of the Constitution). The question that arises is whether the said complaints are sufficient to bring the petition within the scope of Article 137 (1) & (3) the Constitution which confer jurisdiction upon this court?

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The Petitioner's Counsel submitted that the complaints raised fall within the ambit of the “acts” and “omissions” which this Court is enjoined to entertain pursuant to Article 137 (3)(b) of the Constitution. We disagree. Whereas it is true that the complaints set out in the Petition amount to allegations of contravention of certain provisions of the Constitution, in our humble opinion, they do not require any constitutional interpretation. Article 137 (3) (b) must be read together with Article 137 (1) of the Constitution in order to understand its full import. Those ‘acts’ and ‘omissions’ must raise a question for constitutional

240 interpretation that ought to arise in considering the declaration sought. There must be a controversy as to whether or not the said 'acts' and 'omissions' are constitutionally permissible or not either on account of the limitation clause, or some other law.

245 This Court and the Supreme Court have consistently held that not every breach of the Constitution requires interpretation of the Constitution.

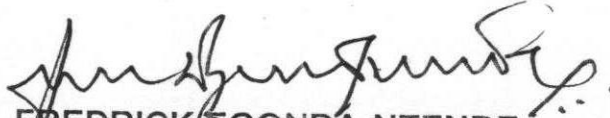
In Ismail Serugo Vs Kampala City Council & Another, Constitutional Appeal No. 2 of 1998, Mulenga JSC stated thus:-

250 "... A person who seeks to enforce a right or freedom guaranteed under the Constitution, by claiming redress for its infringement or threatened infringement, but whose claim does not call for interpretation of the Constitution, has to apply to any other competent court. The Constitutional Court is competent for that purpose only upon determination of a petition under Article 137(3)..."

255 In the instant matter it is clear to us that what the petitioner is seeking from this court is not the interpretation of any provision of the Constitution, but redress for the alleged infringement of his constitutional rights by the Law Council in the process of carrying out the disciplinary proceedings against him, and the striking of his name off the Roll of Advocates contrary to the Advocates Act. He
260 ought to have pursued the appropriate remedies under *Article 50* of the Constitution in an action for enforcement of rights. He could also have applied for judicial review of the decision of the Law Council for not complying with the law and raised the procedural impropriety he sets out. Alternatively, he could have appealed the impugned decision to the High Court pursuant to Section 22
265 of the Advocates Act. Indeed the substance of this petition is a disguised appeal and this court has no jurisdiction to entertain it. We accordingly strike it out with costs to the Attorney General.

Signed and delivered at Kampala this 22nd day of Feb 2021

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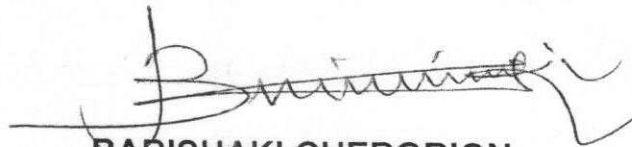
FREDRICK EGONDA-NTENDE
JUSTICE OF THE CONSTITUTIONAL COURT

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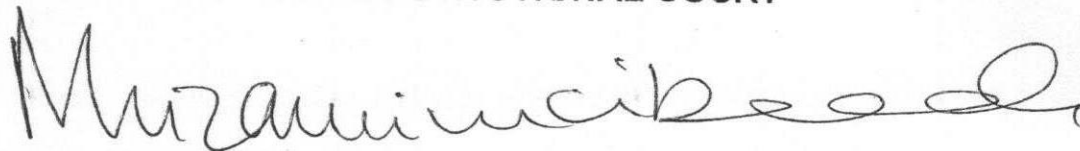
ELIZABETH MUSOKE
JUSTICE OF THE CONSTITUTIONAL COURT

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BARISHAKI CHEBORION
JUSTICE OF THE CONSTITUTIONAL COURT

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MUZAMIRU MUTANGULA KIBEDI
JUSTICE OF THE CONSTITUTIONAL COURT

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IRENE MULYAGONJA
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