

UGANDA / JUDGMENT

Haruna v Attorney General &
Another (Constitutional Petition 18 of
2020) [2024] UGCC 17 (22 May 2024)
[2024] UGCC 17

COURT

Constitutional Court of Uganda

BEFORE

Egonda-Ntende, JCC, Bamugemereire, JCC,
Mulyagonja, JCC, Monica K. Mugenyi, JCC, Eva K.
Luswata, JA/JCC

CASE / FILE NUMBER

Constitutional Petition 18 of 2020

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA HOLDEN AT
KAMPALA CONSTITUTIONAL PETITION NO. 18 OF 2020

[CORAM: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi, Luswata, JJCCI

HARUNA SENTONGO PETITIONER

VERSUS

- 1. ATTORNEY GENERAL
- 2. ORIENT BANK LTD RESPONDENTS

JUDGMENT OF CATHERINE BAMUGEMEREIRE, \$JCC\$

Introduction

$\$S$

$\$10$

This petition was lodged pursuant to Articles 137 (1) (2) (3) (4) and (7) of the 1995 Constitution and rule 3 of the $\$(4)$ Constitutional Court (Petition and Reference) Rules 2005. The main ground of the petition is that regulation 13 of the Mortgage Regulations No. 2 of 2012 is inconsistent with and in contravention of Article 21, 26 and 79 of the Constitution. among others. The petitioner sought the following declarations and orders:

1. Regulation 13(1) of the Mortgage Regulations No.2/2012 which imposes a condition on a litigant seeking justice over a mortgaged property, to first pay to a respondent party (mortgagee), a deposit of 30% of either the forced sale value of a mortgaged property or

$\mathbf{1}$

the outstanding loan amount on an application to court for an injunction stopping a sale by public auction of a mortgaged property erodes the constitutional presumption of innocence, curtails a person's nonderogable constitutional right to free access to justice and courts of law, denies a party a right to a fair hearing, and is contrary to and inconsistent with Article 2, 20, 280, 43 and 44 of the 1995 Constitution of the Republic of Uganda.

2. Regulation 13 (t) is inconsistent with the constitutional principle of equality before the law, undermines the right of a party to equal treatment and protection before the law, and is contrary to, and inconsistent with Article 21 of the Constitution. 10
3. The provisions of regulation 13 (1) and (4) of the Mortgage Regulations which require a mortgagor to pay additional security in the form of a security deposit of 30% of the forced sale value of mortgaged property or outstanding loan amount before stopping or adjourning a sale of the mortgaged property by public auction on an application to court, on top of the property already mortgaged defeats the essence of a mortgage as ^a security for a loan, is repressive, extortionate, amounts to unconscionable and an unlawful compulsory deprivation of the right to property, which contravenes 15 20

and is inconsistent with Articles 2, 20 and 26 of the Constitution.

- 4. The provisions of Regulation 13 (5) of the Mortgage Regulations which require the mortgagor to pay ^a security deposit of 50% of the outstanding loan amount on the mortgage where the sale is stopped or adjourned at the request of the mortgagor in exercise of the right of redemption which preserves the right to property, undermines the mortgagors right to property and is unlawful compulsory deprivation of property, in contravention of Articles 2, 20 and 26 of the Constitution.
- 5. The provisions of Regulations 13 (1), (4) and (5) of the Mortgage Regulations being a delegated subsidiary legislation are ultra vires the Mortgage Act No. 81/2009 when they introduced a requirement to pay a security deposit of the forced market value of the mortgaged property or the outstanding loan amount before a sale can be stopped/ adjourned by court, interferes with the legislative authority of parliament and the judicial function of the courts which thereby contravenes Articles 2, 20, 79, 126, 128 and 150 of the Constitution.
- 6. The provisions of regulation 13 (1) of the Mortgage Regulations which require the mortgagor to pay to the mortgagee, a security deposit of 30% of the forced sale value of the mortgaged property or an outstanding loan

amount on an application to court challenging the sale of the property by public auction discriminates against mortgagors as litigants, promotes inequality with other litigants seeking a similar remedy and thereby contravenes and is inconsistent with Articles 2, 20, 21, 28 and 126 of the constitution.

- 7. An order for costs of the petition
- 8. Any other and further orders as this court may deem fit.
- The 1st respondent filed an affidavit in reply deposed by Charity Nabaasa, a State Attorney in the Attorney General's Chambers who swore that the petition raises no grounds or questions for constitutional interpretation and should be dismissed at the preliminary stage of the proceedings. She deposed that regulations 13 (t), (+) and (5) of the Mortgage Regulations are not inconsistent with Articles 2, 20, 21, 26, 28(J), 43, 44, 79, 126, 128 and 150 of the Constitution. 10 t(

The 2nd respondent filed an affidavit in reply deposed by Natalie Kironde, Head of the Legal Department of the second respondent. She stated that the petition is purely commercial rather than constitutional and that the dispute between the parties is pending before the commercial court thus the petition is a deliberate abuse of court process. She stated that the 2nd respondent has not violated or infringed upon any of the provisions of the Constitution, and that the 25

c

petitioner's allegations are false and misconceived since the 30% security deposit of either the forced sale value of a mortgaged property or the outstanding loan amount is deposited in court and not with the 2nd respondent as alleged by the petitioner.

Background

The facts giving rise to this petition are that the petitioner was a customer of the second respondent bank. He obtained a credit facility for construction of a commercial building on his land comprised in Kibuga Block 12 Plot 825 known as "Nakayiza Mall." The petitioner asserts that he serviced the loan. He then applied for another financial facility of USD 3,000,000 for the construction of a commercial building on his other land comprised in Kibuga Block 12 Plots 250 & 251 known as Segawa Market. The second respondent bank provided the sums applied for by the petitioner, however through different and or respective credit facilities, whereupon the petitioner deposited his titles for Block ¹² Plots 250 and 251 as security for the facility. It is alleged that the second respondent bank breached the contract and failed to disburse the agreed amounts which left the petitioner with no option but to seek legal redress.

Upon carrying out an audit of his accounts with the 2nd respondent Bank and the petitioner realized that the Bank had unlawfully debited his business accounts under the

a

Z5

guise of receiving instalment payments under the initial facility. The petitioner filed HCCS No. 464 of 2018: Hamna Sentongo v Orient Bqnlr Ltd seeking to enforce the agreed contractual terms under the fresh facility and/or have its property returned and discharged from any charge or liability. The second respondent filed a parallel suit in the High Court vide HCCS No. 036 of 2019, Orient Benlr v Hanrna Sentongo seeking to recover a purported outstanding loan amount. The two suits (HCCS No. 464 of 2018 and HCCS No. 36 of 2019) were consolidated to settle the actual disputes between the parties.

The petitioner applied for and obtained a temporary injunction in MA No.610/2018 against the Bank in an effort to avert possible alienation of the suit property pending the determination of the main suit. The second respondent filed HCMA No. 997 of 2018 faulting the trial Judge for not considering the provisions of regulation 13 (t) of the Mortgage Regulations No. 2/2012 to impose a condition for deposit of 30% of a disputed loan that was never disbursed to the second respondent when granting the temporary injunction against it. HCMA No. 997 of 2018 was however dismissed.

> The respondent then filed an appeal in this court vide CACA No. 230 of 2018 (Orient Bank Ltd v Haruna Sentongo) and also filed HCMA No. 112/2019i Orient Bank Ltd v Haruna

Sentongo, applying for an order to set aside, discharge or vary the temporary injunction in MA No.510/2018.

The petitioner filed this petition claiming that the said regulation 13 of the Mortgage Regulations No. 2/2012 is inconsistent with certain provisions of the Constitution.

Representation

At the hearing of the petition, Derrick Bazekuketta appeared for the petitioner, Claire Kukunda, a Senior State Attorney appeared for the 1st respondent while Mac Dusman Kabega appeared for the 2nd respondent. Counsel for all the parties opted to proceed by way of written submissions, which this court has considered, in writing this ruling.

15

$\$S$

Issues derived from the grounds of the Petition

- 1. Whether Regulation 13(1) of the Mortgage Regulations 2012 is inconsistent with and in contravention of Articles 28(1), 21(1) and (2) 43 and 44 (c) of the Constitution.
- 2. Whether regulation 13 (1), (4) and (5) of the Mortgage Regulations 2012 is inconsistent with and in contravention of Article 26 of the Constitution.

- 3. Whether regulation 13(1) of the Mortgage Regulations is inconsistent with and in contravention of articles 79, 126, 128 and 150 of the constitution.
- 4. What remedies are available to the parties?

Submissions for the Petitioner

Gmund No. 1: Whether Regulation 13(1) of the Mortgage Regulations 2012 is inconsistent with and in contravention of Articles 28(1), 21(1) and (2) 43 and 44 (c) of the Constitution.

Counsel for the petitioner submitted that regulation 13 (1) of the Mortgage Regulations limits the enjoyment of the right to a fair hearing by subjecting the grant of a provisional injunctive relief to a mandatory payment of a security deposit of 30% of an amount that is disputed in its entirety before the parties are even heard on the merits of the case. Counsel contended that the provision is inconsistent with and in contravention of Articles 28(1), 21(1) & (2), 43, and 44 (c) of the Constitution of Uganda. It was counsel's argument that to the extent that the impugned regulation 13 (1) is applied by courts in cases where a debt or amount is disputed or challenged, it is unfair.

> He contended that there is no requirement under the impugned regulation 13(1) of the Mortgage Regulations 2012, for mortgagees or banks to prove on a balance of probabilities that indeed the mortgagor or interested party is indebted to the extent alleged or at all.

Counsel submitted that the clearest interpretation and effect of the impugned regulation was expounded by Mubiru, J in *Nakato Margaret v Housing Finance BcnI Ltd & anor HCCA No. 0687 of 2027* where he held that, regulation 13 of

the Mortgage Regulations 2012 is an enactment of the principle "pay now, argue later."

It was counsel's submission that the effect of regulation 13 (1) is to curtail the enjoyment of the right to a fair hearing by limiting access to provisional injunctive reliefs or temporary injunctions to only applicants who are able to pay a security deposit of 30%.

He argued that although a legislation may serve a legitimate purpose, if its effect violates a constitutional right, the legislation is unconstitutional. He relied on *The Queen v Big Drugmark Ltd* (Other inter alia 1996 LRC (Const.) egZ cited with approval in *Attorney General v Salvatori Abuki Constitutional Appeal No. 1 of 1988* to the effect that, either unconstitutional purpose, or unconstitutional effect can invalidate a legislation.

Counsel averred that in the instant petition, the Petitioner would be required to pay 30% of UGX 10,384,031,092 (Uganda Shillings Ten Billion Three Hundred Eighty-Four Million Three Hundred and Twenty Two) He alluded to *Fuelex GD T.imited v Uganda Revenue Authority Constitutional Petition No. 3 of 2009* where this court held that:

> "A law that requires one party to a civil dispute to pay 30% of the amount of money that has been determined by the adverse party, places an objector at a disadvantage..."

Counsel implored this court to find and hold that Regulation 13(1) of the Mortgage Regulations 2012 is inconsistent with and in contravention of Articles 28(r), 21(1) & (2), +g and 44(c) of the Constitution.

Ground No. 2: Whether regulation 13(f), (l) and (5) of the mortgage regulations, 2012, is inconsistent with and in contravention of article 26 of the Constitution.

Counsel submitted that regulation 13(1), (4) and (5) of the Mortgage Regulations, 2012 enables the mortgagee or bank to dispose of the mortgaged property on grounds of inability to pay the 30% security deposit before the rights of the parties can be determined. It was counsel's contention that provisional injunctive reliefs are instrumental in protecting property rights until the final determination of disputes, thus the imposition of security under the impugned provisions deprives financially incapable persons from accessing justice to protect their properties. 10 15

Counsel submitted that Regulation 13 (t), (+) and (5) of the Mortgage Regulations impedes the exercise of the right of access to a court of law envisaged in Article 26(2) (b) (ii) of the Constitution. 20

Ground No. 3: Whether regulation 13 (1), (a) and (5) of the Mortgage regulations, 2012, is inconsistent with and in contravention of Articles 79 (D), 126, 128 and 160 of the Constitution.

Counsel contended that through regulation 13 (1), (a) and (5) of the Mortgage Regulations, the Minister fettered court's discretion to determine whether or not to impose a bond on provisional injunctive relief. He submitted that as a result, the courts have found themselves bound by this regulation and have held that the impugned regulation is mandatory and declined to grant interlocutory relief to litigants who are unable to pay the disputed security deposit. It was counsel's argument that since the impugned regulation removes discretion from court, it is clearly inconsistent with Article 126 of the Constitution.

Counsel further submitted that in exercising limited and delegated authority in making the Mortgage Regulations, 2012, the Minister exceeded the said limited and delegated authority when they made Regulation 13 (1), (2) and (3) of the Mortgage Regulations, 2012, a provision that is not only not sanctioned by section 41 of the Mortgage Act, 2009, but which is also unfair, discriminatory, inhibits access to justice and fetters the discretion of court. He stated that the impugned provision contravenes Article 79 of the Constitution.

Ground No.4: What remedies are available?

Counsel submitted that it is trite law that where a law is inconsistent with any provision of the Constitution, this court is only required to declare whether or not an Act of

Parliament or any other law is inconsistent with or is in contravention of the provisions of the Constitution and to grant redress where appropriate. He cited *Law & Advocacy for Women in Uganda v Attorney General Constitutional Petitions No. 13 of 2006 & 06 of 2006* to that effect.

Counsel prayed that this court finds that regulation 13(1), (a) and (5) violates and is in contravention of Articles 28(1), 21(1) & e), +s, aa (d, 79e), n6, 128 and 150 (1) of the Constitution and grant the reliefs sought in the petition with costs to the Petitioner.

Submineions for the l"t Respondent

Counsel for the 1"t respondent contended that the grounds of the petition which are now before this court were resolved in *Ferdsult Engineering Senrices & Mugisha Ferdinand v the Attorney General & ABSA Bnnk Limited Conetitutional Petitiou* No. 18 of 20.

Counsel submitted that in *Ferdeult* (supra), the petitioners challenged the same provisions of the Constitution, which the Petitioner in the current petition alleges were contravened by Regulation 13 of the Mortgage Regulations. Counsel relied on the doctrine of *stare decisis* in *Attomey General v Uganda Law Society Qsngfit'ufisnel Appeal* No. ¹

of 2006 for the proposition that a court of law is bound to

adhere to its previous decisions. Counsel submitted that the

import of the doctrine is that this Court is bound by the

Z5

r

t2

decision in *Ferdsult* (suprd and invited this court to resolve this petition in the same way.

She invited this court to answer Ground No. 1 in the negative.

5 Regarding the second Ground, counsel submitted that the Mortgagee has the right to sell the mortgaged property if the mortgagor fails to service his/her credit obligations in accordance with the agreement between the two partiesi and the Mortgagor has the right to redeem the mortgaged property. He further submitted that where at the time of applying for relief pursuant to section 33 of the Mortgage Act, the Mortgagor is already in default the security deposit is intended to protect and reassure the Mortgagee that the Mortgagor is committed to meeting his/her obligations under the loan agreement. 10 15

Counsel argued that the intention of the Mortgage Act and Regulations was to ensure equal protection of the rights of all partiesi therefore, the rationale for the security deposited under the Mortgage Regulations is to protect the Mortgagor's property. He added that Regulation 13(1) gives the Mortgagor and any other interested party an opportunity to come to Court and be heard or present their cases before the Court makes any decision, which promotes constitutionalism and not a presumption of guilt as alleged. Counsel submitted that as much as the Constitution provides for rights under Article 28 and 44, the same must

be enjoyed without prejudice to the rights and freedoms of others as stipulated under Article 3(1). He prayed that this Ground be answered in the negative.

5 Regarding the third Ground, counsel contended that the framers of the Mortgage Act and Regulations never intended for a Mortgaged property to automatically transfer to the Mortgagee. He averred that it is only upon default of, the terms of the Mortgage instrument or deed that the Mortgagee exercises his or her rights under the law, which include the power of sale. 10

> Counsel submitted that where the mortgagor defaults in payment of the mortgage, the law under Section 20 of the Mortgage Act 2009 grants the mortgagee the right to foreclose on the secured property. He argued that the same law provides for the right of relief in favour of the mortgagor, which is consistent with Article 26 of the Constitution. It was counsel's contention that the security deposit serves as a reassurance to the mortgagee that the mortgagor is still willing to pay the mortgage.

Counsel invited this court to find that regulation 13 (4) and (5) of the Mortgage Regulations No. 2 of 2012 is not inconsistent with or in contravention of Article 26 the Constitution and that it fulfils the essence of a mortgage.

On the fourth Ground, counsel submitted that regulation ¹³ was intended to operationalize the provisions of sections 20 Z5

to 26 of the Mortgage Act which provide for remedies available to a mortgagee upon default by the mortgagor. It was counsel's averment that while operationalizing the provisions of the Constitution under Article 79, Parliament enacted the Mortgage Act No.7 of 2009 to specifically address the law relating to mortgages in Uganda. Further, that S. 41 of the Act empowers the Minister to make Regulations for better carrying into effect of the purposes and provisions of the Mortgage Act, and pursuant to that power, the Mortgage Regulations 2012 were enacted by the Minister responsible for Lands in consultation with the Central Bank.

Further, counsel submitted that contrary to the Petitioner's argument that regulation 13 divests the Court of its discretioni regulation 13(1) is coined to give discretion to the Court to decide whether a party should be granted the relief of stoppage of a sale. He argued that once a court grants the relief, the obligation to make the 30% payment is mandatory and must be fulfilled for the order of stoppage to take effect depending on the time given for the payment to be made.

Counsel prayed that this court finds that the Mortgage Regulation No.2/2012 does not interfere with the legislative authority of Parliament and the judicial function of the Courts and it does not contravene Articles 79,126, 128 and 150 of the Constitution.

1C

Regarding Ground Five on declarations and orders, counsel submitted that the Petitioner is not entitled to any of the remedies sought and that this Petition ought to be dismissed with costs to the Respondents.

Submissions for the 2^d Respondent

In reply to the first Ground, counsel submitted that the Petitioner have approached the court challenging and seeking the interpretation of the constitutionality of a law whereas this is simply a pretext of an appeal whose *raison d'être* is an underlying dispute between the petitioner and the 2^d respondent in a purely commercial cause which has since been determined in favour of the 2^a respondent. It was counsel's averment that this petition is an exercise in futility and an abuse of Court process since there is no ambiguity or uncertainty that requires interpretation in regulation 13 of Mortgage Regulations.

In response to the second Ground, counsel contended that prior to the execution of the mortgage deeds, the Petitioner sought and obtained independent legal advice on the implications of pledging his properties as security for the mortgage as well as the 30% security deposit in case of default enunciated under Regulation 13 of the Mortgage Regulations 2012. He argued that it is unacceptable for a party to a contract, having obtained independent legal

advice before signing the contract and having derived benefit from the contract/mortgage, to then come to court and seek to challenge the legality of the underlying law that formed the very basis of the mortgage deed.

- He contended that regulation 13(D) of the Mortgage Regulations strictly conforms with and satisfies the right to a fair hearing. He submitted that there is no inconsistency between regulation 13(1) on the one hand and Articles 28, 44 and 43 of the Constitution on the other hand.
- Regarding Ground Three, counsel contended that the scope and meaning of Article 26 of the Constitution was effectively settled in *Uganda National Road Authority v Irumba & another* Constitutional Appeal No. 2 of 2014, espousing the notion that the article addresses situations of compulsory acquisition or taking of land by the Government and was not promulgated for the purpose of addressing disputes between individuals arising from duties and obligations voluntarily created and assumed by Contracts. 10 15
- Counsel submitted that Article 26 is inapplicable to the instant dispute for reason that the mortgages, the cornerstone of this dispute, are governed by specific statutes to wit: the Contracts Act 2010, the Mortgage Act and the Mortgage Regulations. He further submitted that it is disingenuous of the Petitioner to now argue, that regulations 13(1), (4) and (5) fetter his right to property when he, in fact freely applied for the credit facilities, offered his properties 20 25

1:

as security for the loans, well aware that the properties would be forfeited in case of default, and fully utilized the monies advanced to his benefit.

He asserted that Regulation 13 (1) of the Mortgage Regulations is in conformity with the right to property and prayed that the Court reaffirms this position.

In reply to Ground Four, counsel submitted that the Minister acted well within his power and authority duly vested in him by law when he enacted the Mortgage Regulations of 2012. Counsel stated that Article 79(D) of the Constitution is cited out of context. In addition, he submitted that regulation 13 does not in any way clog/shackle the court's discretion to grant an injunctive relief to a mortgagee but rather, only imposes a condition on the exercise of such discretion. Counsel prayed that this Petition be wholly dismissed with costs to the 2nd Respondent.

Determination of Court

I have carefully considered the petition together with the affidavit in support as well as the answers to the petition. I have also considered the submissions and authorities provided to this court by counsel for all parties. 20

In summary, the Petitioner is alleging that regulation 13 (r) of the Mortgage Regulations 2012 contravenes Articles 21, 28, 43 and 44 of the Constitution in as far as it limits and offends the petitioner's rights to a fair hearing and the right to be heard. Regulation 13 (1) and (4) of the Mortgage Regulations which require a mortgagor to pay additional security in the form of a security deposit of 30% of the forced sale value of mortgaged property or outstanding loan amount before stopping or adjourning a sale of the mortgaged property contravenes Articles 2, 20 & 26 of the Constitution. That Regulation 13(1), (4) and (5) of the Mortgage Regulations 2012 contravene Article 79 of the Constitution in so far as it is ultra vires the scope of the Mortgage Act No. 2 of 2009. It introduces the requirement to pay a security deposit of the forced sale value of the mortgaged property or the outstanding amount before a sale can be stopped/adjourned by Court and to that extent interferes with the legislative authority of Parliament.

Regulation 13 provides as follows:-

(i) "The court may on the application of the mortgagor, spouse, agent of the mortgagor or any other interested party and for reasonable cause, adjourn a sale by public auction to a specified date and time upon payment of a security deposit of 30% of the forced sale value of the mortgaged property or outstanding amount."

(a) "Where a sale is stopped or adjourned at the request of the mortgagor, an agent of the mortgagor, the spouse of the mortgagor or any other interested party, the

20

mortgagor, agent or spouse of the mortgagor or that interested party shall, at the time of stopping or adjourning the sale, pay to the person conducting the sale, a security deposit of 30% of the forced sale value of the mortgaged property or the outstanding amount, whichever is higher."

(b) "Where the sale is stopped or adjourned at the request of the mortgagor for the purposes of redemption, the mortgagor shall at the time of stopping or adjourning the sale pay a security deposit of 50% of the outstanding amount."

The question before this court whether by requiring the mortgagor to put down 30% of the mortgage value upon the adjournment or stoppage of a sale, the rights of the mortgagor under articles 21 and 26 of the constitution are interfered with. Without going into any level of detail here I will provide a helicopter view of the various articles of the Constitution referred to here. Article 21 of the Constitution provides for equality before the law while article 26 for the right to property. Article 28(1) stipulates the right to a fair hearing, article 79 provides for the powers of parliament to make laws while article 126 specifies that judicial power shall be exercised in conformity with the law and values, norms and aspirations of the people. Finally, article 128 safeguards the independence of the judiciary and provides

that it is not subject to the control or direction of any person or authority. Article 150 is to the effect that Parliament may make laws providing for the structures, procedures and functions of the judiciary.

Both counsel for the respective respondents argued that the question for investigation in the petition before us was already settled by this court in *Ferdsult Engineering Senricee & Mugisba Ferdinand v Attorney general & ABSA Bank Od (euprs)*. I will make reference to *Ferdeult (suprg)*.

In that case, the petitioners challenged regulation 13 of the Mortgage Regulations claiming that it contravened Articles 21, 28 and 44 of the Constitution in as far as it limits and offends the Petitioners' rights to fair hearing and the right to be heard. Article 79 of the Constitution in so far as it is ultra vires the scope of the Mortgage Act No. 8 of 2009 when it introduces the requirement to pay a security deposit of the forced sale value of the mortgaged property or the outstanding amount before a sale can be stopped/adjourned. It thereby offends Article 26 in so far as it infringes on the right to property and facilitates the taking of property without fair and just compensation or a proper hearing on the same. ZO

> The court in *Ferdeult (supra)* found and concluded the matter as here below:

'The requirement to make a deposit under Regulation 13 (it is clearly devised to stop frivolous and vexatious mortgagors from frustrating mortgagees seeking recovery of monies rightfully owed. The Regulation is necessary to protect mortgagees from unnecessary adjournments or stoppage of sales that would result in satisfaction by defaulting mortgagors.

The Petitioners have not demonstrated how Regulation 13(D of the Mortgage Regulations discriminates against different mortgagors beyond leaving the claim. It therefore found that Regulation 13 of the Mortgage Regulations is not inconsistent with Article 26 of the Constitution. Regulation 13(1) of the Mortgage Regulations was enacted to provide an equitable opportunity for an aggrieved person to seek relief from Court while at the same time protecting the Mortgagee's right to sale as guaranteed by the Mortgage Act. Although Article 26 protects the right of every person to own property, it was not promulgated for the purpose of addressing disputes between private individuals arising out of contractual relationships. Clearly, the Petitioner seeks to use this court to resolve

disputes between himself and the 3d Respondent after failing to honour his contractual obligations.

⁵ Basing (supra) on the above conclusions the court in Ferdeult made the following orders:

- 1. Regulation 13(1) and @ of the Mortgage Begalations No.2/2021 does not contravene and is not inconsistent with Articles 21,28,44, 126(il'and 128 of the Constitution.
- 2. Regrulation 13 (5) of the Mortgage Begilations No. 2/2021 does not contravene and is not inconsistent with article 26 of the Constitution.
- 3. The act of the Cowts or any other person or official enforcing Eegalation 130) of the Mortgage Eegalations does not contravene or is not inansistent with Articles 27, 28, 44,79 and 1260) of the Constitution.
- 4. The passing of the Mortgage Begulations No.2/2021 by the Minister, which includes Begalation l?(t) to introduce payment of a secuity deposit, is not ultra uires the Mortgage Act No 8/2009 and does not contravene or is not inconsistent with article 79 of the Constitution.

The petitioner in the matter now before us raised the similar concerns regarding regulation 13 of the Mortgage Regulations. I would find that once a matter has already been deliberated and adjudged upon by the same court or a superior court, the question in controversy becomes res judicata. The questions in a constitutional petition are not limited to the court cannot be seen or heard to to pronounce itself on the same controversies.

The question of res judicata in constitutional matters was well-articulated in Uganda v Godfrey Oneg Obel Conetitutional Petition No. 24 of 2011, when this court declared that the:

> " fnturpretation by this court of any legal prouision uis a uis the Constitution and its legal effect is not limited to the parties concerned in the case in which the interpretation is mada ft constitutes a binding prunouncement of the law, subject to appeal to the Supreme Court. this court sitting as a Constitutional Court therefore cannot or should not hear and determine the same substantive and legal questions about the interpretation of the constitution more than once because they become res judicata."

Subsequently, this matter is res judicata for reason that the controversy it seeks to resolve has already been adjudicated 25

upon by this court. The petition therefore presents no new question for constitutional interpretation. The petition is herewith dismissed. Each party shall bear its own costs.

CATHERINE BAMUGEMEREIRE JUSTICE OF THE CONSTITUTIONAL COURT

THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende; Bamugemereire, Mulyagonja, Mugenyi & Luswata, JJCC)

CONSTITUTIONAL PETITION NO. 18 OF 2020

HARUNA SSENTONGO PETITIONER

VERSUS**. ATTORNEYGENERAL . ORIENT BANK LTD RESPONDENTS 1 2****JUDGMENT OF MONICA K. MUGENYI. JCC**

I have had the benefit of reading in draft the lead judgment of my sister, Catherine Bamugemereire, JCC in this matter. I agree with the decision therein that the Petition be dismissed for the reasons advanced.

N^{>D} day ot(*7....., zoze. Dated and delivered at Kampala this 4?

l-tx<*L4-u-^ I

rMonica K. Mugenyi Justice of the Constitutional Court

t This judgment was signed before this judge ceased to hold that office

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA CONSTITUTIONAL PETITION NO. 18 OF 2020

Coram: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi & Luswata, JJCC

HARUNA SSENTONGO:.....

VERSUS**1. ATTORENEY GENERAL**

2. ORIENT BANK LTD :.....

JUDGMENT OF IRENE MULYAGONJA, JCC

I have had the benefit of reading in draft the judgment of my sister Catherine Bamugemereire, JCC. I agree that the petition be dismissed for the reasons that she has given with the orders she has proposed.

Dated at Kampala this \$22^{10}\$ day of \$mAY\$ 2024.

Ikonnyago

Irene Mulyagonja JUSTICE OF THE CONSTITUTIONAL COURT

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

[*Coram: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi and* Luswata, JJCC.]

CONSTITUTIONAL PETITION NO.18 OF 2020

HARUNA SSENTONGO ::::::::::::::::::::::::::::::

VERSUS

1. ATTORNEY GENERAL

2. ORIENT BANK LIMITED::::::::::::::::::::::::::::

JUDGMENT OF EVA K. LUSWATA, JCC

I have had the opportunity to read in draft, the judgment of my learned sister Hon. Lady Justice Catherine Bamugemereire, JCC.

I agree with her and have nothing useful to add.

Dated at Kampala this $\dots \lambda \lambda \dots$ day of $\dots \dots$ 2024.

EVA K. LUSWATA JUSTICE OF APPEAL/CONSTITUTIONAL COURT

IN THE CONSTITUTIONALCOURT OF UGANDAAT KAMPALA

fC oram : Egonda-N tende, Bamugemereire, Mu lyagonia, Mugenyi and Lusw ata, JJCC,)

Constitutional Petition No. 18 of 2020

BETWEEN

Haruna Ssentong Petitioner

AND

| The Attorney General | Respondent No.1 |

|-----|-----|

| Orient Bank Ltd | Respondent No.2 |

JUDGMENT OF FREDRICK EGONDA-NTENDE. JCC

- tll ^Ihave had the opportunity of reading in draft the judgment of my sister, Bamugemereire, JCC. I agree with it and have nothing useful to add.

- 121 As, Mulyagonja, Mugenyi and Luswata, JJCC, agree, this petition is dismissed with no order as to costs.

Signed, dated, and delivered this 7th day of June 2024

ckEgonda-Ntende

Jus of the Constitutional Court

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugcc/2024/17/eng@2024-05-22>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/haruna-v-attorney-general-constitutional-petition-18-of-2020-2024-ugcc-17-22-may-2024-and-others-unknown-topic-unknown-court-2024--6a3ea4d83b1caa91297e55eb>

Prepared on 14 October 2026 · Esheria