

UGANDA / JUDGMENT

Nagoli v Attorney General & Anor (Constitutional Reference No. 7 of 2006) [2006] UGCC 2 (24 October 2006)

[2006] UGCC 2

COURT

Constitutional Court of Uganda

CASE / FILE NUMBER

Constitutional Reference No. 7 of 2006

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THE REPUBLIC OF UGANDA

CONSTITUTIONAL REFERENCE NO. 7 OF 2006

CONSTITUTIONAL COURT (OKELLO, TWINOMUJUNI, KITUMBA AND KAVUMA, JJ. A)

EMMANUEL NAGOLI;,,,APPLICANT

VERSES

ATTORNEY GENERAL AND ANOTHER;,,,RESPONDENT

Constitutional Petitions—*Locus to file Reference—Pending contractual obligations*—

Constitutional Reference cannot be maintained in law if based on contractual issues that have not been determined by Court

This was a Constitutional Reference from the High Court which during the hearing of a Civil Appeal No. HCT-04-CV-CA 0003/2003 decided on its own motion that substantial constitutional issues would arise during the trial which would require interpretation in accordance with Article 137 (5) of the Constitution of the Republic of Uganda, 1995. The Court framed the issues and referred them to the Constitutional Court.

The background to this reference is that the above mentioned Civil Appeal was still pending for hearing. The facts, which are disputed by both parties, appear to be that in 1995, the Ministry of Finance, Planning and Economic development (MFPED) offered to the public for sale Plot No. 21 Kumi Road in Mbale Municipality. The property was being administered by the Departed Asians Properties Custodian Board (DAPCB) under the authority of Section 9 of the Expropriated Properties Act of 1982 (now Cap 87) on behalf of MFPED.

The petitioner, who was then a sitting tenant of DAPCB, applied to purchase the property. On November 10, 1995 he signed an agreement with MFPED in which he agreed to pay Ug Shs 12,100,451/= for the property. He paid 10% of the purchase price and undertook to pay the

balance within 60 days from the date of the agreement. According to the first respondent, despite several reminders and extensions to the petitioner to meet his contractual obligations, he failed to pay. In 1998, MFPED terminated the sale agreement, offered to refund the 10% and resold the property to the second respondent who became the registered owner thereof in 1999.

According to the petitioner, in 1998, the first respondent unilaterally terminated the sale agreement without giving him notice or hearing. He filed an appeal against the minister's decision in accordance with Section 15 of the Expropriated Properties Act. The trial Judge then framed the following issues which, in his view, required interpretation, namely;

1. Whether the Minister's decision contravened the principle of Audi alteram partem and Articles 20 and 44 (c) of the Constitution
2. Whether the Minister acted arbitrarily contrary to Article 42 of the Constitution
3. Whether the Minister contravened Articles 20, 21(1), (2) and (3) of the Constitution

HELD:

Although the reference discloses a cause of action within the meaning of Article 137 (5) of the Constitution, it cannot be maintainable in law because the acts of the Minister complained of arise out of a written contract and until they have been determined in the Civil Appeal now pending in the High Court, they cannot be challenged as illegal or unconstitutional. Thus the reference was pre-mature and cannot be maintained in law until those contractual issues have been determined.

Respondent's point of law in opposition to reference allowed. Record of Civil Appeal No. HCT-04-CV-CA 0003/2003 be remitted to High Court to resolve contractual issues involved.

Dated this 24th day of October 2006

OKELLO, JA

TWINOMUJUNI, JA

KITUMBA, JA

KAVUMA, JA

Legislation considered:

Civil Procedure Rules, Cap 71, Order 6 rule 29

The Constitution of the Republic of Uganda, 1995, Articles 20, 21, 42, 44 and 137 Expropriated Properties Act of 1982 (now Cap 87), Sections 9, 15 The Constitutional Court (Petitions and References) Rules, 2005

Cases cited:

Ismail Serugo Vs. K. C. C and Another, Constitutional Appeal No.2 of 1998 Nurdin Ali Dewji and Others vs. Meghiji and Other (1953) 20 EACA 132 Wycliff Kiggundu Kato vs. Attorney General, Civil Appeal No.27 of 1993 (Supreme Court) (unreported)

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Prepared on 14 October 2026 · Esheria