

**Odwe and Another v Attorney General
and 4 Others (Consitutional Petition 7 of
2015) [2023] UGCC 106 (19 October 2023)**
[2023] UGCC 106

BEFORE
Buteera, DCJ, Kiryabwire, JCC, Mulyagonja, JCC,
Monica K. Mugenyi, JCC, Kihika, JA /JCC

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CORAM: HON. MR. IUSTICE RICHARD BUTEERA, DCI HON. MR. IUSTICE GEOFFREY KIRYABWIRE, ICC HON. LADY IUSTICE IRENE MULYAGONJA, ICC HON. LADY JUSTICE MONICA K. MUGENYI, ICC HON. MR. JUSTICE OSCAR KIHAIKA, ICC)r

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE. ICC**Introduction**

This Petition was brought under Article 137(3) of the Constitution of the Republic of Uganda challenging certain provisions of the Penal Code Act, (Cap 120) and the Anti-Corruption Act, 2009.

Background to the Petition

The first and second Petitioners are former employees of the second Respondent Company which had accused the Petitioners of stealing company money. The Petitioners were arrested on 22nd December, 2012 while they were at their former place of work. The first Petitioner was charged with the offence of Embezzlement and Causing Financial Loss while the second Petitioner was charged with the offence of Causing Financial Loss. The Petitioners were released on Police Bond on the day of arrest. An amended Charge dated 1st September 2014 was thereafter presented before the Court which reflected that the Petitioners had been charged with different offences of Fraudulent False Accounting contrary to Section 23(b) of the Anti-Corruption Act, 2009 and Fraudulent False Accounting contrary to Section 325 of the Penal Code Act.

Subsequently, another amended Charge sheet dated 17th November, 2014 was filed in Court and it reflected that the Petitioners and another Katugga Lawrence had been charged with the offences of Conspiracy to Commit a Felony contrary to Section 390 of the Penal Code Act, Theft contrary to Sections 254 and 261 of the Penal Code Act and Fraudulent False Accounting contrary to Section 23(b) of the Anti-Corruption Act.

The Petitioners being aggrieved by the actions of the Director of Public Prosecutions against them, filed this Petition, challenging the constitutionality of the charges levied against them. The Petitioners obtained a court order staying the criminal proceedings in the trial Court in Criminal Case No. 301 of 2014 at the Buganda Road Chief Magistrates' Court, which was issued on 9th March 2015.

Grounds of the Petition

The Petitioners allege that the act of preferring different amended charges before they were actually charged before any Court of law and without leave of court is inconsistent with and/or in contravention of Articles 2(2), 20(1)(2), 21(1), 20(1)(a)(b), 23(1)(a)(b), 44(a)(c), 126 and 128(3) of the Constitution.

The Petitioners further allege that the offence of Conspiracy to commit a felony in Section 390 of the Penal Code Act is inconsistent with and for in contravention of Articles 2(1)(2), 28(1)(a)(b)(12), 23(1)(4)(a)(b), 20(1)(2), 21(1), 43(1)(2)(c) and 44(c) of the Constitution

The Petitioners also allege that Section 390 of the Penal Code Act, is omnibus and undefined and therefore is inconsistent with and/or in contravention of Articles 2(1)(2), 28(L)(3)(a)(b) (12) and 44(c) of the Constitution

It is also the case of the Petitioners that the act of refusal and/or failure by the DPP to avail them with the evidence and materials that the state is relying on in prosecuting them is inconsistent with and/or in contravention of Articles 2B(1) [3] (a) (b) (c) (e), 23 (+)(a)[b], 20 (1) (2) and 21.(1) of the Constitution

The Petitioners also allege that the act of shuffling the offences from the original charge of Embezzlement and Causing Financial Loss on which the Petitioners had obtained a Police Bond to the other charges of an undefined omnibus offence of Conspiracy to Commit a Felony and then back to the initial offences is inconsistent with and/or in contravention of Articles 21[1], 20(1)(2), 23(4)[a][b], 2B(1) (3)(a)(b)(c)(g) (tz), aa@ and 45 of the Constitution

The Petitioners also allege that Sections 23(b) and [c] of the Anti-Corruption Act, 2009 is inconsistent with and/or in contravention of Articles 2B[7][B] (12) of the Constitution.

The Petitioners further allege that the act of failure to produce them before an independent and impartial court of law to determine their civil rights for over a period of one year and ten months while being denied of their liberty is inconsistent with and/or in contravention of Articles 2B(1) [3](a)(b), 20(1)(2), 21,(a), 43(1)(2)(b)(c), 44(a)(c), 45, 120(3)(a)(b)(c) and 21,2(b) of the Constitution.

The Petitioners in addition allege that the act of indefinitely suspending their liberty through Police Bonds without charge in a court of law is inconsistent with and/or in contravention of Articles 20(1) (2), 21,, 28(1) 3(a)[b], 43(1)(2), aa@(c), 45, 120 [3] (a) [b] [5], 212(b) of the Constitution of Uganda,

The Petitioners also allege that the act of coercing them to incriminate themselves in the commission of a crime is inconsistent with and/or in contravention of Articles 2B[1][3](a)(b)(c) [12] and 120(3)(a)(b)(5) of the Constitution of Uganda.

The Petitioners allege that the act of perpetual holding onto their passports and restricting their movements for an unreasonably long period of time without 41 il,

being produced before a Court of Law or Tribunal is inconsistent with and/or in contravention of Articles \$23(1)(4)(a)(b)\$, \$24\$, \$28(1)(3)(a)(b)\$, \$29(2)(a)(b)(c)\$, \$43(1)(2)(b)(c)\$, \$44(a)(c)\$ and 45 of the Constitution.

The Petitioners allege that the act of using armed men to arrest and handcuff female employees and detaining them in second Respondent's board room which is an ungazetted detention center is inconsistent with and/or in contravention of Articles 20(1) (2), 21(1), 23(4)(a)(b), 28(1)(3)(a)(b)(c) (g), \$43(1)(2)\$, \$44(a)(c)\$ and 45 of the Constitution.

The Petitioners contend that the act of keeping them on suspension from work without a hearing and without pay is inconsistent with and/or in contravention of Articles \$2(2)\$, \$20(1)(2)\$, \$21(1)\$, \$23(1)(4)(b)(7)\$, \$24\$, \$25(1)\$, \$28(1)\$, \$40(1)(a)(b)(c)(2)\$, 42, 44(a)(c), 43(1)(2)(c) and 45 of the Constitution.

The Petitioners further allege that the act of selective arrest and imprisonment of the Petitioners based on their junior allegations of what happened in the second Respondent company while at the same time not charging their seniors who were signatories to the bank Accounts free and working is inconsistent with and/or in contravention of Articles \$20(1)(2)\$, \$21(1)(2)(3)\$, \$28(1)(3)(a)(b)\$, 40, 44(a)(c), 43(1)(2)(b)(c), 45, 120(5), 212(b), 173(a)(b) of the Constitution.

The Petitioners allege that the act of interference with their homes by unlawfully entering into and forcefully searching them without any Search Warrant and not leaving any Search Certificate is inconsistent with and/or in contravention of Articles \$27(1)(a)(b)(2)\$, \$43(2)(b)(c)\$, \$20(1)(2)\$, \$21(1)\$, \$43(1)(2)(c)\$ and \$44(a)(c)\$ of the Constitution.

The Petitioners based on the above grounds the sought in the Petition the following declarations and orders namely: -

5 | Page

- a) A declaration that the act of charging the Petitioners with Amended Charges before they were ever charged before any Court of Law and without leave of Court is inconsistent with and/or in Contravention with Articles 2(2),20(1)(2),21(1), 23 (1) (+)ta)tb) ,2B(1) (a)ta)(b) , 44(a)(c), 126,1,28(3) of the Constitution.
- b) A declaration that the offence of Conspiracy to Commit a Felony in Section 390 of the Penal Code Act is inconsistent with and/or in contravention of Articles 2(I)(2),28[1] tE)(a)tb) (12), 23(1) (4)(a)(b), 20[1] (2), 21(t), 43(1)(2)(c), 44 [c] of the Constitution.
- c) A declaration that Section 390 of the Penal Code Act, under which the Petitioners are charged is omnibus and undefined and this is inconsistent with and/or in contravention of Articles 2[1](2), 2B(1)t3)ta)(b) (12), aa@) of the Constitution.
- d) A declaration that the act of refusal and/or failure to avail the Petitioners with the materials the State is relying on in their prosecution is inconsistent with and/or in contravention of Articles 2B(1) (3)(a)(b)(c)(e), ²³(4)(a) (b) , 20 (1) (2), ²(1) of the Constitution.
- e) The act of shuffling the offences from Embezzlement and Causing Financial Loss with which the Police Bond was issued to the omnibus undefined offence of Conspiracy to Commit a Felony and back to the initial offences is inconsistent with and/or in contravention of Articles 21,(L), 20(1)(2), 23(4)[a)(b), 2B(1) [3)(a)[b)(c)(g) (12),aa@) and 45 of the Constitution.

- 0 A declaration that Section 23(b) of the Anti-Corruption Act 2009 is inconsistent with and/or in contravention of Articles 2B(7)(B) (12) of the Constitution.
- g) A declaration that Section 23(c) of the Anti-Corruption Act 2009 is inconsistent with and/or in contravention of Article s 2B(7)(B) [12] of the Constitution.
- h) A declaration that the act of failure to produce the Petitioners before an independent impartial court of law to determine their civil rights for over a year and ten months while denied of liberty is inconsistent with and/or in contravention of Articles 28(1) [SXA]tb), 20(1) (2), 21.(a), 43[2] [b] [c], 44(c), 45, 120(3) (a)tb) (5), 212[b] of the Constitution.
- i) A declaration that the act of indefinitely suspending the Petitioners' liberty through Police Bond without charge in a court of law is inconsistent with and/or in contravention of Article s20(1)(2),21,28(1)3 (a)(b), 43 [1] [2] [c], aa@)(c),45,120[3][a][b] (5),212(b) of the Constitution of Uganda.
- j) A declaration that the act of coercing Petitioners to self-incriminate themselves in commission of a crime is inconsistent with and/or in contravention of Articles 28(1)(3)[a][b] [c] [12J, 120[3][a)(b)(5) of the Constitution of Uganda.
- k) A declaration that the act of perpetual holding onto Petitioners' passports and restricting their movements for an unreasonably long period without being produced before a Court of Law or Tribunal is inconsistent with and/or in contravention of Articles 23t1)t4)[a][b], 24, 28(1)[3][a][b], 29(2)[a][b)(c), 43(1)t2)tb) (c),44(a)(c) and 45 of the Constitution.
- l) A declaration that the act of using armed men to arrest and handcuff the Petitioners, female employees, and detaining them in the second Respondent's Board Room which is an ungazetted detention centre is inconsistent with and/or in contravention of Articles 20[1)(2), 21[1),
\$23(4)(a)(b)\$, \$28(1)(3)(a)(b)(c)(g)\$, \$43(1)(2)\$, \$44(a)(c)\$ and 45 of the Constitution.
- m) A declaration that the act of keeping the Petitioners on suspension without a hearing and without pay is inconsistent with and/or in contravention of Articles \$2(2)\$, \$20(1)(2)\$, \$21(1)\$, \$23(1)4(b)(7)\$, 24, \$25(1)\$. \$28(1)\$. \$40(1)(a)(b)(c)(2)\$, 42, 44(a)(c), 43(1)(2)(c) and 45 of the Constitution.
- n) A declaration that the act of selective arrest and imprisonment of the Petitioners based on their low position in the second Respondent while leaving the signatories to Accounts is inconsistent with and/or in contravention of Articles \$20(1)(2)\$, \$21(1)(2)(3)\$, \$28(1)(3)(a)(b)\$, 40, \$44(a)(c)\$, \$43(1)2(b)(c)\$, 45, 120(5), 212(b), 173(a)(b) of the Constitution.
- o) A declaration that the act of interference with the Petitioners' homes by unlawfully entering into and forcefully searching them without any search warrant and not leaving any Search certificate is inconsistent with and/or in contravention of Articles \$27(1)(a)(b)(2)\$, \$43(2)(b)(c)\$, \$20(1)(2)\$, \$21(1)\$, \$43(1)(2)(c)\$ and \$44(a)(c)\$ of the Constitution.

- p) An order that the Respondents release the Petitioners' property and documentation in their possession.
- q) An order of injunction doth issue restraining the Respondents, their agents, representatives, workmen or any other person deriving their authority or actions from the impugned criminal investigations and proceedings irregularly continuing in glaring breach of the rules of natural justice and the Constitution.
- r) An order discontinuing the illegal prosecution of the Petitioners which is mounted in breach of the Constitution.
- s) An order for reinstatement of Petitioners to their jobs.

8 | Page

- t) An award of damages to the Petitioners arising out of continued unlawful restraint and torture visited upon them when arrested as required by Article 23(7) of the Constitution.
- u) An order requiring the Respondents to pay exemplary and punitive damages.
- v) General damages.
- w) Costs of the Petition..."

Replies by the Respondents

All the Respondents opposed the Petition for reasons that I refer to and high light into detail later. All the Respondents further prayed that the declarations sought by the Petitioner should not be granted and the Petition be dismissed.

Representations

Dr. f ames Akampumuza appeared for the first and second Petitioners, Mr. Ebila Hilary (holding brief for Mr. Geoffrey Atwiine) appeared for the first Respondent whereas Mr. Bard Sebuliba appeared for the second Respondent.

Duty of the Court

Before I delve into this Petition, it is important that I recall the role of ^a Constitutional Court and the principles that guide its decisions.

Article 1,26 of the Constitution provides that judicial power which is derived from the people shall be exercised by the Courts established under the Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people. In adjudicating cases, the Courts shall, subject to the law, apply certain principles including the concepts that Justice shall be done to all irrespective of their social or economic status,

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promotion of reconciliation between the parties and the administration of justice without undue regard to technicalities.

With regard to principles of constitutional interpretation, Article 137 (1) of the Constitution provides: -

"Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court"

In this Petition it is alleged that certain persons, by their actions or omissions, acted inconsistently or in violation of the Constitution. As to such alleged actions and omissions, Article 137 (3) (b) provides: -

"(3) A person who alleges that-

- (a) .
- (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."

As to remedies, Article 137 (4) of the Constitution provides: -

"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"

The above provisions set the jurisdiction and parameters for the interpretation by the Constitutional Court. However, jurisdiction is not enough to constitute ^a matter in this Court as it is also trite law that the Petition must in addition, disclose a cause of action.

In the case of *Baku Raphael Obudra and Obiga Kania v. Attorney General*, Constitutional Appeal No. 1 of 2003 (Justice Mulenga IJSC as he then was), recalling his holding in *Ismail Serugo v. Kampala City Council & Attorney General*, Constitutional Appeal No. 2 of 1998 held that a Petition discloses a cause of action if it describes the act or omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent or alleged to have contravened and prays for a declaration to that effect.

In *Wycliffe Kiggundu v. Attorney General*, Civil Appeal No. 27 of 1993 Hon. Justice S. W. W. Wambuzi (Chief Justice as he then was) held that it is not sufficient on the face of it to have an allegation of the breach of or inconsistency with an Article or Articles of the Constitution with any act, omission or law which would have merely fulfilled the requirement to plead so under Article 137 (3) of the Constitution. In other words, there must be a controversy involving interpretation before the matter can be referred to the Constitutional Court.

In *Davis Wesley Tusingwire v. Attorney General*, Constitutional Petition No 2 of 2013 this Court however, held: -

"... that a liberal and broader interpretation should be given to a constitutional petition than is given to a plaint in a normal civil suit when determining whether a cause of action has been established (*Baku Raphael Obudra and Another v. Attorney General*, Constitutional Appeal No. 1 of 2003 (SC)). The same principle applies to subsidiary legislation..."

It can also be deduced from the decisions of *Ismail Serugo* (supra); *Raphael Baku* (supra) and *Wycliffe Kiggundu* (supra) that the onus to prove a controversy involving the interpretation of the Constitution lies with the Petitioner.

I shall bear these principles in mind while resolving the issues raised in this Petition

Issues

Whereas some parties filed scheduling notes, the issues for determination were not fully harmonised at conferencing. As a result, therefore for ease of resolving this Petition, I shall not reproduce these varying independent issues of the parties in this judgment but rather I shall rely on the grounds in the Petition itself.

I shall address each of the grounds of the Petition and merge as many of the similar arguments as possible in order to avoid repeating myself.

Resolution

I find that the thrust of the Petition and its Grounds rest on resolving the main allegation that the act of preferring the Petitioners with varying amended

charges at different times before they were formally charged before a court of law and without

leave of court is inconsistent with and/or in contravention of Articles 2(2), 20(1)(2), 21(r), 23(1) (+) (a)(b), 2B(1) [3](a) (b), 44(a)(c), 1.26 and 128(3) of the Constitution. This statement in my understanding represents the issue that covers the bulk of the Grounds in the Petition.

I have therefore opted to resolve this issue first.

First and second Petitioners' submissions

From the written submissions it can be deduced that the first and second Petitioners argue that the amendment of the charges did not comply with Section 132(1)(c) of the Magistrates Courts Act as they were amended without the leave of Court. It was submitted for the Petitioners in this regard that the charges were amended twice without the said leave of Court. Counsel relied on Annexure A2 of Florence Odwe's Affidavit which is an Amended Charge sheet dated 18th September, 2014 and was only signed by the officer preferring the charge but without the Magistrate's signature. This charge sheet was presented in court on the day when the Petitioners appeared before Buganda Road Chief Magistrates' Court on 25th, September, 2014. According to this Amended charge sheet, the Petitioners were charged with two other offences of Conspiracy to Commit a Felony and Theft.

Counsel for the Petitioners further relied on Annexure A1-1 of Florence Odwe's Affidavit which is also an Amended Charge sheet dated 17th November, 2014 which was signed by the Officer preferring the charge and the Director of Public Prosecutions but was not signed by the Magistrate. According to this Amended charge sheet, a third Accused person, Katugga Lawrence, was added and the

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trio were charged with three new offences of Fraudulent False Accounting, Theft, and Conspiracy to Commit a Felony.

Counsel for the Petitioners submitted that the amendments were made without first seeking the leave of Court. Counsel submitted that this omission rendered the entire trial null, void and unfair. He argued that this omission was an abuse of the criminal process contrary to Article 120(5) of the Constitution. Counsel also relied on the case of Col. Dr. Kizza Besigye & 22 others v. Attorney General, Constitutional Petition No. 12 of 2006.

Submissions for the first Respondent

Counsel for the first Respondent contended that the subject matter of this Petition, ceased to exist, thus rendering the entire Petition moot and academic. Counsel relied on the affidavit of Clayton Mwaka, the Chief Financial Officer of the second Respondent wherein he deposed that the criminal charges brought against the Petitioners in Police Case No. CIID HQRTS E/162/2014 were withdrawn by the Director of Public Prosecutions. Counsel maintained that there are no pending charges against the Petitioners. Counsel referred to a copy of the withdraw letter which is attached as Annexure A to Clayton Mwaka's Affidavit in reply to the Petition.

Counsel therefore contended that the Petition did not raise any question for constitutional interpretation. He submitted that a violation of the Petitioner's rights per se does not give rise to an issue for constitutional interpretation. Counsel relied on the decisions in the cases of Attorney General V. Major General David Tinyefuza, Constitutional Appeal No. 1 of 1987 and Ismail Serugo v. KCC and Attorney General, Constitutional Appeal No. 2 of 1998.

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Counsel prayed that the Petition be struck out with costs as it does not disclose any cause of action for constitutional interpretation.

Submissions for the second Respondent

Counsel for the second Respondent did not specifically submit on the grounds challenging the amendment of the charges. However, it was submitted for the second Respondent that the alleged actions did not contravene any provision of the Constitution, hence did not warrant constitutional interpretation.

Findings of the Court

I have considered the Petition and the replies to it. I have also considered the submissions of both counsel and the authorities that they have provided, for which I am grateful.

The grounds of the Petition before this Court (and in particular Ground one), are premised on the various amendments to the charge sheets that were made before the Petitioners were arraigned in Court. Counsel for the Petitioners contends that this was a violation of Section 132 of the Magistrates Courts Act.

In further response to the Petitioners' allegations, it was submitted for the first Respondent that the Director of Public Prosecutions withdrew the charges against the Petitioners and therefore there are no existing charges against the Petitioners. Counsel also referred this Court to a copy of the withdraw letter on Court record which is dated 4th March 2015. According to the record, the trial Magistrate rejected the withdrawal forms and on 9th March 2015, she ordered that the proceedings in the criminal case be stayed pending referral of the matter for determination of the constitutionality of the charges against the Accused (now the Petitioners). The matter was referred to this Court under Article 137(5)(b) of the Constitution. However, by the time of the referral, this Petition had already been filed in this Court on 4th March 2015.

It is on this basis that the Prosecution filed Criminal Revision No. 09 of 2015 in the High Court on grounds that the trial Magistrate acted irregularly when she rejected the withdrawal forms and issued an order referring the criminal case to the Constitutional Court.

The Revision of the trial Magistrate's decision to reject the withdrawal forms is not a subject in this Petition but it appears to me that, in order to dispose of this Petition properly, it is inevitable to address this argument given that it was raised in the submissions of the first Respondent.

Article 120(3)(d) of the Constitution of Uganda specifies that one of the functions of the Director of Public Prosecutions is: -

- (d) to discontinue at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court." (underlining added)

Article 120(3)(d) of the Constitution vests powers in the Director of Public Prosecutions to withdraw criminal proceedings that have been instituted by him or her. In addition, Article 120(6) of the Constitution also provides: -

"In the exercise of the functions conferred on him or her by this Article, the Director of Public Prosecutions shall not be subject to the direction or control of any person or authority."

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According to the above provisions of the Constitution, the Director of Public Prosecutions was exercising his functions by withdrawing the charges against the Petitioners. The trial Magistrate's actions amounted to the unconstitutional control of the powers of the Director of Public Prosecutions.

In the case of *Kaitale Julius & 3 others v. Uganda*, Constitutional Reference No. 1,1, of 2014 one of the issues was whether the DPP in charging the Petitioners afresh acted unconstitutionally and whether his conduct therefore amounted to persecution. This Court considered the provisions of Section 134 of the Trial on Indictments Act which gives the DPP the power to enter a *Nolle Prosequi* and held at p.10): -

"... it is also clear that under Section 134 of the Trial on Indictments Act, the DPP has power to withdraw any criminal proceedings before the verdict. This entails withdrawal of the charges and the discharge of the accused... the legal position is that the DPP has the power to institute, withdraw and re-instate any charge against anyone any time before verdict and without assigning any reasons."

The court further held, at page 11: -

"... we therefore conclude in respect of the instant Reference that when the DPP exercised his right to enter a *Nolle Prosequi*, he was within his powers to do so."

In light of the above decisions, it is clear to my mind that the Director of Public Prosecutions was exercising his functions under Article 120(3)(d) of the Constitution in withdrawing the charges against the Petitioners. The discontinuation of the charges by the Director of Public Prosecutions, and the filing of withdrawal forms in Court which he had duly signed, automatically

amounted to the discharge of the Petitioners meaning that there are no existing charges against the Petitioners.

I find that the Petition does not disclose a cause of action because it does not raise any unresolved constitutional controversy which requires further constitutional interpretation.

Counsel for the first Respondent prayed that this Court dismisses the Petition on grounds that it falls within the mootness doctrine which bars court from deciding moot cases in which there is no longer an actual controversy. He further submitted that the exercise of judicial power depends upon existence of a case or controversy.

In the case of *Uganda Electricity Board v. Charles Kabagambe*, Court of Appeal Civil Appeal No. SB of 2000 it was held that: -

"It is a well-known principle of law that courts adjudicate on issues which actually exist between litigants and not academic ones. See: *Uganda Corporation Creameries Ltd & another v Reamaton Ltd*, Civil Reference No. LL of 1-999, Court of Appeal (unreported)."

In addition, in the case of *The Environment Action Network Ltd v. Joseph Eryau*, Court of Appeal Civil Application No. 98 of 2005, it was held that Courts do not decide cases for academic purposes because court orders must have a practical effect and must be capable of enforcement.

The above principles are equally applicable in the adjudication of petitions in the Constitutional Court. To my mind, the other grounds of this Petition which are equally challenging the charges that were preferred against the Petitioners. The grounds also seek the enforcement of rights, which shall not be resolved by

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this Court as they have become moot. This is especially clear when one looks at the remedies sought in this petition which presuppose that trial at the Magistrates Court is ongoing whereas not. In any case, the matter of the amendment of charges apart, this Court has severally addressed the issues of being arrested and detained outside the Constitutional time frame and being detained in non gazetted centres on a number of occasions such as in the case of *Omar Awadh Omar & 10 ors v. Attorney General*, Consolidated Constitutional Petition Nos. 55 and 56 of 2011. As to the grounds relating to property rights and loss of salary, these are rights that need not be pursued in a Constitutional Court. The civil courts are the right fora to address them. In the case of *Ismail Serugo v. Kampala City Council & the Attorney General*, Constitutional Appeal No. 2 of 1998, Mulenga JSC held: -

"It follows that 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 an 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)."

Final orders

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Having found as above, this Petition is over taken by events and I accordingly dismiss it. As to costs, this matter is largely overtaken by events so I order that each party bears its own costs of this Petition.

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I so Order.

Dated at Kampala this \$\ldots \ldots \ldots 2023.\$

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GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT I(AIVIPALA

(Coram: Richard Buteera-DCJ, Geoffrey Kiryabwire, Irene Mulyagonja, Monica K. Mugenyi and Oscar Kihika JJCC)

CONSTITUTIONAL PEITION NO. 07 OF 2015

1. FLORENCE ODWE

2. NAIVIAZZI WSTINE PETITIONERS

VERSUS

ATTORNEY GENERAL & 4 OTHERS ===== RESPONDENTS

JUDGMENT OF RICHARD BUTEERA, DC.. I

I have had the opportunity of reading in draft the Judgment of Justice Geoffrey Kiryabwire, JCC.

I agree \Mith his reasoning, decision and declarations he proposed. I have nothing useful to add.

As Irene Mulyagonja, Monica K. Mugenyi and Oscar Kihika, JJCC members of this Coram also agree, this Petition is accordingly dismissed. And as to costs, this matter is largely over taken by events and each party shall bear its own costs of this Petition.

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| Dated this | | day of 9- | 2023. |

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CONSTITUTIONAL PETITION NO.7 OF 2015

FLORENCE ODWE PETITIONER

VERSUS

ATTORNEY GENERAL RESPONDENT

I

Constitutional Petition No.7 of 2015

JUDGMENT OF MONICA K. MUGENYI. JCC

- 1. I have had the benefit of reading in draft the judgment of my learned brother, Kiryabwire, JCC.
- 2. I agree with the decision arrived at and the orders proposed.

Dated and delivered at Kampala, Uganda,1st day of .. P"haAg". 2023.

I I

Monica K. Mugenyi Justice of the Constitutional Court

Constitutional Petition No.7 of 2015

THE REPUBLIC OF UGANDA**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA****CONSTITUTIONAL PETITION NO. 07 OF 2015****I. FLORENCE ODWE**

2. NABIVAZZI JUSTINE PETITIONERS

I/VERSUS

1. ATTORNEY GENERAL
2. KYAGALANYI COFFEE LTD
3. JATIKO THOMAS
4. JOSHUA MTIWANGA
5. OKURUT STEPHEN:.....RESPONDENTS

CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DC., I

HON. MR. JUSTICE GEORGE KIRYABWIRE, JCC

HON. LADY JUSTICE IRENE MUYAGONJA, JCC

HON. LADY JUSTICE MONICA MUGETIYI, JCC

HON. MR. JUSTICE OSCAR KIHICA, JCC

JUDGMENT OF MR. JUSTICE OSCAR KIHICA, JCC

I have had the opportunity of reading in draft the lead Judgment of my learned brother Justice Geoffrey Kiryabwire JCC. I agree with the analysis and findings.

I agree and indeed find that this Petition has been overtaken by events. It does not disclose a cause of action on account of the fact that it does not raise any unresolved constitutional controversy which requires constitutional interpretation. Having found so, this Petition ought to be and is hereby dismissed.

Each party is to bear its own costs.

I so order

Dated this 19 day of October 2023 **JUSTICE OSCAR KIHICA**

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

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CASE PAGE <https://chat.esheria.ai/case-law/uganda/odwe-and-another-v-attorney-general-and-4-others-constitutional-petition-7-of-2015-2023-ugcc-106-19-october-2023-unknown-topic-unknown-court-2023>

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