

UGANDA / JUDGMENT

Okori v Attorney General and Ors (Constitutional Petition No. 6 of 2020) [2021] UGCC 39 (1 March 2021) [2021] UGCC 39

COURT

Constitutional Court of Uganda

BEFORE

Bamugemereire, JCC, Kakuru, JCC, Madrama, JCC,
Mulyagonja, JCC, Buteera, DCJ

CASE / FILE NUMBER

Constitutional Petition No. 6 of 2020

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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA CONSTITUTIONAL
PETITION NO. 06 OF 2020

OKORI JAMES..... PETITIONER

VERSUS

- 1. ATTORNEY GENERAL
- 2. THE ELECTORAL COMMISSION UGANDA
- 3. FORUM FOR DEMOCRATIC CHANGE (FDC)
- 4. NATIONAL RESISTANCE MOVEMENT (NRM)
- 5. THE DEMOCRATIC PARTY (DP)
- 6. UGANDA PEOPLES CONGRESS (UPC)
- 7. JUSTICE FORUM (JEEMA) PARTY
- 8. PARLIAMENT OF THE REPUBLIC OF UGANDA..... RESPONDENTS
- CORAM: Hon. Mr. Justice Richard Buteera, DCJ Hon. Mr. Justice Kenneth Kakuru, JA/JCC
Hon. Lady Justice Catherine Bamugemereire B. K, JA/JCC. Hon. Mr. Justice Christopher
Madrama, JA/JCC Hon. Lady Justice Irene Esther Mulyagonja, JA/JCC

JUDGMENT OF COURT

The petitioner, who is respecting himself, brought this petition under Article 137 (1), (3) (a) (b) and 4 of the Constitution.

The grounds of the petition are set out as follows:-

(i) The act of the 2nd respondent in receiving fronted/nominated candidates from political parties through closed primaries and going ahead to nominate them

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is inconsistent with and contravenes Articles 1 (1), (2), (3), (4), 29, 38 (1), (2), 41(1), 54, 59, 62, 67(1), 68, 69(1), 70, 71, 73, 74, 78(1) of the constitution of the Republic of Uganda, 1995.

- *(ii) The acts of the 3rd, 4th, ^{⁵th, 6^⁷ respondents in conducting closed door primaries contravenes Articles ^¹ (1), (2), (3), (4), 29, 38 (1), (2), 41(1), 54, 59, 62, 67(1), 68, 69(1), 70, 71, 73, 74, 78(1) of the constitution of the Republic of Uganda, 1995.*}
- *(Hi) Whether Ugandan Citizens under Articles ^¹ (1), (2), (3), (4), 29, 38 (1), (2), 41(1), 54, 59, 62, 67(1), 68, 69(1), 70, 71, 73, 74, 78(1) of the constitution of the Republic of Uganda, 1995 have a right to direct democracy system of governance that places citizens as sovereigns above the Executive, the Legislature and the Judiciary.*
- *(iv) Whether Parliament under Article 79 and Government have exclusive authority to make laws or decisions regarding Our Sovereignty, Natural Resources use, Military, Foreign Affairs, National among others other elections without Collective Rights of citizens of Uganda through meaningful stakeholder consultations that lead to self-determination or Ratification under Article ^¹ of the constitution.*
- *(v) Whether Political parties have powers to hold elections by lining up other than by secret ballot under the 1995 Constitution.*

The petitioner seeks 22 declarations and 11 orders. We have found on reason to reproduce them here.

In his affidavit in support of the petition, he states:-

- *1. ...*
- *2. THAT in the 2016 general elections, the electoral commission presented candidates on the ballot paper for voting in my constituency that were fronted by political parties but were undesirable and unknown to me,*

and I therefore only participated in Presidential elections and not Parliamentary elections as the candidates at parliamentary and Local Council levels were unknown to me which made my right to vote at Parliamentary and Local Council level meaningless.

- *3. THAT my area Member of Parliament(Hon. Peter Sematimba) spent 2 years of his Election term in Court over academic documents and lost in the High Court but emerged victorious on appeal in the Court of Appeal judgment dated 13th, September 2017. But later on the 15th of November, 2019, while I was watching news at 9:00pm, my area Member of Parliament was televised on NBS Television Uganda News (Next Media Uganda) sitting senior six exams which is the minimum formal requirement and which was being challenged in the courts of law at Kakoola High School in Ziroobwe Sub-county in Luweero District. This is frustrating and embarrassing for me as a voter and resident of the constituency.*
- *4. THAT having read about my rights to vote under the constitution, now I believe that Party organization impacts on voter information, the party and the candidate and therefore by holding closed primaries, the petitioner is denied useful information as he the petitioner and other eligible voters miss out on analyzing the political parties ideologies, candidates ideologies/knowledge of the affairs/concerns within his constituency thereby denying the petitioner his right to access information contrary to Articles 1(1),(2),(3), (4), 29, 78(1), 41(1), 38, 67(1), 69(1) & 78(1) of the constitution, because they impact on voter information impacts' on free expression of the will of electors and genuine elections.*
- *5. THAT closed primaries are an indirect restriction on Article 78(1), freedom of expression, freedom of access to information like freedom of political debate. That it's important that the period preceding general elections that opinions of the candidate and that of the people is freely*

circulated as it is essential to check a candidate's voting intentions to contest for elective positions.

The operation of political organisations is restricted to their membership. They are founded by and constituted of individuals with a common political ideology, agenda or programme. This is usually set out in a manifesto. They are regulated by their own constitutions which are required to be in compliance with *Article 71* of the Constitution. They recruit eligible members of the public to join their party voluntarily.

Persons who do not subscribe to any of the political parties are free to form their own or participate in elections and/or political activities as individuals. Such individuals are free to vote for any candidates of their choice during elections, without restriction. They may also opt to contest for any elective post at any level in accordance with the Constitution and the electoral laws.

The contention that the petitioner was denied a right to vote because political parties did not allow him to participate in their elections has no legal basis.

This petition is clearly misconceived. It raises no questions as to interpretation of the Constitution. See: *Ismail Serugo and Kampala City Council & Another Constitutional Petition 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 No. 2 of 1999* and *Paul Ssemwogerere and 2 others vs Attorney General Constitutional Petition No. of 2002.*

In the premises, this Court lacks jurisdiction to entertain this petition. We accordingly strike it out with costs to the 1st and 2nd respondents who filed answers to it. Had we not struck it out, we would have dismissed it for being frivolous and vexatious.

No order is made as to costs in respect of the rest of the respondents as they did not file any answer to the petition

We so order.

Dated at Kampala this..... day of..... 2021.

Richard Buteera, DCJ JUSTICE OF APPEAL/CONSTITUTIONAL COURT Kenneth Kakuru JUSTICE OF APPEAL/CONSTITUTIONAL COURT Catherine Bamugemereire B. K JUSTICE OF APPEAL/CONSTITUTIONAL COURT Christopher Madrama JUSTICE OF APPEAL/CONSTITUTIONAL COURT

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

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