IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: ODOKI CJ., TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE JJ.S.C, OGOOLA & KITUMBA AG.JJ.S.C.

CONSTITUTIONAL APPEAL NO. 1 OF 2006

BETWEEN

ATTORNEY GENERAL::APPELLANT

AND

UGANDA LAW SOCIETY::::::::::::::::::::::::::::::::::::RESPONDENT

(Appeal from decision of the Constitutional Court (Mukasa-Kikonyogo DCJ, Okello, Engwau, and Byamugisha, JJ.A and Kavuma JA dissenting) at Kampala dated 31st January 2006, in Constitutional Petition No.18 of 2005.)

JUDGMENT OF MULENGA J.S.C.

The Uganda Law Society, the respondent in this appeal, instituted a public interest litigation in the Constitutional Court, by a petition under Article 137 of the Constitution, challenging the constitutionality of –

- acts perpetrated by security agents at the High Court premises to prevent the release of persons granted bail pending their trial on criminal charges in the High Court;

- subsequent criminal proceedings in the General Court Martial against the said persons on charges based on same facts as the charges in the High Court;
- provisions of section 119(1) (g) and (h) of the Uganda People's Defence Forces (UPDF) Act.

The Attorney General, the appellant in this appeal, opposed the petition. By majority decision, the Constitutional Court allowed the petition in part and granted four corresponding declarations. The Attorney General brings this appeal against the majority decision in respect of only three of the declarations granted. The respondent cross-appeals against three holdings of the Constitutional Court.

Background

In 2005, Col. (Rtd.) Dr. Kizza Besigye and 22 others ("the accused persons") were on remand in custody at Luzira Prison pending trial by the High Court on an indictment for treason and concealment of treason. On 16th November 2005, twenty-two of the accused persons appeared before the High Court (Lugayizi J.) at Kampala, on a bail application. The learned judge granted them conditional bail. Before the accused persons could be released from custody, however, a group of heavily armed security agents invaded the High Court premises, interrupted the processing of release papers and as a result the accused persons were returned to Luzira prison instead of being released. On the following day, 17th November 2005, they were taken to the General Court Martial where they were jointly charged with the offences of terrorism and unlawful possession of firearms.

It is not in dispute that the charges in both the High Court and the General Court Martial are based on the same or inter related facts. In count I of the indictment, Col. (Rtd.) Dr. Kizza Besigye is charged with treason on allegation that between 2001 and 2004 he and others still at large contrived a plot to overthrow the Government of Uganda by force of arms. The alleged overt acts include co-ordinating recruitment and funding of rebels and supply of weapons. In count II of the indictment, all the accused persons are jointly charged with the same offence on the allegation that they contrived the same plot. The alleged overt acts of the offence include the purchase, transportation and keeping of arms. In the alternative they are jointly charged with the offence of concealing the plot. In the charge sheet before the General Court Martial, all the accused persons are jointly charged with the offence of terrorism on the allegation that between November and December 2004, they procured or were found in unlawful possession of firearms and ammunitions, which are listed therein. In the alternative they are jointly charged with the offence of unlawful possession of firearms on the same allegation.

The Issues

At the pre-hearing scheduling conference, the following six issues were framed for determination by the Constitutional Court: -

> ***"(1) Whether the acts of security agents at the premises of the High Court on the 16th November 2005 contravened Articles 23(1) & (6), 28(1) and 128(1), (2) & (3) of the Constitution.***
>
> ***(2) Whether the concurrent proceedings in High Court Criminal Case No.955/05 and Criminal Case No.UPDF/GCM/075/05 in the General Court Martial against the accused contravene***

Articles 28(1) & 44(c) of the Constitution and are inconsistent with Articles 28(9) and 139(1) of the Constitution.

(3) Whether section 119(1)(g) & (h) of the UPDF Act is inconsistent with Articles 28(1), 126(1) and 210 of the Constitution.

(4) Whether the joint trials of civilians and members of Defence Forces in military court for offences under the UPDF Act is inconsistent with Articles 28(1), 126(1) and 210 of the Constitution.

(5) Whether the trial of the accused persons before the General Court Martial on a charge of terrorism contravenes Articles 22(1), 28(1) and 126(1) of the Constitution.

(6) Whether the trial of the accused persons for the offences of terrorism and unlawful possession of firearms before the General Court Martial is inconsistent with the provisions of Articles 28(1), 120(1) and (3)(b)&(c), 126(1) and 210 of the Constitution.

By majority decisions, the Constitutional Court answered issues nos. 1, 2, 5 and 6 in the affirmative. On issue no.1 the court held that the acts of the security agents invading the High Court and preventing the implementation of the court bail order contravened Articles 23(1) & (6) and 128(1), (2) & (3) of the Constitution. On issues nos. 5 and 6, the court held that the trial of the accused persons in the General Court Martial for the offences of terrorism and unlawful possession of firearms respectively contravened Articles 22(1), 28(1) and 126(1) and was inconsistent with Articles 28(1), 120(1), (3)(b) & (c) and 210.

With regard to issue no.2, however, there were some incoherencies in the judgments and as a result the court's answer was not homogeneous. The

learned Deputy Chief Justice held that "issue no.2 succeeds *(sic)* in part". Her view was that concurrent proceedings in respect of offences over which both courts had concurrent jurisdiction did not contravene, and were not inconsistent with, any provision of the Constitution, but that in the instant case, because the General Court Martial had no jurisdiction over the offences with which the accused persons were charged before it, the concurrent proceedings contravened Articles 28(1) and 44(c).

Okello J.A. (as he then was) held that the concurrent proceedings contravened Articles 28(1) and 44(c) not only because the General Court Martial had no jurisdiction over the offences with which the accused persons were charged before it, but also because such concurrent proceedings were inconsistent with the principle underlying the protection under Article 28(9). In his view, the right not to be tried for an offence of which one was previously convicted or acquitted includes the right not to be charged in two different courts for offences arising from the same facts as otherwise the accused would be put at risk of being convicted twice in respect of the same facts. Inexplicably, however, in what appears to me to be a slip, he concluded that he would answer issue no.2 ***"partly in the affirmative"***. Similarly, Engwau and Byamugisha JJ.A., held that the General Court Martial lacked jurisdiction over the charges before it and that the concurrent proceedings offended the principle against putting an accused person at risk of double jeopardy.

With due respect, therefore, what was recorded in the final order that the majority of four answered the issue partly in the affirmative and partly in the negative, is not entirely accurate. The position is that a majority of three

answered the issue wholly in the affirmative, namely that the concurrent criminal proceedings in the High Court and the General Court Martial against the accused persons contravened Articles 28(1) and 44(c) and the effect was inconsistent with Article 28(9).

Grounds of Appeal and Counsel Submissions

The appellant brings this appeal on three grounds, namely that ***"the learned Justices of the Constitutional Court erred in law and fact in holding –***

> ***(1) that the concurrent proceedings in High Court Criminal Case No.955/2005 and Court Case No.UPDF/Gen/075/2005 in the General Court Martial against the accused contravened Articles 28(1) and 44(c) of the Constitution;***
>
> ***(2) that the General Court Martial had no jurisdiction to try the charges of terrorism and unlawful possession of firearms;*** and
>
> ***(3) that the trial of the 23 accused persons before the General Court Martial on charges of terrorism and unlawful possession of firearms contravened Articles 22(1), 28(1), 120(1) & (3)(b)(c), 126(1) and 210 of the Constitution."***

The appellant lodged written submissions under rule 93 of the Rules of this Court, in which the grounds of appeal are argued separately. Counsel for the respondent, however, made oral submissions at the hearing. Essentially, the arguments from both sides in respect of all the grounds of appeal revolve around the jurisdiction of the General Court Martial.

The gist of the appellant's argument in respect of the first ground of appeal, is that the General Court Martial has unlimited original jurisdiction to try any person who is subject to military law for any service offence, and that no

constitutional provision expressly prohibits the General Court Martial from trying such a case concurrently with the High Court trying the same person for a different offence albeit arising from the same facts. According to the appellant the prohibition under Article 28(9), which is replicated under section 216 of the UPDF Act, applies to only situations where there has been an acquittal or a conviction. In the instant case, the 23 accused persons who were charged before the General Court Martial had not been either convicted or acquitted by any court of offences arising from the same facts as those with which they were charged. Furthermore, the appellant draws attention to section 204 of the UPDF Act, which provides that nothing in the Act shall affect the jurisdiction of any civilian court to try cases within its competence, and submits that the reverse is also true.

Although the second and third grounds of appeal are argued separately, the arguments are virtually the same. The appellant argues that both the offences of terrorism and unlawful possession of firearms are service offences within the meaning of the UPDF Act and are *ipso facto* triable by the General Court Martial. He contends that terrorism is a service offence, "*since the equipments and means of terrorist activities are carried out using unlawful weapons which are a monopoly of the UPDF"*. With regard to the offence of unlawful possession of firearms, he argues that any person, including a civilian, in unlawful possession of arms, ammunition or equipment that are ordinarily the monopoly of Defence Forces is, by virtue of section 119(1)(h) of the UPDF Act, subject to military law and consequently, the offence is a service offence triable by the General Court Martial. The appellant submits that the provisions of section 119 of the UPDF Act were enacted for the purpose of safeguarding national security and urges this Court to desist from

interfering with the legislative function of Parliament by refusing to give effect to those provisions.

Learned counsel for the respondent made oral submissions and argued the three grounds of appeal together. He conceded that the General Court Martial has jurisdiction to try any person who is subject to military law and who is charged before it with a service offence as prescribed by the UPDF Act. However, he supported the holding of the Constitutional Court that the General Court Martial did not have jurisdiction to try the 23 accused persons because the charge sheet did not allege either that any of the accused persons was subject to military law or that any of them aided or abetted a person who is subject to military law. Furthermore, learned counsel submitted that the accused persons were charged under the Anti-Terrorism Act No.14 of 2002 and the Firearms Act Cap.297, and not under the Penal Code Act. The charge sheet did not show that the offences charged were service offences within the meaning of the UPDF Act. Besides, section 3 of the Anti-Terrorism Act provides that no person shall be charged under the Act except with the consent of the Director of Public Prosecutions, and yet there was no indication that such consent was obtained to charge the 23 accused persons.

Findings on grounds of appeal

As I said earlier in this judgment, the finding by the majority was that the impugned concurrent proceedings against the accused persons offended the Constitution in two ways. First, it was held that because the General Court Martial had no jurisdiction over the charges before it, the proceedings contravened Articles 28(1) and 44(c) because, to use the words of three of

the learned Justices ***"there can be no fair trial within the meaning of Article 28(1) of the Constitution where the court is not competent."*** It seems to me, however, that the more accurate statement would be that there can be no trial at all where the court is not competent. A trial by an incompetent court is by that fact alone a nullity *ab initio.* Secondly, it was held that the concurrent proceedings in separate courts on charges arising out of the same facts exposed the accused persons to the risk of double jeopardy, since they could be convicted and sentenced by both courts.

The jurisdiction of the General Court Martial is conferred by the statute that creates it, namely the UPDF Act, which provides in section 197 (2) –

> ***"The General Court Martial shall have unlimited original jurisdiction <u>under this Act</u> and shall hear and determine all appeals referred to it from decisions of Divisional Courts Martial and Unit Disciplinary Committees."*** (Emphasis is added)

That statute creates many offences, over which the General Court Martial has indisputable jurisdiction. They are collectively referred to as service offences. The charges against the accused persons before the General Court Martial, however, were not offences under the UPDF Act but were the offence of ***"Terrorism*** contrary to section 7(1) (b) and (2) (j) of the Anti-Terrorism Act 14 of 2002"; and in the alternative the offence of "***Unlawful Possession of Firearms*** contrary to section 3(1), and (2) of the Firearms Act Cap 299. In support of the contention that the General Court Martial had jurisdiction over the two offences, the appellant seeks to invoke the statutory definition of "service offence". Section 2 of the UPDF Act defines service offence as –

> ***"an offence under this Act or any other Act for the time being in force committed by a person while subject to military law."***

I agree that the appellant's contention is untenable. For an offence under an Act other than the UPDF Act to be within the jurisdiction of the General Court Martial, it must have been committed by a person subject to military law. In the instant case it was not alleged, let alone shown, that the accused persons committed either of the two offences while they were subject to military law. Without that link neither of the two offences can be called a service offence within the meaning of the said definition.

Furthermore, the statute that created the main offence with which the accused persons were charged before the General Court Martial expressly conferred jurisdiction over it in the High Court alone to the exclusion of any other court. Section 6 of the Ant-Terrorism Act provides –

> ***"The offence of terrorism and any other offence punishable by more than ten years imprisonment under this Act are triable only by the High Court and bail in respect of those offences may be granted only by the High Court."***

It follows that the proceedings before the General Court Martial were inherently unconstitutional irrespective of the proceedings in the High Court.

I also agree with the majority holding of the Constitutional Court that the concurrent proceedings in the two courts were inconsistent with the principle underlying the provision in Article 28(9) of the Constitution, which prohibits the trial of a person for an offence of which he or she has been convicted or acquitted. In effect that provision is an aspect of the protection of the right to fair hearing, namely the right not to be tried more than once on the same facts or for the same *actus reus*. The principle behind that right originates

from an old English common law maxim that "*no man is to be brought in jeopardy of life or limb more than once for the same offence*". I agree with the proposition invoked by Okello J.A. (as he then was) that a constitutional provision which relates to a fundamental right must be given an interpretation that realises the full benefit of the guaranteed right. Article 28(9) is such a provision that must be given such interpretation, and not the narrow interpretation urged by the appellant.

Subject to the rule against misjoinder, the prosecution has the liberty to join in the same charge sheet or indictment against an accused person all possible offences arising from the same facts in order that the offences are tried together. The law also empowers the court in appropriate circumstances to convict an accused person of an offence established by the adduced evidence instead of the offence stated in the charge sheet or indictment. All this is in recognition of the principle that an accused person should be subjected to trial on the same facts only once. Needless to say, concurrent criminal proceedings in respect of the same facts entail trial more than once.

In the result I find that the appeal fails on all three grounds.

Cross – appeal

The respondent filed four grounds of cross-appeal, but at the hearing its counsel abandoned the second and fourth grounds leaving the first and third grounds which were to the effect that –

"The Constitutional Court erred in law and fact -

1. ***in holding on issue No.2 that the General Court Martial is equivalent to the High Court in status of jurisdiction to try civilians not subject to military law, jointly with persons subject to military law on charges arising from the UPDF Act; and that such joint trial is not inconsistent with Articles 28(9) and 139(1) of the Constitution; and***

3. ***in holding that the joint trial of civilians and members of UPDF by the General Court Martial for offences prescribed under the UPDF Act is not inconsistent with Articles 28(1), 126 and 210 of the Constitution as the General Court Martial is not subordinate to the High Court but equivalent to it."***

In his submissions, learned counsel for the respondent contended that the question raised in the two grounds of cross-appeal had been settled by the decision of this Court in ***Attorney General vs. Joseph Tumushabe,*** Constitutional Appeal No.3/05, in which it was held that the General Court Martial is not equivalent but subordinate to the High Court.

Prior to the hearing, the appellant filed written submissions in reply to the grounds of the cross-appeal, virtually reiterating the views of the Constitutional Court in support of the holding that the General Court Martial is equivalent to the High Court, but making no reference to the decision of this Court in ***Joseph Tumushabe's case*** (supra) .

As correctly submitted by learned counsel for the respondent, in ***Joseph Tumushabe's case*** (supra), this Court upheld the majority decision of the Constitutional Court in that case, that the General Court Martial is a subordinate court. However, in the instant case the Constitutional Court had earlier held by majority of 3 to 2 that its decision in ***Joseph Tumushabe's***

case (supra) was wrong and refused to follow it. Clearly that holding cannot be sustained since the final decision of this Court in ***Joseph Tumushabe's case*** (supra) must prevail. That alone should be sufficient to dispose of the cross-appeal as finally presented by the learned counsel for the respondent. However, I am constrained to comment on the manner in which the Constitutional Court arrived at the opposite conclusion in the instant case.

While I appreciate that the Constitutional Court decision in this case was well before the decision of this Court in ***Joseph Tumushabe's case*** (supra), was handed down, and therefore it cannot be faulted for not following it, I find no lawful explanation on the part of the majority for the refusal to follow the previous decision of that court.

Under the doctrine of *stare decisis,* which is a cardinal rule in our jurisprudence, a court of law is bound to adhere to its previous decision save in exceptional cases where the previous decision is distinguishable or was overruled by a higher court on appeal or was arrived at *per incuriam* without taking into account a law in force or a binding precedent. In absence of any such exceptional circumstances a panel of an appellate court is bound by previous decisions of other panels of the same court.

The panel that heard the instant case did not only decline to follow the precedent by the panel that decided ***Joseph Tumushabe's case*** (supra) but it purported to overturn it. The majority views on the issue in question were mainly articulated in the judgment of the learned Deputy Chief Justice. While considering issue no.2, on whether the concurrent proceedings in the

General Court Martial and the High Court contravened Articles 28(1), 44(a) and 139(1) of the Constitution, the learned Deputy Chief Justice observed –

> ***"First and foremost I think I should address my mind to the controversial issue of the jurisdiction of the General Court Martial. Does it have concurrent jurisdiction with the High Court which is seized with unlimited original jurisdiction, under Article 139(1) of the Constitution?"***

After reviewing arguments of counsel she postulated –

> ***"If, as was held percuriam in Constitutional Petition No.6 of Joseph Tumushabe vs. Attorney General (<u>as it was not decided on framed issues</u>), the General Court Martial is subordinate to the High Court, then the former would be bound by the decision of the High Court. In the premises the concurrent proceedings in this petition would contravene Article 28(1) ……"***

After further consideration of pertinent provisions of the Constitution and the UPDF Act, the learned Deputy Chief Justice accepted the submission of the learned Solicitor General and adopted the minority position taken by Byamugisha JA in ***Joseph Tumushabe's case*** (supra) that military and civil courts are both courts of law, parallel to each other. She stressed that she entirely agreed with the view, which holds that the General Court Martial is equivalent of the High Court of Uganda.

Finally she wound up the issue thus –

> ***"Before taking leave of this petition we wish to draw the attention of all those concerned to the decision of this court in Constitutional Petition No.6 of 2004 Joseph Tumushabe vs. Attorney General where <u>it was decided percuriam</u> by a majority of four to one that the General Court Martial is subordinate to the High Court. We hold by a majority of 3 to 2 that the case for the reasons we have given was wrongly decided. By a majority of three to two we hold and declare that the General Court Martial***

is not subordinate to the High Court but equivalent to it in the parallel military court system."

The learned Deputy Chief Justice listed the following arguments as supportive of that conclusion –

- the Courts Martial are not courts of judicature but military courts which are creatures of the UPDF Act;
- appeals from the General Court Martial, unlike those from other special courts like Industrial Court, Tax Appeal Tribunal and NPART, do not lie to the High Court but to the Court Martial Appeals Court;
- under Article 139(2) appeals from all subordinate courts lie to the High Court yet those from the General Court Martial do not; and
- the High Court and the General Court Martial have concurrent jurisdiction to try capital offences and impose the same sentences.

It is noteworthy that the precedent was not distinguished or distinguishable from the instant case. It had not been overruled on appeal, nor was it a precedent that had been decided *per incuriam*. The arguments relied on in support of the decision in the instant case were also considered in the previous case. No reason was given for the conclusion by the panel in the instant case that the panel that heard the petition in ***Joseph Tumushabe's case*** had wrongly decided the issue. The only apparent hint is that the decision in the precedent was *"percuriam as it was not decided on a framed issue"* (sic).

With due respect, this was not a valid basis for departing from the previous decision. First, the issue of the status of the General Court Martial was not

directly “framed” as such in either case. However, it was a very strong undercurrent and was fully argued in both cases. Secondly, it does not make good sense in case of a controversial issue, for a panel of an appellate court by a majority of three to two to overturn a precedent set by a panel of the same court by a majority of four to one. The best practice observed in other jurisdictions where a court is empowered to depart from its previous decision, is to empanel the full court in case of a controversial issue so as to give more clout to the decision in the event of departure from precedent. To permit one panel of the Court of Appeal to overturn a precedent set by another on such pretext as in the instant case, would lead to the antithesis of the doctrine of *stare decisis* and would be a recipe for uncertainty, instability and unpredictability of the law that the courts have the responsibility to interpret and apply.

In conclusion I would dismiss the appeal and allow the cross–appeal with costs to the respondent in this Court and in the Constitutional Court.

DATED at Mengo this 20th day of January 2009

J.N. Mulenga,
Justice of Supreme Court.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, C.J, TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE JJ.SC, OGOOLA AND KITUMBA AG. JJ.SC)

CONSTITUTIONAL APPEAL NO. 1 OF 2006

BETWEEN

ATTORNEY GENERAL::APPELLANT

AND

UGANDA LAW SOCIETY:::::::::::::::::::::::::::::::: RESPONDENT

[Appeal from the decision of the Constitutional Court at Kampala (Mukasa-Kikonyogo, DCJ, Okello, Engwau, and Byamugisha JJA and Kavuma JA dissenting) dated 31st January 2006 in Constitutional Petition No. 18 of 2005]

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother, Mulenga JSC, and I agree that this appeal should fail and the cross-appeal should succeed. I concur in the order he has proposed as to costs.

As the other members of the Court also agree, this appeal is dismissed and the cross appeal allowed, with costs here and in the Court below.

Dated at Mengo this 20th day of January 2009.

B J Odoki
CHIEF JUSTICE

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

[CORAM: ODOKI, CJ; TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE, JJSC; OGOOLA AND KITUMBA, AG. JJSC.]

CONSTITUTIONAL APPEAL NO.1 OF 2006

BETWEEN

ATTORNEY GENERAL …….. ….APPELLANT

AND

UGANDA LAW SOCIETY…….. RESPONDENT

[An appeal from the decision of the Constitutional Court at Kampala (Mukasa-Kikonyogo DCJ; Okello, Engwau, and Byamugisha, JJA; Kavuma JA dissenting) dated 31st January, 2006 in Constitutional Petition No. 18 of 2005]

JUDGMENT OF TSEKOOKO, JSC.

I have had the advantage of reading in advance the judgment prepared by my learned brother, Mulenga, JSC, which he has just delivered. I agree with his reasoning in the appeal and cross-appeal and his conclusions that the appeal be dismissed and that the cross- appeal ought to succeed. I also agree that the respondent should have its costs here and in the two courts below.

Delivered at Mengo this 20th day of January 2009.

J. W. N. Tsekooko.
Justice of the Supreme Court.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: ODOKI, C.J, TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE, JJ.S.C, OGOOLA AND KITUMBA, AG.JJSC.)

CONSTITUTIONAL APPEAL NO.1.OF 2006
BETWEEN

ATTORNEY GENERAL ::: APPELLANT

AND

UGANDA LAW SOCIETY ::: RESPONDENT

(An appeal from the decision of the Constitutional Court at Kampala (Mukasa-Kikonyogo DCJ, Okello, Engwau , Byamugisha, JJA, Kavuma JA dissenting) dated 31st January, 2006 in Constitutional Petition No 18 of 2005

JUDGMENT OF KANYEIHAMBA, J.S.C

I have had the benefit of reading in draft the judgment of my learned brother, Mulenga, J.S.C. and I agree with him that this appeal ought to fail and the cross appeal succeed.

I also agree with the orders he has proposed

Dated at Mengo this 20th day of January 2008

G.W.KANYEIHAMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, CJ., TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE JJ.SC, OGOOLA & KITUMBA AG. JJ.S.C.).

CONSTITUTIONAL APPEAL NO 1 OF 2006

BETWEEN

ATTORNEY GENERAL :::::::::::::::::::::::::::::: APPELLANT

AND

UGANDA LAW SOCIETY :::::::::::::::::::::::::::::: RESPONDENT

(Appeal from decision of the Constitutional Court (Mukasa-Kikonyogo DCJ, Okello, Engwau, and Byamugisha, JJ.A and Kavuma JA dissenting) at Kampala dated 31st January 2006, in Constitutional Petition No. 18 of 2005).

JUDGMENT OF KATUREEBE, JSC.

I have had the benefit of reading in draft the Judgment of my learned brother, Mulenga, JSC and I agree with him that the appeal must fail for the reasons he has given in his judgment.

I also agree that the cross-appeal be allowed, and that the respondent be awarded costs in this Court and in the Constitutional Court.

Dated at Mengo this 20th day of January 2009.

Bart M. Katureebe
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, CJ., TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE JJ.SC, OGOOLA AND KITUMBA AG. JJ.S.C.).

CONSTITUTIONAL APPEAL NO 1 OF 2006

BETWEEN

ATTORNEY GENERAL :::::::::::::::::::::::::::::: APPELLANT

AND

UGANDA LAW SOCIETY :::::::::::::::::::::::::::::: RESPONDENT

(An appeal from decision of the Constitutional Court at Kampala (Mukasa-Kikonyogo DCJ, Okello, Engwau, and Byamugisha, JJ.A and Kavuma JA dissenting) dated 31st January 2006, in Constitutional Petition No. 18 of 2005).

JUDGMENT OF OGOOLA, Ag. JSC.

I have had the benefit of reading in draft the Judgment of Mulenga JSC. I agree with the presentation of the facts, the analysis and the reasons of the learned Judge in the appeal and the cross-appeal; as well as with his conclusions that the appeal must fail; the cross-appeal succeed; and the respondent be awarded its costs in this Court and in the Constitutional Court.

Dated at Mengo, this 20th day of January, 2009

James Ogoola

Ag. Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, CJ., TSEKOOKO, MULENGA, KANYEIHAMBA, KATUREEBE JJ.SC, OGOOLA AND KITUMBA AG. JJ.S.C.)

CONSTITUTIONAL APPEAL NO 1 OF 2006

BETWEEN

ATTORNEY GENERAL :::::::::::::::::::::::::::::: APPELLANT

AND

UGANDA LAW SOCIETY :::::::::::::::::::::::::::::: RESPONDENT

(Appeal from decision of the Constitutional Court (Mukasa-Kikonyogo DCJ, Okello, Engwau, and Byamugisha, JJ.A and Kavuma JA dissenting) at Kampala dated 31st January 2006, in Constitutional Petition No. 18 of 2005).

JUDGMENT OF KITUMBA, AG. JSC.

I have had the benefit of reading in draft the Judgment of my learned brother Justice Mulenga, JSC. I concur and have nothing useful to add.

Dated at Mengo this 20th day of January 2009.

C.N.B Kitumba

AG. JUSTICE OF THE SUPREME COURT