

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

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**(CORAM: ODOKI CJ, TSEKOOKO, KATUREEBE, TUMWESIGYE
AND KISAAKYE, JJSC)**

CIVIL APPEAL NO 06 OF 2008

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BETWEEN

1. GORDON SENTIBA }

2. AMBASSADOR PAUL ORONO ETIANG} ::: APPELLANTS

15 **3. ENGINEER JAMES ZIKUSOOKA }**

AND

INSPECTORATE OF GOVERNMENT ::::::::::::::: RESPONDENT

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[Appeal from the decision of the Court of Appeal at Kampala (Okello, Mpagi-Bahigeine and Kitumba, JJA) dated 28 March 2008 in Civil Appeal No 14 of 2007]

25 **JUDGMENT OF ODOKI, CJ**

Introduction:

30 This appeal arises from the decision of the Court of Appeal whereby that Court dismissed with costs the appeal filed by the appellants against the respondent. The appeal raises

several issues of great public importance concerning the legal capacity and *locus standi* of the Inspectorate of Government, limitations on the investigative powers of the Inspectorate, the role of the Attorney General as the Principal Legal Advisor to Government and the Independence of the Judiciary.

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The Brief Facts:

The brief facts of the case as found by the lower courts were as follows. The appellants were former shareholders of Nyanza Textiles Ltd (NYTIL) and owned 1% of its shares.

10 The appellants sued in a representative capacity for all the shareholders for compensation arising from the divestiture of NYTIL. The suit was filed against the Attorney General and culminated into a consent judgment entered on 2nd January 2007.

On 15th January 2007, the appellants obtained a Garnishee Nisi Order against Stanbic
15 Bank to attach the money from the Divesture Account. Before the Order could be made absolute, the respondent applied to the High Court seeking to review or set aside the consent judgment, that had been entered into between the appellants and the Attorney General.

20 At the hearing of the application, the appellants raised preliminary objections to the effect that the application was Statute-barred and that the respondent had no *locus standi* to lodge an application on behalf of the Government. The Attorney General also raised objections on affidavits supporting the application.

25 Kasule J, who heard the application on 16 March 2007, overruled the objections. The appellants applied for and obtained leave to appeal against the ruling. The Court of Appeal heard the appeal and dismissed it; hence this appeal.

The Grounds of Appeal:

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The appellants have lodged three grounds of appeal which are framed as follows:

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- “1. *The learned Justices of the Court of Appeal erred in law when they failed to find that Section 19(I)(c) of the Inspectorate of Government Act No 5 of 2002 barred the Inspectorate of Government from investigating or seeking to investigate any civil matter that had been commenced in a court of law prior to the beginning of the Inspectorate of Government’s Investigations thereby rendering her application statute barred.*
 2. *The learned Justices of the Court of Appeal erred in law in failing to find that the Inspectorate of Government was barred by Section 19(I)(a) of the Inspectorate of Government Act No 5 of 2002, from filing an application in the High Court seeking to review and/or set aside the consent judgment reached in the lower Court.*
 3. *The learned Justices of the Court of Appeal erred in law in failing to find that the Inspectorate of Government had no locus standi to represent the Government of Uganda or any Department thereof in a Civil Application intended to set aside a consent judgment between the Attorney General and the Applicants.”*

The appellants requested the Court for the following orders:

- (a) The ruling and order of the High Court given on the 16th March 2007 be set aside.

(b) The Respondent's Miscellaneous Application No 65 of 2007 be dismissed for being incompetent and statute-barred.

(c) The Respondent be ordered to pay the costs of this appeal, the Court of Appeal and the High Court.

Learned counsel for both parties filed written submissions. The appellants were represented by Mr. Ebert Byankya assisted by Mr. Oscar Kihika. The respondent was represented by Mr. Kasujja Vincent, from the Inspectorate of Government.

Both counsel argued ground three first and then dealt with grounds one and two together. I shall follow the same order in considering this appeal.

Ground 3: *Locus Standi* of Inspectorate of Government:

Arguments of the Appellants:

Learned counsel for the appellants submitted that Sections 2 and 10 of the Government Proceedings Act Cap 77 leave no room for any doubt that any civil proceedings instituted on behalf of the Government must be initiated by the Attorney General. They contended that an application to set aside a consent judgment entered by the Attorney General is a civil proceeding within the meaning of Section 10 of the Government Proceedings Act. Moreover, they argued, the Attorney General had represented the Government in the main suit and therefore by applying to set aside the consent judgment, the respondent was effectively taking over the conduct of the suit from the Attorney General, which was contrary to the provisions of the said Act.

Learned counsel further argued that the provisions of the Government Proceedings Act are reflected in the provisions of the Constitution which in Articles 250 and 119 provide that civil proceedings by or against the Government shall be instituted by or against the Attorney General, and that the Attorney General shall represent the Government in the
5 Courts and any other proceedings to which the Government is a party. On the other hand, counsel submitted, the functions of the respondent which are set out under Article 225 do not include any right to represent the Government in civil proceedings or a right to give legal services or advice to any Department of Government.

10 Learned counsel cited the case of **Bank of Uganda vs Banco Arab Espanol** Civil Appeal No 1 of 2001 (SC) where this Court stated, that the appellant (Bank of Uganda) was the principal financial advisor of the Government of Uganda and the Attorney General is the principal legal advisor to the Government of Uganda.

15 Learned counsel for the appellant further cited the judgment of Kanyeihamba, JSC in **Bank of Uganda vs Banco Arab Espanol** (supra) where the learned Justice observed,

20 ***“In my view the opinion of the Attorney General as authenticated by his own hand signature on an agreement or other legal transaction should be accorded the highest respect by Government and public institutions and their agents. Unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further inquiries or verification.”***

25 Learned counsel contended that since the Attorney General fixed his signature to the consent judgment, the transaction was legal on behalf of the Government. It was his submission that the Attorney General advised the Ministry of Finance that he supported the consent judgment and the appellants as third parties were entitled to the consent
30 judgment without inquiring into whether there was effective consultation between the

two ministries before concluding the consent judgment. It was counsel's argument that the Minister of Finance was obliged to respect the advice and decision of the Attorney General instead of attempting to avoid complying with the consent judgment by seeking legal advice or representation from the respondent, which was not part of the respondents' constitutional or statutory mandate.

Learned counsel further argued that it appears that both the High Court and Court of Appeal were heavily influenced by the decision of the Constitutional Court in the case of *Inspectorate of Government vs Kikondwa Butema Farms Ltd and Attorney General*, Constitutional Appeal No 14 of 2007, where that Court held that the respondent is a body corporate with legal capacity to sue and be sued. Counsel submitted that the *Kikondwa Butema Case* was wrongly decided, and that this Court should reconsider the decision and rule whether it constitutes a valid statement of the law.

Learned counsel disagreed with the reasons given by the Constitutional Court in holding that the respondent had capacity to sue and be sued. Counsel submitted the fact that the respondent had sued and been sued in previous legal proceedings without objection, could not confer legal capacity to sue and be sued on the respondent. Secondly, counsel argued that the fact that the respondent was independent was not a unique position and there were many other Constitutional Institutions which were independent but had no capacity to sue or be sued, for instance, the Directorate of Public Prosecutions, the Judiciary, the Auditor General or the Public Service Commission. Counsel maintained that for a public office to be vested with capacity to sue and be sued, Parliament must expressly state so, as it has done in the case of Administrator General, whose office is a corporate sole with capacity to sue and be sued under the Administrator General's Act (Cap.157). But in the case of the respondent Parliament did not in its wisdom confer corporate status to the office. Counsel submitted that one of the presumptions of statutory interpretation is that the legislature does not make mistakes.

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Learned counsel further contended that it is a violation of a cardinal rule of statutory interpretation to read words into a statute conferring corporate status on the respondent when Parliament has in its wisdom not included them. Counsel cited the decision of this Court in the case of **Registered Trustees of Kampala Institute vs Departed Asians**
5 **Property Custodian Board**. Civil Appeal No 21 of 1993 (unreported) in support of their argument.

The third wrong premise in the **Kikondwa Butema**, decision, counsel submitted, was that anybody with authority to recruit employees must be taken to have capacity to sue and be
10 sued. He contended that for Government bodies like Public Service Commission which recruit public officers, it is the Attorney General who sues and is sued on behalf of Government.

Finally learned counsel submitted that the only types of court actions that may be instituted by the respondent under the law are criminal prosecutions in respect of cases
15 involving corruption brought under Article 230 of the Constitution and not power to initiate actions to set aside consent judgments in civil proceedings. Furthermore, the respondent power to investigate Public Officers and Attorney General are limited to actions taken in their administrative capacity as provided in Article 225 of the Constitution. It was counsel's contention that when the Attorney General or judicial
20 officers are discharging their functions, they are not acting in administrative capacities. Counsel concluded by submitting that on this ground alone, the appeal should succeed.

Arguments of the Respondent:

25 Learned counsel for the respondent opposed the appeal. He submitted that the respondent has *locus standi* to file applications for setting aside consent judgments and stay of execution pursuant to Order 91, r.12, Order 46, r.1 and r.2, Order 52, r.1 and r.3 and Order 22, r.26 of the Civil Procedure Rules and sections 82 and 98 of the Civil Procedure Act. He also relied on the decision in **Ladak Abdullah Muhamed Hussein vs Griffiths**
30 **Isingoma Kakiiza & Two Others**, Civil Appeal No 56 of 1996 (Supreme Court).

According to counsel, these authorities permit third parties to the suit like the respondent who were not parties to the suit to bring such proceedings where they have suffered a legal grievance. It was counsel's submission that the respondent had suffered a legal grievance when the irregularities which amounted to alleged corruption, abuse of authority and abuse of office were brought to the attention of the Attorney General and he failed or ignored to take remedial action to protect Government interests based on the Ministers objection. Furthermore, learned counsel argued that the respondent was not taking over the role of the Attorney General as a legal advisor but was exercising its constitutional mandate to eliminate and foster elimination of corruption and abuse of office which gives it a right to intervene in accordance with the law wherever it detects corruption in public places and abuse of authority or office. It was his contention that the respondent is entitled to examine the practices and procedures of those offices in order to facilitate the elimination of corruption in those offices. Counsel maintained that the respondent had power to conduct investigation including litigation.

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Secondly, counsel submitted, the respondent is a creature of the 1995 Constitution clothed with independence under Article 227 of the Constitution, with powers to fight corruption and abuse of office under Articles 225, 226, and 230 of the Constitution. He submitted further that Section 24 of the Government Proceedings Act Cap.77 allows Government to take any advantage of the provisions of any other enactment not named in the Act in order to safeguard Government interests. According to counsel, the Minister of Finance was right to invoke the provisions of Section 24(I) of the Inspectorate of Government Act 2002 in lodging a complaint to the respondent to protect and safeguard Government interests in the matter as the Attorney General appeared to be contended with the consent judgment.

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He pointed out that the respondent brought the irregularities in the consent judgment to the attention of the Attorney General who took the view that the Minister of Finance was not supposed to question his advice as decided in the decision of *Bank of Uganda vs Banco Arab Espanols*, (supra). It was the contention of learned counsel that much as the

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Attorney General is the Principal Advisor to Government, the Attorney General is bound to follow the instructions of his client, in this case – the Ministry of Finance.

5 Thirdly, counsel submitted that in the recent past, the position of the Attorney General has been overruled. In the decision of *Kikondwa Butema Farm Ltd vs Inspectorate of Government* (supra), the respondent successfully defended its power of investigation and stopped payment of a further amount of one billion shillings approved by the Attorney General on top of Shs.500 Million that had earlier been paid as extra and in settlement of the claim. There was no appeal against the decision of the Court. In same vein, in
10 *Inspectorate of Government vs American Procurement and Attorney General*, High Court Misc. Application No.248 of 2007, the respondent moved court to set aside *ex parte* judgment that was irregularly executed between the plaintiff and the Attorney General who had not filed a written statement of defence.

Lastly learned counsel argued, that although the legal status of the respondent was
15 clarified in *Inspectorate of Government vs Kikondwa Butema and Attorney General*, (supra), Learned counsel for the appellants was wrong to rely on decision in the *Kikondwa Case* (supra) because he did not raise the point in the two lower courts and that his attempt to do so before this court amounted to a disguised appeal against the decision in *Kikondwa Case*, (supra)

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Consideration of the Law:

The main issue to determine in this ground of appeal is whether the respondent has legal capacity to sue and be sued. Other related sub issues are whether the respondent had
25 *locus standi* to bring these proceedings, whether the respondent can intervene in civil actions where the Attorney General is a party representing Government and whether it can intervene as an aggrieved third party in proceedings where it is not a party. The decision in *Kikondwa Butema Case* is central to the determination of this issue and it will be reviewed in this judgment.

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I do not find it necessary to delve into the history and rationale for establishment of the institution of the Inspectorate of Government. Suffice it to refer to the recent decision of this Court in ***John Ken Lukyamuzi vs Attorney General and Electoral Commission***, Constitutional Appeal No 2 of 2007 (unreported) where the background to the establishment of the institution of Inspectorate of Government, its functions, powers and limitations were adequately considered.

In his lead judgment, Tumwesigye, JSC, observed,

10 ***“Article 225 of the Constitution prescribes the functions of the Inspector General of Government. They include promotion of the rule of law and principles of natural justice in administration, elimination of corruption and abuse of public office, supervision of the enforcement of the leadership code of conduct and promotion of good governance in public offices.***

15 ***Article 225(I)(e) gives the Inspector General of Government a general power of investigations. Article 230(I) gives the IGG power to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office. Article 230(3) gives the IGG power to enter and inspect premises of any government department or person and to call for any document in connection with the case being investigated. Article 230(4) provides that the IGG, when enforcing the Leadership Code of***

20 ***Conduct shall have all the powers conferred on it in Chapter 13 of the Constitution or any other law”***

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30 However the Court held that the IGG is not the appropriate Leadership Code Tribunal mentioned in Article 83(I)(e) of the Constitution.

In *Inspectorate of Government vs Kikondwa Butema Farm Ltd and Attorney General*, (supra) the Constitutional Court held that the respondent had capacity to sue and be sued. In coming to that decision, the Court cited several cases where the appellant (IGG) has
5 been a party and stated,

10 *“In all these cases the issue of the applicant’s capacity to sue or be sued was not raised. Be that as it may, we think that there are legal provisions in the Constitution that set up the Inspectorate of Government and the Act that operationalised those provisions that indicate that the applicant has capacity to sue and be sued.”*

The Constitutional Court then went on to mention three sets of provisions which justified
15 their legal position. The court identified those provisions as follows:

20 *“The first most important provision in the Constitution and the Act are Article 227 (supra) and Section 10 of the Act that guarantees the independence of the Inspectorate in the performance of its functions. It is not subject to the direction or control of any person or authority. It is only responsible to Parliament. It is therefore independent of all Government Departments and Agencies including the office of the Attorney General. This means as we understand it, that the Inspectorate and the Inspector General in particular must own its/her
25 decisions and have the capacity to defend those decisions in any forum including courts of law if necessary.*

30 *The Inspector General of Government can be likened to the Registrar of Titles under the Registration of Titles Act. Although*

the post is held by a Traditional Civil Servant, the holder has been dragged to court from time to time to defend and explain decisions he/she takes in the performance of his/her duties.

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The second provision is Section 7 that establishes an Appointments' Board. The functions of the board are inter alia to appoint officers and other employees of the Inspectorate. This means that it can enter into contracts of employment. Such contracts are binding. A person who has capacity to enter into a contract has capacity to sue and be sued on such contract. By making this particular provision, in our view, Parliament clothed the Inspectorate with corporate status without saying so in many words.

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The third provisions are those concerning the functions and jurisdiction of the Inspectorate, Articles 225 and 226 of the Constitution and Sections 8 and 9 of the Act. The functions and jurisdiction cover a wide spectrum of officers and leaders serving in many offices of Government, statutory corporations, the Cabinet, Parliament, to mention but a few.”

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In coming to that conclusion the Constitutional Court cited several cases where the appellant (IGG) had been a party:

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“There is no dispute that the applicant has been appearing in Courts of law. One of such cases is Miscellaneous Application No 593 of 03 that was filed by the first respondent against the applicant. The other cases in which the applicant was a party that have been drawn to our attention are:

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1. ***Lubowa vs IGG – Civil Appeal No 85/2001(CA)***
2. ***Gladys Aserua vs IGG, Miscellaneous Cause No 1214/99***
3. ***Semakula vs IGG Miscellaneous Cause No 9/03***
4. ***Owiny vs IGG – Miscellaneous Cause No 29/03***
5. ***Robert Bakisula vs IGG – Civil Appeal No 24/03***
6. ***IGG vs Orochi – Civil Application No 90/200 (CA)***
7. ***Kikondwa Butema Farm Ltd vs Inspector General of Government – Civil Appeal No 35/2002.”***

The independence of the respondent is provided for in Article 227 of the Constitution which provides:

“The Inspectorate of Government shall be independent in the performance of its functions and shall not be subject to the direction or control of any person or authority and shall be responsible only to Parliament.”

A similar provision is repeated in Section 10 of the Inspectorate of Government Act 2002. There is nothing in the Article 227 or Section 2 of the Act which confers on the respondent corporate status or legal capacity to sue or be sued. The Constitutional Court merely inferred corporate status by holding that Parliament vested that status in the respondent without saying so. If Parliament had wanted to confer corporate status on the respondent nothing could have stopped it from doing so, but it did not in its wisdom do so.

For instance, like the IGG, the Ombudsman of Argentina called the ***“Public Defender of the Nation”*** established under Section 86 of the National Constitution is independent and not subject to directions from any authority. The functions of the Ombudsman include the defence and protection of human rights and control of public administration. The office holder is appointed and dismissed by the congress with a vote of two thirds of the

members of both houses, and serves a term of five years subject to reappointment once. However, the Constitution expressly confers legal standing on the office of Ombudsman, unlike in the case of IGG.

5 The Constitutional Court likened the respondent to the Registrar of Title under the Registration of Titles Act, but in the Registration of Titles Act, Parliament did confer on the Registrar of Titles power to appear in Court and defend his or her actions for instance under Section 182. Under Section 174, the Registrar has power to state a case for the High Court with regard to the performance of his or her duties or functions.

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Indeed there are other offices like the Administrator General on which Parliament has conferred the status of corporate sole and can sue and be sued in its capacity as Public Trustee. In this connection Section 2 of the Administrator Generals' Act states:

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“The Administrator General shall be a corporate sole by the name of the Administration General of Uganda with perpetual succession and an official seal and, in all proceedings under the Act and in all legal proceedings he or she shall sue and be sued by that name and it shall be necessary to state and prove the Administrator General’s authority and title in the specific estate to which the proceedings may relate but not his or her general authority or appointment.”

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The Constitutional Court further justified its decision on the ground that the respondent has an Appointment’s Board and can enter into contracts and be sued on those contracts.

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It is true that section 16(2) of the Inspectorate of Government Act provides that ***“All officers and employees of the Inspectorate other than the Secretary shall be appointed by the Board upon such terms and conditions as the Board may determine.”*** The

Appointments’ Board is established under Section 7 of the Act but nowhere in the

30 Section is the respondent given legal capacity to sue or be sued by its staff or any person.

As counsel for the appellants submitted, the mere fact that a body or an office has power to recruit or appoint staff does not mean that it has corporate status. An example of such body is the Public Service Commission which recruits public officers, which cannot sue or be sued.

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Finally it was argued that the respondent has appeared in Court in several cases as a party. While that may be true, the issue of its legal capacity or *locus standi* was not raised and therefore the issue was not determined in those cases.

10 For these reasons, I am of the view that the decision in *Kikondwa Butema Case* regarding the legal capacity of the respondent was arrived at in error and I would decline to follow it.

There is no provision in the Constitution, the Inspectorate of Government Act or any
15 other law which confers corporate status on the respondent and it would be wrong for the Court to confer such status on the respondent when Parliament in its wisdom did not find it necessary to do so for effective enforcement of the powers of the respondent. However, Parliament has power to review the matter and confer corporate status on the Inspectorate of Government.

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It was also argued for the appellants that the respondent could not take over or intervene in a case filed by the Attorney General because it was the Attorney General who was the Principal Legal Advisor to Government and who had legal capacity or *locus standi* to sue and be sued on behalf of Government and not the respondent.

25 It is trite law that the Attorney General is the Principal Legal Advisor to Government as provided for in Article 19(3) of the Constitution, and that the legal opinion of the Attorney General is generally binding on Government and public institutions like the respondent. See *Bank of Uganda vs Bank Arab Espanol* (supra). Therefore the respondent is not correct in submitting that it can intervene or take over a case where the
30 Attorney General has decided not take action or taken a different action in order to save

the Government from losing colossal sums of money. The respondent is a creature of the Constitution and Statute and its functions and powers are clearly laid down in those legal instruments. It is not the function of the Courts to confer corporate status or legal capacity or similar powers on public institutions or bodies which are not specified in the parent or enabling laws. In the present case the powers of the respondent to investigate, prosecute criminal cases, or make other orders, are not affected by the absence of legal capacity in civil cases. Indeed the respondent may make applications in appropriate cases involving corruption and abuse of office.

Accordingly, I would allow the third ground of appeal. My decision on this ground would be sufficient to dispose of this appeal in favour of the appellants. However in view of the importance of the issues raised in the 1st and 2nd grounds of appeal, I find it necessary to consider them.

Grounds 1 and 2: Limitations on the Powers of the Inspectorate of Government

Arguments of the Appellants:

Learned Counsel for the appellants submitted that the intention of the respondent in bringing the application in Court was to prepare ground for investigating a Court matter which had not only been commenced but had been concluded by the parties by entering a consent judgment. Counsel pointed out that this was clear from the two orders the respondent sought in its notice of motion filed in the High Court which were, first to review or set aside the consent judgment in HCCS No 431 of 2006, and second to enable the respondent to investigate the manner in which the consent judgment was entered between the parties.

Learned counsel contended that the respondent is barred by the provisions of Section 19 of the Inspectorate of Government 2002 from questioning the three judicial decisions made in this case namely the order of the Registrar granting leave to file a representative

suit granted to the appellants on behalf of the minority shareholders, the consent judgment itself and the garnishee order granted by the Registrar.

5 Furthermore, it was the submission of counsel that the proceedings the respondent sought to investigate constituted a civil matter in a court of law commenced before the start of investigations and therefore the respondent was barred from investigating the matter. He submitted that the Court of Appeal erred in agreeing with the view of the High Court that the respondent was not seeking to review the judgment itself but was simply moving court to review its own decisions and was therefore not contravening the Act. In so
10 holding, the two lower courts completely ignored to consider the word “*question*” which appears in Section 19(I) as the respondent could not claim to be moving the court to set aside a court decision without questioning the decision. It was counsel’s contention that by challenging the consent judgment it was questioning the order of the Court.

15 Finally counsel argued that the two lower courts erred in interpreting the word “*review*” as if the words used in the Act were “*judicial review*”, because the respondent is not a judicial office and is not expected to exercise judicial authority. Counsel submitted that the ordinary meaning of the word review as set out in *Black’s Law Dictionary* 7th Edn was “*consideration inspection or examination of a subject or thing.*” By seeking to
20 investigate the consent judgment, the respondent was “*considering, inspecting and examining*” the judgment and events that led to it, counsel submitted. Counsel maintained that the only way to preserve the independence of the Judiciary as intended by Parliament is to adopt the natural and ordinary meaning of the word “*review.*”

25 **Arguments of the Respondent:**

In reply learned counsel for the respondent submitted that it was erroneous for the appellants to contend that the respondent is curtailed by the provisions of Section 19(I)(a) and (c) of the Inspectorate of Government Act to bring before the High Court both
30 Miscellaneous Applications No 65 and 70. He argued that the applications were brought

to move the court to consider the irregularities presented by the respondent and to review its own consent judgment after listening to the merits of the applications.

5 Learned counsel's second submission was that given the fact that the Government represented by the Minister of Finance was the complainant, the respondent was of the view that Government was not going to receive a fair treatment either by judicial review or appeal and this justified the respondent to exercise its discretion under Sections 19(I) (a) (i) (ii) and (iii) of the Inspectorate of Government Act to take action by filing the application for judicial review to safeguard Government or public interest in the case and
10 prevent abuse of authority. Counsel concluded by supporting the decision of the Court of Appeal.

Consideration of the Law:

15 It is common ground that while the respondent has wide statutory powers to investigate and prosecute cases involving corruption, abuse of authority or public office, under Articles 225 of the Constitution, and Section 8 of the Inspectorate of Government Act, there are limitations imposed on the respondent by Section 19 of the Inspectorate of Government Act. In this connection Section 19(I) (a) (b) and (c) of the Act provide;

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“(a) The Inspectorate shall not have power to question or review any of the following matters-

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(a) The decision of any court or of any judicial officer in the exercise of his/her judicial functions;

(b) The decision of any tribunal established by law in the exercise of its functions

(c) Any civil matter which is before court at the commencement of the Inspectorate Investigations.”

5 In the present case, the relevant limitations on the powers of the Inspectorate of Government are contained in paragraphs (a) and (c) above. The consent judgment was entered by the court and is therefore covered by paragraph (a). The civil matter which the respondent brought to court for judicial review was concluded in a consent judgment before the respondent commenced its investigations in the matter.

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In the notice of motion dated 15th February 2007 the Applicant (IGG) stated that she would move the court for the following orders:

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“1. That the consent judgment in HCCs No 431 of 2006 dated 29 December 2006 and filed in Court on the 2nd of January 2007 be reviewed and set aside.

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2. That pursuant to the appellants’ powers and functions enshrined under Articles 230 (b) (c) of the 1995 Constitution 225 (I) (a) (e) the Applicant be enabled to investigate the manner into which the consent judgment was entered amongst the parties in total disregard to the instructions from Ministry of Finance, Planning and Economic Development.”

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In her affidavit in support of the motion she stated in paragraph 9:

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“I swear this affidavit in support of an application to review the consent judgment and allow the applicant to investigate the

circumstances that led to the consent judgment.” (emphasis added).

5 The lower courts held that it was not the respondent seeking to review the decision of the court, but was merely requesting the court to review its orders. With respect, it seems that the lower courts interpretation of the intention and import of Section 19 was erroneous. The respondent is barred from questioning or reviewing decisions of Courts or investigating civil matters which are before the courts and can not do so indirectly by
10 requesting the court to allow her to investigate pending proceedings. There are no exceptions given regarding these limitations and in my view they are an absolute bar.

In the instant case, it is clear that the Respondent (IGG) was requesting the Court to allow her to investigate civil matters pending before the court, and this was clearly contrary to
15 the clear provisions of the law. In order to set aside a consent judgment the respondent had to carry out investigations to establish fraud and this was not permissible at this stage.

I agree with the submissions of counsel for the appellants that the object of the limitations
20 on the powers of the respondent was to preserve the independence of the Judiciary and the finality of judicial process. A judicial decision between the parties is *res judicata* between them and should be respected by the parties and all the authorities until set aside in accordance with the law. There would be no end to litigation if any person or authority could at any time intervene and challenge a decision of the Court where it was not a party
25 and where it did not have *locus standi* on the pretext that it was protecting public interest.

In this case nothing prevented the respondent from investigating officers it considered had abused their powers and take appropriate action according to its well laid down powers. To investigate civil proceedings commenced or completed before the respondent
30 commences investigations, violates the principle of the independence of the Judiciary and

cannot be sanctioned by this court. In the result the 1st and 2nd grounds of appeal should succeed.

Decision:

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For the reasons given, I would allow this appeal. I would set aside the decision of the Court of Appeal and substitute an order allowing the appeal with the following orders:

- 10
- (a) The ruling and order of the High Court given on 16th March 2007 be set aside;
 - (b) The respondent's Miscellaneous Application No 65 of 2007 be dismissed for being incompetent.

15 I would order that each party bears its own costs in this Court and in Courts below, in view of public interest involved in this litigation.

As the other members of the Court agree, this appeal is allowed with the orders I have proposed.

20 **Dated** at Kampala this 17th day of **August** 2010.

B J Odoki

CHIEF JUSTICE

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

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{CORAM: TSEKOOKO, KATUREEBE, OKELLO, TUMWESIGYE & KISAAKYE,
JJSC.}

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Civil Application No. 02 of 2010

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1. GORDON SENTIBA

BETWEEN

2. AMBASSADOR PAUL ORONO ETIANG

APPELLANTS

3. ENGINEER JAMES ZIKUSOKA

AND

INSPECTOR GENERAL OF GOVERNMENT RESPONDENT

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*{An appeal from the decision of the Court of Appeal at Kampala (Okello, Mpagi-
Bahigeine*

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and Kitumba, JJA.) dated 28th March, 2010 in , in Civil Appeal No. 14 of 2007}

JUDGMENT OF JOHN W. N. TSEKOOKO, JSC

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I have had the benefit of reading in draft the judgment prepared by my Lord the Learned Chief Justice and I agree with his reasoning and his conclusions that this appeal should succeed and that each party bears their costs here and in the two courts below.

5 This appeal raises some interesting constitutional issues which the learned Chief Justice has ably considered. In my view, neither the constitution of 1995 nor the Inspectorate of Government Act, 2002 confer corporate personality on the Respondent endowing it with authority to institute Civil Proceedings against anybody. Indeed I am not aware of
10 any other law giving corporate status which entitles the IGG to institute a Civil Proceeding in the name of the IGG. With the greatest respect to the Learned and distinguished Justices of the Court of Appeal I am not persuaded by their reasoning that the respondent was entitled to seek to set aside the consent judgment entered into between the appellants as Plaintiffs and the Attorney General as Respondent.

15 I maintain most stoutly that giving the IGG powers to interfere with Judicial decisions would be a recipe for chaos in the judiciary and such powers would undermine the very foundation of the independence of the Judiciary. I believe that the delegates of the Constituent Assembly who enacted the Constitution intended to protect judicial independence by not including among the IGG's functions, power to interfere in
20 decisions of Courts. It is not for nothing that in enacting S.19 [I] of the Inspectorate of Government Act, 2002; Parliament in its wisdom emphatically prohibited the IGG from questioning or reviewing any decision of any Court or Judicial Officer. That must remain so if Uganda is to be a truly Constitutional democracy.

25 I would allow the appeal.

Delivered at Kampala this **17th day** of August, **2010**

30 **JWN Tsekooko**

Justice of the Supreme Court

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA**

{CORAM: ODOKI, C.J., TSEKOOKO, KATUREEBE, TUMWESIGYE AND
5 KISAAKYE, JJ.S.C.}

CIVIL APPEAL NO. 06 OF 2008

BETWEEN

10

1. GORDON SENTIBA
2. AMBASSADOR PAUL ORON ETIANG
3. ENGINEER JAMES ZIKUSOOKA }
::: APPELLANTS

AND

15

INSPECTORATE OF GOVERNMENT:..... RESPONDENT

*[Appeal from the decision of the Court of Appeal at Kampala (Okello Mpagi-Bahigeine
and Kitumba, JJ.A) dated 28th March, 2008 in Civil Appeal No. 14 of 2007]*

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JUDGMENT OF KATUREEBE, JSC

I have had the benefit of reading in draft the judgment of my Lord the Chief Justice and I
fully agree with him that this appeal should succeed for the reasons he has given.

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I also agree that each party bears their own costs in this Court and Courts below for
reasons given in his judgment.

Delivered at Kampala this 17th day of **August** 2010.

.....

5 **B. M. KATUREEBE**
JUSTICE OF THE SUPREME COURT

Dated at Kampala this 17th day of August 2010.

5

**JOTHAM TUMWESIGYE
JUSTICE OF THE SUPREME COURT**

.....

DR. ESTHER M. KISAAKYE

5 JUSTICE OF THE SUPREME COURT