**Matembe and others v Attorney-General**

**Division:** Constitutional Court of Uganda at Kampala

**Date of judgment:** 2005

**Case Number:** 1/05

**Before:** Okello, Engwau, Kitumba, Byamugisha and Kavuma JJA

**Sourced by:** Lawafrica

*[1] Constitutional law – Doctrine of separation of powers – Power of Judiciary to inquire into the*

*actions of the Executive and the Legislature – Unconstitutionality of a Bill of Parliament.*

*[2] Temporary injunctions – Applicable principles in applications for temporary injunction.*

**Editor’s Summary**

The applicants, all members of Parliament, filed this application seeking to restrain Parliament and its committees from further consideration of the Constitutional (Amendment) Bill number 2 of 2005 until final determination of Constitutional Petition number 2 of 2005 challenging the Bill’s constitutionality.

**Held** – In order to get a temporary injunction the applicant must show that there is a *prima facie* case with a probability to succeed; the applicant might suffer irreparable injury if the temporary relief is not granted; if the court is in doubt, it will decide the case on a balance of convenience. (G*iella v Casman Brown and Co Ltd* [1973] EA 358; U*ganda Law Society and another v Attorney-General* Constitutional application number 7 of 2003 applied). The doctrine of separation of powers is fundamental (*Marbury v Madison* 1 Cr 137 [180]; *Uganda v Commissioner of Prisons* Ex Parte *Matovu* [1966] EA 514 followed). However, this doctrine is not absolute. The Constitutional Court was established to guard the rights and freedoms of the individual against oppressive and unjust laws and acts and it must remain vigilant in upholding the provisions of the Constitution. If an allegation is made against the Executive or the Legislature about the unconstitutionality of their actions or omissions, the court is seized with jurisdiction to act. The Bill was tabled before Parliament and later to the Legal and Parliamentary Committee for its consideration. Until the Committee submits the report it is difficult to say that Parliament has accepted the Bill. Hence, it is premature to gauge a breach of the Constitution on the part of Parliament. Application dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Attorney-General v Major General Tinyefuza* Constitutional appeal number 1 of 1997

*Giella v Cassam Brown and Co Ltd* [1973] EA 358 – **AP**

*Marbury v Madison* 1 Cr 137 (180) – **F**

*Uganda Law Society and another v Attorney-General* Constitutional application number 7 of 2003 – **AP**

*Uganda v Commissioner of Prisons* ex parte *Matovu* [1966] EA 514 – **F**