**Serugo v Kampala City Council**

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

**Date of judgment:** 30 April 1998

**Case Number:** 14/97

**Before:** Manyindo Dcj, Kato, Berko, Engwau and Twinomujuni JJA

**Sourced by:** P Karugaba

**Summarised by:** H K Mutai

*[1] Constitutional law – Jurisdiction of the Court of Appeal – Interpretation – Limitation period –*

*Whether an issue of constitutional interpretation arose – Whether the petition had been filed in time –*

*Articles 50 and 137 – Constitution – Rule 4(1) – Fundamental Rights and Freedoms (Enforcement*

*Procedure) Rules – Legal Notice 4, 1996.*

*[2] Practice – Constitutional petition – Cause of action – Petitioner convicted of a non-existent offence –*

*Liability of government for acts of judicial officers – Parties – Whether the petitioner’s constitutional*

*rights had been violated – Whether there was a cause of action against Respondents – Article 128(4) –*

*Constitution – Section 4(5) – Government Proceedings Act (Chapter 69) – Section 48(1) – Judicature*

*Statute 1996.*

**Editor’s Summary**

On 5 September 1997, the petitioner was arrested by an official of the Kampala City Council (“KCC”). Later that same day, he was charged before a magistrate’s court with the offence of obstructing a police officer on duty contrary to section 106 of the Penal Code. He pleaded guilty and was sentenced to four months’ imprisonment. On appeal against the conviction and sentence, the appeal was allowed on the ground that he had been convicted of a non-existent offence. On 22 October 1997 he was released from prison and a month later, on 24 November, he filed a petition against the KCC and the Attorney-General seeking a declaration that the acts of the Respondents were unconstitutional and constituted a violation of his human rights, and compensation for the violation. When the petition came up for hearing, the Respondents raised preliminary objections on the grounds (i) that no cause of action against them existed as, in the case of the First Respondent, the wrongs complained of were not committed by a person in its employment, and, in the case of the Second Respondent, section 4(5) of the Government Proceedings Act (Chapter 69) provided that the government was not answerable for the acts of a person carrying out his judicial functions; (ii) that no constitutional issue requiring the Court’s interpretation existed and (iii) that, in any case, the petition was time-barred. Counsel for the petitioner argued that the Second Respondent was properly joined to the suit as the government was responsible for the unconstitutional actions of its agent, the magistrate, and that section 4(5) of the Government Proceedings Act did not apply to constitutional cases.

**Held** – The petitioner had failed to show that the KCC or its agents were responsible for whatever happened to him after his arrest. The only role played by the KCC’s agent was in his arrest, which itself appeared to have been lawful. As for the Second Respondent, the provisions of section 4(5) of the Government Proceedings Act clearly exempted the government from liability for acts or omissions of a judicial officer while acting in his official capacity. The section applied in both ordinary civil suits and in constitutional matters; *Attorney-General v Olwoch* [1972] EA 392 and *Serapio Rukundo v Attorney-General* constitutional case number 3/97 applied. The role of the court with regard to constitutional matters was ordinarily restricted to that of interpretation under article 137 of the Constitution and, in this instance, since no question for interpretation arose, the court had no jurisdiction. Rule 4(1) of the Fundamental Rights and Freedoms (Enforcement Procedure) Rules provided that a petition alleging a breach of the Constitution had to be filed within 30 days after the date of the alleged breach. The rationale behind this rule was that constitutional cases were important and had to be attended to expeditiously; *Serapio Rukundo v Attorney-General* (*supra*) applied. In this instance, the petitioner having been freed on 22 October he ought to have filed the petition by 22 November and, as he had not done so, the petition was clearly out of time. The objection would therefore be allowed and the petition struck out.

**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)

***East Africa***

*Attorney-General v Olwoch* [1972] EA 392 – **AP**

*Attorney-General v Tinyefuza* Supreme Court constitutional appeal number 1/97

*Serapio Rukundo v Attorney-General* constitutional case number 3/97 – **AP**

***United Kingdom***

*Moharaj v Attorney-General of Trinidad and Tabago No 2* [1978] 2 All ER 670