**Ssemogerere and others v Attorney-General (3)**

**Division:** Supreme Court of Uganda at Mengo

**Date of Judgment:** 29 January 2004

**Case Number:** 1/02

**Before:** Odoki CJ, Oder, Tsekooko, Karokora, Mulenga, Kanyeihamba

JJSC and Byamugisha AJSC

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Constitution – Amendment – Procedure to be followed – Whether Act 13 of 2000 complied with procedure for amending Constitution – Whether Constitution may be amended by implication and infection – Whether Act 13 of 2000 was unconstitutional – Articles 28, 41(1), 44(c), 128(1) (2) (3),*

*137(3), 259 and 262 Constitution of Uganda.*

*[2] Constitutional Court – Jurisdiction – Whether Constitutional Court had jurisdiction to hear petition challenging an Act of Parliament unconstitutional – Article 137(3) Constitution of Uganda.*

**Editor’s Summary**

Paul K Ssemogerere and Zachary Olum petitioned the Constitutional Court seeking a declaration that the Referendum and Other Provisions Act of 1999 was null and void on the ground that parliament had passed it without a quorum. The Constitutional Court dismissed the petition as incompetent and decided that it has no jurisdiction to entertain the petition. The petitioners appealed to the Supreme Court which allowed the appeal and held that the Constitutional Court had jurisdiction to decide whether or not the Referendum and Other Provisions Act was passed in accordance with the provision of the Constitution. The petition was referred back to the Constitutional Court for hearing. The Constitutional Court heard the petition and declared null and void the Referendum and Other Provisions Act which had been passed without the requisite quorum and in disregard of the Constitutional provisions applicable. As a result of that judgment, parliament passed the first amendment to the 1995 constitution (Uganda), namely, the Constitution (Amendment) Act number 13 of 2000. It was introduced in parliament, debated, passed and received presidential assent. The three appellants, Messrs Paul Ssemogerere, Zachary Olum and Juliet Rainer Kafire filed a constitutional petition against the Attorney-General challenging *inter alia*, the constitutionality of the Constitution (Amendment) Act number 13 of 2000. The Constitutional Court declared by a majority that it had no jurisdiction to interpret one provision of the Constitution against another or others. It decided that it could only hear one ground which it framed, namely, whether Act 13 of 2000 was passed in compliance with the procedural requirements for the amendment of the Constitution. The Constitutional Court dismissed the petition and held that Act 13 of 2000 had properly amended articles 88, 89, 90, 97 and 257 which were specifically enumerated in the long title to the amending bill. The Court further held that the Act had not amended any other articles of the Constitution. The appellants appealed against the majority decision of the Constitutional Court.

**Held** – The Constitutional Court was under a duty to make a declaration. In denying that it had jurisdiction to make a declaration, the learned majority Justices of the Constitutional Court had abdicated the function of the Court and their decision was made *per incuriam*. *Attorney-General v Tinyefuza* constitutional appeal number 1 of 1997; *Ssemogerere and another v Attorney-General* [2000] LLR 5 (SCU) followed. *Rwanyarare and another v Attorney-General* [1999] LLR 43 (CAU); *Uganda Law Society and another v Attorney-General* [2001] 1 EA 301 overruled. In amending article 88, 89, 90 and 97 of the Constitution, parliament failed to comply with the provisions of the Constitution in that the bill effecting their amendment should have been accompanied by a certification by the speaker of parliament indicating that the bill had complied with the provisions before the presidential assent. The Constitution (Amendment) Act 13 of 2000 was unconstitutional and should be struck out as null and void. Appeal allowed.

**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 Tinyefuza* constitutional appeal number 1 of 1997 – **F**

*Chapaa and others v Attorney-General* constitutional petition number 6 of 2000 (UR) – **D**

*Dodhi v National and Gridlays bank Ltd* [1970] EA 195 – **C**

*Kiriri Cotton Company Limited v Ranchoddas Kesharji Dewani* [1958] EA 239 – **C**

*Opolo v Attorney-General* [1969] EA 631 – **C**

*Rwanyarare and another v Attorney-General* [1999] LLR 43 (CAU) – **O**

*Serugo v Kampala City Council and another* constitutional appeal number 2 of 1998 (SC) (UR) – **C**

*Sowabiri and another v Uganda* (SSC) criminal appeal number 5 of 1990 – **C**

*Ssemogerere and another v Attorney-General* [1999] LLR 1 (CAU) – **F**

*Ssemogerere and another v Attorney-General* [2000] LLR 5 (SCU) – **F**

*Tinyefuza v Attorney-Genera*l constitutional appeal number 1 of 1997 (SC) (UR) – **F**

*Tinyefuza v Attorney-General* constitutional case number 1 of 1996 – **F**

*Uganda Law Society and another v Attorney-General* [2001] 1 EA 301 – **O**

***Canada***

*The Queen v Big M Drug Mart Limited* [1986] LRC 332 – **C**

***India***

*KC Gajapati Narayan Deo v Orissa* [1954] SCRI (53) ASC 375 – **C**

*Kesavananda v State of Kerala* AIR 1654 SC 788 – **C**

*Kesavananda v State of Kerala* AIR 1973 SC 146 – **D**

***Singapore***

*Teo Soh Lung v Minister of Home affairs and others* [1990] LRC – **C**

***South Africa***

*Phato v Attorney-General* [1999] 3 LRC 587 – **C**

***United Kingdom***

*Attorney-General for Alberta v Attorney-General for Canada* [1979] – **C**

*Attorney-General for Ontario v Reciprocal Insurers* [1924] AC 326 – **C**

*Bribery Commissioner v Ranasinghe* [1965] AC 132 – **F**

*House of Lords Practice Statement (Judicial Precedent)* [1966] I WLR 1234 – **C**

*Morgan Pty Limited v Dy Commissioner of Taxation for NSW* [1940] AC 838 – **C**

*Stockadale v Hansard* [1839] 9 Ad and E1 – **C**

*Union Colliery Company of British Columbia v Bryden* [1899] AC 580 – **C**

*Young v Bristol Aeroplane Company Limited* [1944] KB 718 – **C**

***United States***

*Smith Dakota v North Carolina* 192 US 268 [1940] – **C**