



**ISLAMIC UNIVERSITY
IN
UGANDA**

**COMPARATIVE LAW
JOURNAL**

IUIUCLJ

IUIUCLJ. VOL 6, ISSUE 2, 2019

CASE REVIEW
KRISPUS AYENA ODONGO v. ATTORNEY GENERAL OF
UGANDA
(FEBRUARY 2020)

MUKAMA SANYU JAMIL*

Introduction

The thrust of the case: *the role of Court in strengthening the idea of the independence of the Judiciary vis- a- vis the doctrine of separation of powers and checks and balances.*

On the 7th day of February 2020, the Court of Appeal sitting as the constitutional court delivered a land mark decision in constitutional petition number 30 of 2017 filed by former Member of parliament and lawyer Krispus Ayena Odong against the Attorney General and the Parliamentary Commission wherein the said petition was upheld in part as discussed herein below .

Genesis of the Case.

The petitioner Mr Krispus Ayena Odong a member of the Uganda law society and an Advocate filed a constitutional petition brought under articles 50(1), (2) and 137 (2)and. 3 of the Constitution of the Republic of Uganda contending that the rights of judicial officers provided for under the constitution were being violated by being paid at a much lower rate in comparison to other government officials which act was inconsistent with provisions of the Constitution and that parliament failed to enact a law for the administration of judiciary as an independent organ of government equal in stature with the legislature and executive thereby leaving the administration of the judiciary to fall under the public service a failure that is inconsistent with or in contravention of the constitution .He further contended that the subjugation of the judiciary being an independent arm of the state to the budgetary control of the executive in relation to its finances was inconsistent with the constitution and the principle of the independence of the judiciary as postulated under article 128 of the constitution .

ISSUES FOR DETERMINATION

The over aching issue among others for determination in the petition was whether the Ugandan judiciary is constitutionally guaranteed to be financially independent from the executive and legislative arms of government and whether our Ugandan judiciary has

* Lecturer Islamic University in Uganda and Advocate of the High Court of Uganda

financial security free from interference from any of the other two arms of government .

In addition to the above the second important issue for determination was whether the present appropriation practice of funds by the executive and the legislature whereby the judiciary as an arm of the state is dependent on the executive for judicial financial estimates and funding does not indeed violate the constitution and therefore unconstitutional ?

The other two issues were to do with whether there was a cause of action against the parliament commission and whether there was inconsistency with the provisions of the constitution in as far as the petitioner alleged that the salary structure of judicial officers as compared to employees of other organs of government was low.

Determination of the Petition

In consideration of the petition , court dismissed the petition as against the second respondent since the petition never disclosed a cause of action against it and as well held that it did not see how the payment of members of the judiciary was inconsistent with the constitution since the petitioner didn't cite any provision of the constitution that had been infringed on that ground .

However of much relevance court held that the process of subjecting the funding of the judiciary to the appropriation process by presenting the estimates for approval of parliament in an appropriation bill is not the manner envisaged by the constitution and is therefore unconstitutional.

Court further held that it was so primarily because the funding of the judiciary through the appropriation act presented by the executive contravenes articles 154(1), 156 , 128(5),(6) of the constitution and in effect also contravenes articles 128 (1) of the constitution which provides that the courts shall be independent and shall not be subject to the direction or control of any person or authority .

And therefore that as a consequence of the manner of funding of the judiciary through estimates presented to finance and put before parliament by the president for the enactment of an appropriation act for any financial year compromises the independence of the judiciary and subjects the judiciary to control by other arms of state such as the executive. .Court therefore further held that it is clear from article 154 of the constitution that the administrative expenses of the judiciary ought to be charged directly from the consolidated fund and that there is no requirement whatsoever before withdrawal of funds to present the estimates via an appropriation bill for approval of parliament .

And as a consequence there of court made declarations to the effect that the remuneration , salaries , allowances and recurrent expenditures of the judiciary are charged by the constitution on the consolidated fund and do not form part of the estimates to be included in the annual appropriation bills , that the judiciary is only obliged to send its financial estimates of revenue and expenditure to the president for laying before parliament without any review or amendment by the president though it may be accompanied by comments of the president as part of the proposed estimated of government , a declaration that the practice of funding the judiciary through an appropriation act is inconsistent with articles 128(5), (6) and 154(1)a of the constitution and a further declaration that the judiciary may if it chooses present its annual budget for administrative expenses in collaboration with the ministry of finance to parliament for approval in the same manner the parliamentary commission. does without going through an appropriation bill.

GENERAL ANALYSIS

Generally, the decision in a way helps to reinforce the principle of the independence of the judiciary and the general concept of the constitutional doctrine of separation of powers. The declaration by the constitutional court in the aforesaid reviewed decision that the appropriation practice of funds for the judiciary through an appropriation act was inconsistent with provisions of the constitution was timely and much needed since the said out lawed practice undermined the independence of the judiciary and the concept of separation of powers which is meant to ensure independence of each branch of government since the rationale of an independent judiciary is to enable court to freely decide cases without any actual or apparent external influence or dependence upon any persons or institutions whatsoever .

The aforesaid decision as well managed to answer the question of financial security of the judiciary which is a component of judicial independence.

Since judicial independence requires security of tenure and financial security and relatedly financial security has been considered as the central concept of the international concept of judicial independence by different schools of thought.

This decision helps in reshaping the idea of the independence of the judiciary since it guarantees the financial and administrative autonomy of courts and Minimises on the unnecessary interference of the other two arms of government in the funding process of the judiciary and will definitely help in the efficiency of the judiciary.

CONCLUSION

In conclusion however much one is alive to the fact that judicial independence cannot solely be achieved on one facet of financial independence of the judiciary since there are many other factors which influence such independence which were not discussed

in the said decision , with financial independence , courts will be able to exercise their functions more efficiently since the judicial independence of the courts can not be achieved if the court finances are determined by political organs of the executive and the legislature over whom courts should exercise judicial control since ‘who pays the piper controls the tune’ .