



THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO.....0021.....OF 2024
PLINTH CONSULTANCY SERVICES LTD:::::::::::::::::::::::::Petitioner
VERSUS

1. ATTORNEY GENERAL

2. INYATSI CONSTRUCTION LIMITED:::::::::::::::::::::::::RESPONDENTS

PETITION

Under Article 137 (3) (b) of the Constitution of the Republic of Uganda, 1995 (as amended), Rules 2 and 3 of the Constitutional Court (Petitions and References) Rules, S.I No. 91/2005

The humble petition of **Plinth Consultancy Services Limited** of C/O Nexus Solicitors and Advocates, Plot 102, Bukoto Street, Kampala, M/s Meritas Advocates, Plot 37, Nakasero Road, UEDCL Tower, Level 2, P.O. Box 102771, and Kasiko Advocates, Plot 92, William Street, Explorer Suites, Suite 8, P.O. Box 140357, Kampala, M/s Galisonga & Co. Advocates, Box 514, Ntinda Plot 17, Kakungulu Road, Ntinda Minister's Village Kampala, do swear and state that

1. Your humble Petitioner is a company duly incorporated in the Republic of Uganda and is a reputable firm in the business of construction for projects both in the private and public sectors.

2. The 1st Respondent is the Constitutional representative of Government in court proceedings to which the Government is a Party and is sued in that capacity.
3. The 2nd Respondent is a construction company incorporated in the Kingdom of Eswatini (formerly Swaziland) and registered in the Republic of Uganda as a foreign company, with active business interests in the construction sector in Uganda.
4. The Petitioner petitions this Honorable Court to interpret, construe and declare that the acts of the first Respondent writing to the Principle Judge a letter dated September 19, 2024 demanding “**administrative intervention**” of the Principle Judge in respect of a judgement delivered by the High Court of Uganda (Commercial Division) in **Miscellaneous Cause No. 0053 of 2024** wherein the Petitioner and the 2nd Respondent were parties, contravenes **article 128 (1) (2) (4)** of the Constitution of the Republic of Uganda, 1995 on independence of the judiciary.
5. The Petitioner petitions this Honorable Court to interpret, construe and declare that the act of the Principle Judge in a letter dated **September 24, 2024** re-allocating the case file in the matter between the Petitioner and the 2nd Respondent and “all applications arising therefrom” to Lady Justice Rubagumya Tumusiime Patience Emily of the High Court (Commercial Division) after transferring the first trial judge in the matter, Lady Justice Harriet

Grace Magala to the High Court circuit in Arua district following a demand for **administrative action** by the first Respondent, infringes on the Petitioner's right to a fair hearing and runs afoul of **article 28(1)** of the Constitution of the Republic of Uganda, 1995 and amounts to interference with the independence of the judiciary, in contravention of **article 128(1) (2) (4)** of the Constitution.

6. The Petitioner further avers that the act of the first Respondent, acting through his subordinate the Deputy Solicitor General (as he then was), **demanding administrative intervention** of the Principle Judge in respect of a judgement delivered by the High Court and applications arising therefrom, and the Principle Judge's transfer of the Judge from the Commercial Division of the High Court to Arua, following a complaint from the first Respondent and thereafter the Principle Judge re-allocating the case file to a different Judge of the High Court with instructions on how to proceed in the matter, is in contravention of **article 128(4)** of the Constitution and infringes on the Petitioner's right to a fair hearing under **article 28 (1)** of the Constitution.
7. The Petitioner further avers that whereas under **section 20 of the Judicature Act** the Principal Judge is vested with powers to determine the distribution of business before the High Court among the judges and may assign any judicial duty to any judge, the same must be exercised in accordance with the constitution and laws of Uganda, and that the impugned acts of the Principle Judge acting under the whims of the first Respondent,

whose private law firm represents the 2nd Respondent in on-going arbitration at the International Chamber of Commerce (ICC) and separate proceedings in the High Court of Uganda brought under the Arbitration and Conciliation Act, contravenes the Petitioner's Right to a fair hearing under **Article 28** of the Constitution and interferes with judicial independence contrary to **article 128** of the Constitution of Uganda.

8. The Petitioner avers that the act of the first Respondent, who remains a partner at **K&K Advocates (formerly Kiwanuka & Karugire Advocates)** demanding **administrative intervention** of the Principle Judge who immediately transferred the first trial judge on the case file and re-allocated the file to another judge, in a matter where the 2nd Respondent's Counsel on record is the same law firm of the first Respondent amounts to manifest interference with and erosion of the independence of the judiciary contrary to **article 128 (1)** and infringes on the Petitioner's right to a fair hearing contrary to **article 28(1)** in terms of the on-going High Court proceedings between the first and 2nd Respondents against the Petitioner.
9. The Petitioner further avers that the act of the first Respondent filing **Miscellaneous Application No. 1921 of 2024** (arising from High Court **Miscellaneous Cause No. 0053 of 2024**) and the 2nd Respondent filing **Miscellaneous Application 1878 of 2024** (arising from **Miscellaneous Cause No. 0053 of 2024**) wherein the net effect and outcome of both applications is to either set aside, vary and or review a judgement of the High Court, the same remedies that arise out of or grantable in Appeals, in respect of an arbitration matter wherein

no right of appeal accrues to the Petitioners and Court's intervention is limited to the instances set out in the enabling law on arbitration is unconstitutional in terms of **article 138 (1) (4)** of the Constitution of Uganda on the binding nature of Supreme Court decisions on questions of law on the subordinate courts.

10. The Principle Judge has made it a tendency of unilaterally acting on purported complaints, to direct Judges and other judicial officers on how to handle matters pending before them, a case in point being **John IMANIRAGUHA v. URA HC (Commercial Division) Misc. APPLN 2770 of 2023**, or out rightly withdrawing files from Hon. Judges of the High court and summarily transferring them to far flung Circuits, and the Petitioner further avers and contends that that impugned conduct of the Principle Judge contravenes **Art. 126 and 128** of the Constitution
11. The Petitioner further avers that the Respondents in patently using the applications as a backdoor appeal are attempting to undermine the jurisdiction of the Supreme Court of Uganda on **questions of law** wherein the Supreme Court has pronounced itself on the legal position that there lies no right of appeal in respect of High Court decisions arising from arbitral proceedings and even the High Court's intervention is limited to the instances spelt out in the Arbitration and Conciliation Act, and therefore the impugned syndicated acts of the first and 2nd Respondents of disguised and backdoor appeals of High Court decisions through prayers for variation, review and setting aside a High Court judgement in respect of arbitral proceedings

contravenes **article 138 (1) (4)** of the Constitution of Uganda.

WHEREFORE your humble Petitioner prays that this Honorable Court be pleased to allow this petition and grant the following orders for redress:

- (a) A declaration that the act of the first Respondent **demanding “administrative intervention”** of the 2nd Respondent in respect of a judgement delivered by the High Court of Uganda (Commercial Division) in Miscellaneous Cause No. 0053 of 2024 wherein the Petitioner and the 2nd Respondent were parties, contravenes **articles 28 (1), 128 (1) (2) (4) of the Constitution of the Republic of Uganda, 1995**.
- (b) A declaration that the act of the Principle Judge re-allocating the case file in the matter between the Petitioner and the 2nd Respondent and “all applications arising therefrom” to Lady Justice Rubagumya Tumusiime Patience Emily of the High Court (Commercial Division) after suspiciously transferring the first trial judge in the matter, Lady Justice Harriet Grace Magala to the High Court circuit in Arua district, infringes on the Petitioner's right to a fair hearing and contravenes **article 28(1) of the Constitution of the Republic of Uganda, 1995** as well as **article 128(1) (2) (4) of the Constitution** on judicial independence.
- (c) A declaration that the act of the Principle Judge of withdrawing the case file from the Trial Judge, Lady Justice Harriet Magala and subsequently transferring her to Arua High Court Circuit undermines the independence of the Judiciary and amounts to

interference with exercise of Judicial functions by a a Judicial officer in Contravention of **Art. 128 (1), (2)** and undermines the effectiveness of Court guaranteed under **Art. 128 (3)**.

- (d) A declaration that the Principle Judge in acting on the basis of the letter of the Solicitor General, without affording the Petitioner a chance to express itself on the same contravenes the Petitioner's right to a fair hearing guaranteed under Article. 28 (1) of the Constitution.
- (e) A declaration that the impugned acts of the Principle Judge acting under the whims of the first Respondent whose private law firm represents the 2nd Respondent in on-going arbitration at the International Chamber of Commerce (ICC) and separate proceedings in the High Court of Uganda brought under the Arbitration and Conciliation Act, between the Petitioner and the 2nd Respondent contravene **article 28 of the Constitution** and **article 128 of the Constitution of Uganda**.
- (f) A declaration that the act of the first Respondent filing **Miscellaneous Application No. 1921 of 2024 (arising from High Court Miscellaneous Cause No. 0053 of 2024)** and the 2nd Respondent filing **Miscellaneous Application 1878 of 2024 (arising from Miscellaneous Cause No. 0053 of 2024)** wherein the net effect and outcome of both applications is to set aside, vary and review a judgement of the High Court in respect of an arbitration matter wherein no right of appeal accrues to the Petitioners and even the High Court's intervention is restricted by Supreme Court decisions, contravenes **article 138 (1) (4) of the Constitution of Uganda** on the jurisdiction of the Supreme Court of Uganda **on questions of law**.

- (g) A declaration that the on-going proceedings in the High Court of Uganda (Commercial Division) between the first and 2nd Respondents against the Petitioner are manifestly unconstitutional in so far as they are founded on the erosion of judicial independence contrary to **article 128 of the Constitution** in light of the glaring intermeddling in the exercise of power and functions case file by the first and 2nd Respondents.
- (h) A declaration that the on-going proceedings in the High Court of Uganda (Commercial Division) between the first and 2nd Respondents against the Petitioner are manifestly unconstitutional in so far as they undermine the Petitioner's right to a fair hearing contrary to **article 28 of the Constitution**.
- (i) A permanent injunction stopping hearing applications seeking to review or revise the judgement in High Court (Commercial Division) Misc. Cause No. 53 of 2024 Plinth Consultancy Services Ltd v Inyatsi Construction Ltd and 2 others.
- (j) Any other orders that this Honorable Court may, in its wisdom, deem fit and proper.
- (k) Costs of this petition be awarded to the Petitioner.

Dated at Kampala this ... ^{25th} ... day of ... ^{October} ... 2024.



.....
Petitioner

To be served on:

The Attorney General of the Republic of Uganda,

Attorney General's Chambers,
Ministry of Justice and Constitutional Affairs,
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Inyatsi Construction Limited

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THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 21 OF 2024
PLINTH CONSULTANCY SERVICES LTD:::Petitioner
VERSUS

- 1. ATTORNEY GENERAL**
- 2. cINYATSI CONSTRUCTION LIMITED:::RESPONDENTS**

AFFIDAVIT IN SUPPORT OF THE PETITION

I, IBM JOSEPH MUGULUMA MBAZZI of C/O Nexus Solicitors and Advocates, Plot 102, Bukoto Street, Kampala, M/s Meritas Advocates, Plot 37, Nakasero Road, UEDCL Tower, Level 2, P.O. Box 102771, and Kasiko Advocates, Plot 92, William Street, Explorer Suites, Suite 8, P.O. Box 140357, Galisonga & Co. Advocates, Box 514, Ntinda Plot 17, Kakungulu Road, Ntinda Minister's Village Kampala, do swear and state that:

- 1.** I am a male adult Ugandan of sound mind, the Director of the Petitioner well conversant with the facts pertaining to this constitutional petition and I depone to these presents in that capacity.
- 2.** The 2nd Respondent was awarded a contract by the Government of the Republic of Uganda represented by Ministry of Water and Environment (hereinafter referred to as the "Employer") for the construction works for the Kabuyanda Earth Dam in Isingiro District worth **Uganda Shillings Eighty-four billion**.
- 3.** On 4th May 2023, the 2nd Respondent executed a sub-contract agreement with the Petitioner wherein the

Petitioner agreed to execute and complete the sub-contract works set out in the said Sub-contract agreement forming part of the works comprised in and to be executed in accordance with the Principal Contract and any authorized variations of the Sub-Contract works. **(A copy of the Sub-contract agreement is attached hereto and marked "A")**.

4. By a letter dated 11th May 2023, the 2nd Respondent accepted the Petitioner's bid offer for execution of the Sub-contract works at the subcontract sum of **UGX 60,539,216,525.48 (Uganda Shillings Sixty Billion, Five Hundred Thirty-nine Million, Two Hundred Sixteen Thousand, Five Hundred Twenty-Five Shillings and Forty-Eight Cents)** excluding VAT. **(A copy of the Acceptance letter is hereto attached and marked "B")**.
5. Following the acceptance, a **Notice of Commencement** of the sub-contract works dated 11th May 2023 was duly received by the Petitioner, in which the 2nd Respondent requested the Petitioner to submit the Subcontract program in line with its obligations under the subcontract. **(A copy of the Notice of Commencement of works is hereto annexed as "C")**.
6. In accordance with the Notice of Commencement and the subcontract agreement, the Petitioner submitted its guarantees, subcontractor's program of works, and executed the agreed construction works set out in the said subcontract agreement despite the several breaches of the subcontract by the 2nd Respondent. The Petitioner notified the 2nd Respondent of its grievance with the said breaches in a letter dated 20th October, 2023 and of its intention to refer the matters in contention to mediation for purposes of settling the disputes as provided for under the

sub-contract. **(A copy of the said letter is attached hereto and marked Annexure "D")**

7. In a shocking turn of events, the Petitioner received two letters both dated 30th October, 2023, one of which was a response to the disputes raised in its letter and the other a termination letter for the sub-contract. The termination was purportedly due to the 2nd Respondent's failure to obtain approval for the Petitioner as a subcontractor on the project from the Employer and 2nd Respondent directed the Petitioner in the said letter to prepare a final account for the services provided up to the date of termination. **(Copies of the Letter in response to the notice of dispute & termination letter are hereto attached and marked Annexures "E" & "F" respectively).**
8. The Petitioner thereafter handed over auxiliary sites to the 2nd Respondent and submitted its statement of claim (final Account) and Consequential claims for the unfair and unlawful termination of the sub-contract in the total sum of **UGX 19,112,882,277.90 (Uganda Shillings Nineteen Billion, One Hundred Twelve Million, Eight Hundred Eighty Two Thousand, Two Hundred Seventy-seven Shillings and Ninety Cents)** which was disputed by the 2nd Respondent. **(Copies of the letter of the Final Account and the 1st Respondent's reply are hereto attached and marked Annexures "G" & "H").**
9. Consequently, a dispute arose on the quantum of the Petitioner's final Account and the Petitioner made several attempts to have the matter resolved first through amicable settlement and then through mediation all of which failed. **(Attached hereto is a copy of the mediation report marked "I").**

10. The Petitioner initiated arbitration proceedings at the Centre for Arbitration and Dispute Resolution (CADER) by issuing a Notice of Arbitration to the 2nd Respondent upon which the 2nd Respondent responded to the same proposing that the matter be referred to the International Chamber of Commerce (ICC) for arbitration in accordance with the terms of the subcontract. **(Copies of the said letters are attached hereto and marked "J" & "K").**
11. Accordingly, the Petitioner has commenced arbitration by lodging a Request for Arbitration at the International Chamber of Commerce (ICC), the forum proposed and preferred by the 2nd Respondent and the arbitration is on-going. **(Copies of the Request for Arbitration and proof of receipt of the same are attached hereto and marked "L" and "M").**
12. The 2nd Respondent being a foreign company with no known or verifiable assets and permanent physical presence or address in Uganda, the Petitioner applied to the High Court for Interim Measures of Protection pending the hearing and final determination of the arbitral proceedings between the Petitioner and the 2nd Respondent.
13. Consequently, the High Court of Uganda (Commercial Division) delivered a judgement on August 30, 2024 wherein it issued several interim measures of protection against the 2nd Respondent as well as Absa Bank Uganda Limited and the first Respondent (as a nominal 2nd parties). **A copy of the High Court judgement is attached and marked "N").**
14. The status of the Kabuyanda Earth Dam project as at the time of filing this petition is such that the contractor (2nd

Respondent) has since terminated the contract with Government of Uganda and demobilized from the construction site over default on payment obligations by the Ministry of Water and Environment and gone ahead to claim over **Uganda Shillings Thirty Six Billion** from the Government in claims and damages. (**Copies of the 2nd Respondent's Termination Letter and Final Account and Termination Costs Statement are attached and marked "O1, O2"**).

15. Further more on the current status of the project, the Ministry of Water and Environment objected to the 2nd Respondent's termination of the contract and proceeded on its part to also terminate the same contract and the World Bank, which is the project funder, has since advised the Government to consider procuring another contractor to complete the construction works. (**Copies of the Ministry of Water and Environment's Notice of Termination, Termination letter, Deputy Attorney General's letter on the termination and the World Bank advisory letter on the termination are attached and separately marked P1, P2, P3 and P4 respectively**).
16. Shortly after the above-mentioned judgement was delivered, the Principle Judge transferred with immediate effect, the trial judge who heard and disposed of the matter in **High Court (Commercial Division) Miscellaneous Cause No. 0053 of 2024** and the case file for applications arising from the High Court's said judgement were re-allocated to Lady Justice Rubagumya Patience Emily in what appeared a normal exercise of administrative duties by the Principal Judge until the Petitioner learnt that there was a syndicated plot between the first and 2nd Respondents on the one hand and the 2nd Respondent on

the other to undermine the right to a fair hearing in the matter.

17. In quick succession of events, the first Respondent filed **High Court (Commercial Division) Miscellaneous Application No. 1921 of 2024 (arising from High Court Miscellaneous Cause No. 0053 of 2024)** and the 2nd Respondent filed **Miscellaneous Application 1878 of 2024 (arising from Miscellaneous Cause No. 0053 of 2024)**, both of which are seeking to vary, set aside and review the High Court judgement wherein the Petitioner was the victorious party. ***(Copies of the first Respondent's application with the affidavit in support of the application and the Petitioner's own affidavit in reply of the said affidavit are attached and marked "Q1, Q2" and copies of the 2nd Respondent's application alongside the affidavit in support of the application and the Petitioner's affidavit in reply to the same are attached and marked (R1, R2").***

18. I have since been advised by the stated Legal Counsel of the Petitioner whose advice I believe to be true, that these two applications by the first and 2nd Respondents are mischievous backdoor and disguised appeals by the first and 2nd Respondents whose purpose is to achieve what they would ordinarily have achieved in the Court of Appeal and that this is unconstitutional as it seeks to oust the constitutional jurisdiction of the Supreme Court on questions of law and the binding effect of decisions of the Supreme Court on all subordinate courts.

19. I have also been advised by the stated Legal Counsel of the Petitioner whose advice I believe to be true, that Supreme Court of Uganda's position in several decided

cases is that there is no right of appeal in respect of High Court decisions arising from arbitral proceedings unless the parties had earlier agreed on the right of appeal in their arbitration agreement on questions of law and even the High Court's intervention is restricted to the areas spelt out in the enabling law on arbitration and that the first and 2nd Respondents' acts in ousting the jurisdiction of the Supreme Court on questions of law are unconstitutional.

20. I am further advised by the Petitioner's Legal Counsel that be that as it may, the first and 2nd Respondents' applications to set aside the High Court judgement arising from an application under the Arbitration and Conciliation Act, is unconstitutional as it contravenes **article 132(4) of the Constitution of Uganda** in terms of all other courts being bound to follow the decisions of the Supreme Court on questions of law.

21. After instructing the Petitioner's Legal Counsel to file replies to the first and 2nd Respondent's applications in the High Court (Commercial Division), I was shocked to obtain documentary evidence that the first Respondent, through his subordinate, the Deputy Solicitor General, had written a letter to the 2nd Respondent demanding that he takes administrative action in respect of Lady Justice Harriet Grace Magala's decision in Miscellaneous Cause No. 0053 of 2024 and it now started to make sense that the Judge had been penalized for her decision by a transfer from the Commercial Division of the High Court to Arua High Court circuit to satisfy the first Respondent's concerns with the said Lady Justice's decision. **A copy of the first Respondent's letter is attached and marked 'S' and the 2nd Respondent's letter is marked 'T'.**

22. I have been advised by Legal Counsel of the Petitioner which advice I believe to be true, that the transfer of the said Judge to avoid her hearing and determining the first Respondent's application against the Petitioner following a demand for administrative action by the first Respondent, infringes on the Petitioner's constitutional right to a fair hearing as the re-allocation of the case file by the 2nd Respondent to another Judge without even involving the Head of Division of the Commercial Court, was instigated by and done to serve the interests of the first Respondent and that judicial independence has been grossly interfered with in the said High Court proceedings.
23. The incumbent office holder of the first Respondent remains a founding partner of K&K Advocates (formerly Kiwanuka & Karugire Advocates) since he was appointed Attorney General and the same law firm is the Legal Counsel on record for the second Respondent and that there is manifest conflict of interest since both the first and second Respondents have applied to set aside a High Court judgement and influenced which Judge the case file is re-allocated to, leaving the Petitioner with serious apprehension that its right to a fair hearing has been defiled by the Principal Judge acting under the political influence of the first Respondent whose private law firm represents the second Respondent in the same matter.
24. That I have been advised by Legal Counsel of the Petitioner whose advice I believe to be true that whereas the Principal Judge has power to administer the High Court and distribute court business to different Judges of the High Court, the same power must be exercised in accordance with the Constitution and the Laws of Uganda and in a manner which does not compromise the right to fair

hearing, Independence of the Judiciary and do not interfere with the court or judicial officers in the exercise of their judicial functions but that in the instant case the conduct of the Principal Judge infringes the Petitioner's Right to a fair hearing, compromises the independence of the Judiciary and amounts to interference with court and a judicial officer in the exercise of judicial functions.

25. That I have been advised by Legal Counsel of the Petitioner whose advice I believe to be true that the actions of the Principal Judge stated herein of re-allocation of the case file after transferring the first trial Judge following a **demand for administrative action** by the first Respondent whose law firm represents the second Representative interfere with the independence of the Judiciary and interferes with courts or Judicial Officer in the exercise of their Judicial functions and goes against the principle that justice must not only be done but also be seen to be done and infringes on the Petitioner's constitutional right to a fair hearing.

26. On October 18, 2024, the Petitioner's legal team formally raised objection to the first Respondent's actions and implored the 2nd Respondent to ensure that the Petitioner's right to a fair hearing is not undermined and thereafter this petition was filed. **(A copy of the letter is attached and marked "U")**.

27. The Petitioner is particularly apprehensive that the actions of the first and 2nd Respondents in the prevailing circumstances where there is manifest conflict of interest in terms of the first Respondent representing Government of Uganda in an application against the Petitioner and his own private law firm representing the 2nd Respondent in a similar application against the same Petitioner before the

same court and the first Respondent **demanding administrative action** from the 2nd Respondent against a High Court judgement leading to the re-allocation of the case file to the trial judge and transfer of the first trial judge, jeopardizes the Petitioner's constitutional right to a fair hearing.

28. That I am aware that the Principle Judge has made it a tendency of unilaterally acting on purported complaints, to direct Judges and other judicial officers on how to handle matters pending before them, a case in point being **John IMANIRAGUHA v. URA HC (Commercial Division) Misc. APPLN 2770 of 2023**, or out rightly withdrawing files from Hon. Judges of the High court and summarily transferring them to far flung Circuits (**A copy of the Ruling in John IMANIRAGUHA v. URA HC (Commercial Division) Misc. APPLN 2770 of 2023 is attached and marked V**)

29. It is just and fair and also in the greater public interest of upholding constitutionalism, rule of law, commercial justice, maintaining certainty and trust by the business community in Uganda's arbitration law landscape and the commercial justice system at large, that this petition is allowed.

30. Whatever is stated herein-above is true and correct to the best of my knowledge and belief save for the advice and information whose source is therein disclosed.

SWORN at Kampala by the said **IBM JOSEPH MUGULUMA MBAZZI** this...^{25th}...day of...^{October}...**2024**

Dee

DEPONENT

BEFORE ME



Jointly Drawn & Filed By:

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