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Judgment
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1965

IN THE PRIVY COUNCIL No. 56 of 1964

ON APPEAL

FROM THE HIGH COURT OF UGANDA AT KAMPALA

B E T W E E N :

THE KABAKA'S GOVERNMENT and
YOWANA PETERO KABUYE Appellants
(Plaintiffs)

- and -

THE ATTORNEY GENERAL OF UGANDA
and E.R. NORRIS ESQ.,
The Referendum Administrator
Respondents
(Defendants)

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Appellants.

EDWIN COE & CALDER WOODS,
~~7, New Square,~~
61/62 Lincoln's Inn Fields
London, W.C.2.
Solicitors for the Respondents.

IN THE PRIVY COUNCIL No. 56 of 1964

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
Summons to enter Appearance	6th October 1964
Notice of hearing of Judgment	27th October 1964
Letter - Plaintiffs' Counsel to Chief Registrar	1st November 1964
Letter - Chief Registrar to Plaintiffs' Counsel	3rd November 1964
Notice of Motion for Leave to Appeal	4th November 1964
Order granting Conditional Leave to Appeal	11th November 1964
Exhibit "A" - Certificate of Registration of Voter	
Exhibit "B" - Certified Copy of Register of Voters for North Mubende	

IN THE PRIVY COUNCIL No. 56 of 1964

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(Plaintiffs)

- and -

THE ATTORNEY GENERAL OF UGANDA
and E.R. NORRIS ESQ.,
The Referendum Administrator Respondents
(Defendants)

RECORD OF PROCEEDINGS

No. 1

PLAINT

In the High Court of Uganda

No. 1

Plaint.

6th October 1964.

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL CASE NO. 669 OF 1964

1. THE KABAKA'S GOVERNMENT)
2. YOWANA PETERO KABUYE ESQ.) ... PLAINTIFFS.

v e r s u s

1. THE ATTORNEY-GENERAL OF UGANDA.)
2. E.R. NORRIS ESQ. THE REFERENDUM ADMINISTRATOR.) ... DEFENDANTS.

P L A I N T :

1. The First Plaintiff is incorporated by statute under the title of the Kabaka's Government, and sues as the Government of the Kingdom of Buganda. The address for service of the Plaintiffs is care

In the High Court of Uganda

No. 1

Plaint.

6th October 1964 - continued.

of Mr. J.W.R. Kazzora, Advocate, P.O. Box 2588, Kampala.

2. The First Defendant is sued as the representative of the Government of Uganda. The Second Defendant is the Referendum Administrator purportedly appointed under the Referendum Act and is sued in that capacity. Their address for service is care of The Attorney-General's Chambers, Ministry of Justice, P.O. Box 183 Kampala.

3. The First Plaintiff is interested in these proceedings on behalf of large number of Baganda who are in the same position as the Second Plaintiff namely, they are entitled in accordance with Section 44 of the Constitution of Uganda (hereinafter referred to as "Constitution") to vote in the elections for members of the National Assembly for constituencies in the counties of Buyaga and Bugangazzi, but are not entitled to vote in the referendum proposed under the Referendum (Buyaga and Bugangazzi) Act 1964 (hereinafter referred to as the Referendum Act).

4. The Second Plaintiff resides at KYAKANENA VILLAGE, Muluka Sabadu, Gombolola Musale in the County of Buyaga and has resided at that address since the 20th day of April, 1963.

5. The Second Plaintiff is a citizen of Uganda, aged 47 years, and was on the 28th day of November 1961 registered under Section 44 of the Constitution as a Voter in the constituency of KAPEKA which is not in either the county of Buyaga or the county of Bugangazzi.

6. The Second Plaintiff is a person entitled to vote in constituencies established in the counties of Buyaga and Bugangazzi under Section 26 of the Uganda (Independence) Order in Council 1962, but he is not entitled to vote in the referendum under s. 3 of the Referendum Act.

7. The Constitution of Uganda was published as the Schedule to the Uganda (Independence) Order in Council, 1962, S.I. No. 2175. Section 26 of that Order in Council provides:-

(1) In order to ascertain the wishes of the inhabitants of the County of Buyaga and the

County of Bugangazzi as to the territory of Uganda in which each of those counties should be included a referendum shall be held in accordance with the following provisions -

(a) The referendum shall take place on such date, not being earlier than 9th October, 1964, as the National Assembly may, by resolution appoint;

(b) The persons entitled to vote in the referendum in a county shall be the persons entitled to vote in any constituency established in that county under Section 46 of the Constitution of Uganda;

. . . . . .

(d) Subject to the foregoing provisions of this subsection, the referendum shall be organized and conducted in such manner as Parliament may prescribe.

. . . . . .

8. The Constitution of Uganda contains the following provisions:-

Section 1 This Constitution is the supreme law of Uganda and, subject to the provisions of sections 5 and 6 of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

. . . . . .

Section 44 A person who -

(a) has attained the age of twenty-one years;

(b) is a citizen of Uganda; and

(c) has been resident in Uganda for six months immediately preceding the date on which he applies for registration as a voter,

In the High Court of Uganda

No. 1

Plaint.

6th October 1964 - continued.

shall, unless he is disqualified for registration as a voted under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by Parliament, to be registered as a voter for the purposes of elections of elected members of the National Assembly.

. . . . . .

9. On the 11th September 1964 assent was given to the Referendum Act passed by Parliament of Uganda to which the Plaintiffs will refer at the hearing for its full terms and purported effect.

Section 3 of the Referendum Act provides as follows:-

1) The register of voters prepared for each polling division in the County of Buyaga and in the County of Bugangazzi, as the case may be, for the elections in 1962, of elected members of the National Assembly shall be the register of voters for the purposes of this referendum; and accordingly every person whose name is included in that register shall be entitled to cast a vote in that polling division in favour of one or other of the alternatives.

2) For the avoidance of doubts, it is hereby declared that the register of voters referred to in the preceding subsection is the same register as was used for the general election in 1962 for the election of the elected members of the Lukiiko of Buganda.

10. In purported exercise of powers granted by the Referendum Act, the Prime Minister of Uganda made on the 11th September, 1964 the Referendum (Buyaga and Bugangazzi) Regulations, 1964, purporting to make provision for the holding of a referendum and matters connected therewith and on the 9th day of September 1964 the Second Defendant was appointed Referendum Administrator.

11. The Defendants have made all necessary arrangements for a referendum under the Referendum Act and under the said Regulations, and intend to hold such referendum on the 4th November, 1964.

12. On its proper interpretation, s. 26(1)(b) of the Uganda (Independence) Order in Council, 1962 requires that the person entitled to vote in the referendum in the counties of Buyaga and Bugangazzi shall be the persons entitled at the date of the referendum to vote in any constituency established in either county under s.46 of the Constitution of Uganda. Under s.3 of the Referendum Act, the persons entitled to vote in the referendum are not the persons entitled at the date of the referendum to vote in such constituencies, but the persons whose names were included in the register of voters in 1962. The Referendum Act, or alternatively s.3 thereof, constitutes an alteration to section 26 of the Uganda (Independence) Order in Council, 1962. The Kabaka's Government has not consented that the Referendum Act should have effect, and the Referendum Act, or alternatively s.3 thereof, by virtue of s.30(5) of the said Order in Council, has not come into effect.

WHEREFORE THE PLAINTIFFS CLAIM:-

(1) A declaration that the Referendum Act and any Regulations purportedly made thereunder are ineffective:

(2) A declaration that Section 3 of the Referendum Act is ineffective and/or is ultra vires the Constitution:

(3) An injunction to restrain the Defendants and the Government of Uganda by themselves their servants or agents or otherwise from holding a referendum, or making any preparation for the holding of a referendum, or doing any other thing, under the Referendum Act or the Regulations purportedly made thereunder:

(4) A declaration that the Second Plaintiff is a person entitled to vote in a constituency established in the County of Buyaga under Section 46 of the Constitution of Uganda within the meaning of Section 26(1)(b) of the Urganda (Independence) Order in Council, 1962:

(5) Further or other relief in the premises:

In the High Court of Uganda

No. 1

Plaint.

6th October 1964 - continued.

(6) Costs.

DATED at Kampala this 6th day of October, 1964.

JOHN W.R. KAZZORA.

COUNSEL FOR THE PLAINTIFFS.

FILED BY: J.W.R. Kazzora,
Advocate,
P.O. Box 2588,
KAMPALA.

No. 2

Defence

14th October 1964.

No. 2

DEFENCE

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL CASE NO. 669 of 1964

1. THE KABAKA'S GOVERNMENT)
2. YOWANA PETERO KABUYE ESQ.) PLAINTIFFS

1. THE ATTORNEY-GENERAL OF UGANDA)
2. E.R. NORRIS ESQ. THE REFERENDUM ADMINISTRATOR.) DEFENDANTS

D E F E N C E

1. Save that no admission is made as to the right of the first plaintiff to bring this action, paragraph 1 of the plaint is admitted.

2. No admission is made as to anything contained in paragraphs 3, 4 and 5 of the plaint, and no admission is made as to the right of the second plaintiff to bring this action.

3. Save that it is admitted that the second plaintiff is not a person entitled to vote in the

referendum under section 3 of the Referendum Act paragraph 6 of the plaint is denied.

4. As to paragraphs 7, 8 and 9 of the plaint, the Defendants will refer to and will rely on the Uganda (Independence) Order in Council 1962 S.I.No. 2175 of 1962 the Constitution of Uganda and the Referendum Act and Regulations made thereunder for their full terms and effect.

5. As to paragraph 10 of the plaint, it is admitted that the second defendant was duly appointed Referendum Administrator.

6. Paragraph 11 of the plaint is admitted.

7. The Defendants will submit that the Referendum Act and the Regulations made thereunder are and were at all times valid and effective in law and do not make or purport to make any alteration to Section 26 of the said Order in Council and are not in any way inconsistent therewith.

8. The Register of Voters in force at the time the Referendum Act was passed, when the Regulations thereunder were made and when the referendum is appointed to be held, is the Register duly compiled under and in accordance with the National Assembly (Elections) Ordinance 1957 which is the Register which was used for the election of the elected members of the Lukiiko of Buganda at the general election of the Lukiiko held in 1962. Part II of the said Ordinance was a prescription by Parliament as to the time and manner of registration of voters in accordance with Section 44 of the Constitution of Uganda.

9. Save as aforesaid each and every allegation contained in the plaint is denied. It is denied that the Plaintiffs or either of them are entitled to the relief claimed or to any relief.

Dated at Kampala this fourteenth day of October, 1964.

G.L. BINAISA

Counsel for the defendants

Filed by:-

The Attorney General of Uganda,
Kampala.

In the High Court of Uganda

Plaintiffs' Evidence

No.3

Yowana Petero Kabuye.

Examination.

21st October 1964.

PLAINTIFFS' EVIDENCE

No. 3

EVIDENCE OF YOWANA PETERO KABUYE

Yowana Petero Kabuye sworn.

MR. KABUYE: I live at Kyakanena village, gombolola Musala, Buyaga county, muluka Sabbadu. I have lived at that village for 1½ years. I went there on the 20th April, 1963.

Q. Where did you live before the 20th April, 1963.
A. I used to live at Kapeka village in Gombolola Sabaddu, Bulemezi County.

Q. How long did you live at Kapeka? A. I lived there for 21 years.

Q. Why did you move from Kapeka to Kyekanena?
A. The plot I had was too small and it was no longer productive. It was not fertile. I decided to go to Buyaga County.

Q. Were you registered as a voter at Kapeka?
A. Yes, I was.

Q. Have you a document to show that wou were registered as a voter at Kapeka? A. Yes, I have one and I will produce it to the Court.

Q. Please produce it.

My Lords, Your Lordships will see that the document is framed largely in a language which I am afraid I am not familiar with but it could be interpreted.

C.J.: Do you have any objection to this?

MR. BINAISA: My Lords, I have one small point to make in respect of that registration card. The names are different. The name filed on the plaint is Yowana Petro Kabuye and on the registration card it is Yowana Kanyamugole.

C.J.: Are you going to object?

MR. BINAISA: Otherwise I do not object except

that I shall have to question the validity of that.

(Put in and marked Exhibit A)

C.J.: Can you read the document?

JONES J: What does it purport to be?

INTERPRETER: It purports to be a card for registration. It says, "Electoral District of Central Mengo". Next it says, "This document is not to be paid for. Registration of voters 1961". Then it goes on to say, " I have received this document on which a voter makes application in the name of . . . ".

C.J.: I think the best way would be that that document will have to be translated, then we could read it in English. I think the interpreter will be able to do that.

JONES J: You yourself know what is in it?

MR. LE QUESNE: I have some idea of what is in it.

JONES J: Your learned junior is not a Muganda.

MR. LE QUESNE: Unfortunately not.

SHERIDAN J: Is the second plaintiff a Muganda?
A. I am.

SHERIDAN J: I was just wondering. Is that not a Kenya Independence tie?

MR. LE QUESNE: My Lords, I should see the translation of that in due course. All that does appear clear on the face of it is that something happened on the 28th November, 1961, and it has something to do with elections in Kapeka. Now, Mr. Kabuye, after you moved to Kyekanena village, did you apply to be registered as a voter there?
A. Yes, I did.

Q. When did you do so? A. On the 24th September this year.

Q. And what was the result of that application?
A. My application was refused. I was told that

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Examination.

21st October 1964 - continued.

I would not be allowed to vote in that area if I did not register as a voter in that area.

C.J.: Surely he was not going to vote. He applied to be registered. A. With a view to vote. I applied to be registered with a view to vote, because I have had my card.

JONES J: After that you were told that because you were not registered you could not vote? That is the position?

MR. LE QUESNE: Have you tried again to be registered at Kyekanena? A. Yes, I did.

Q. When was that? A. On the 12th of this month.

Q. What was the result that time? A. Again I was refused.

Q. How old are you? A. I am 47 years of age.

Q. Are you a citizen of Uganda? A. Yes, I am.

Cross-Examination.

XXd

MR. BINAISA: Mr. Kabuye, what is your job? A. I am a cultivator.

Q. Have you got any other job besides cultivation? A. I was only that. Only cultivation.

Q. Are you not a junior chief? I put it to you, are you not a Muluka chief in that area? A. No, I am not a Muluka chief in that area. I have just settled in this area.

C.J.: You are not a chief of any kind? A. I have some people who are under me in that village but I am not a Mutongole chief.

C.J.: But are you a chief of any description? A. I am not a chief in any way.

JONES J: How does it come about that these people are under you? What does it mean?

SHERIDAN J: Is he a Mitala chief?

JONES J: Village chief? A. No, I am not a village chief but I live with some people in the village.

JONES J: How would you assume control of those people? A. That is usually the case, when you are in a village there happens to be a leader but I am not officially appointed a chief.

C.J.: You are a natural leader?

MR. BINAISA: I put it to you, Mr. Kabuye, that you served as a gallant soldier in the Army. A. Yes, I am an ex-serviceman.

Q. So, you fought for His Majesty and His Majesty's Forces during the second World War? A. Yes.

Q. I suggest to you, Mr. Kabuye, that you are the servant of H.H. the Kabaka's Government, as a leader of the men under you. A. I am not officially a leader.

Q. But you were a paid servant of H.H. the Kabaka's Government. A. No, I am not paid any salary.

Q. You told this Court that you applied on the 24th of September to be registered, to be put on the register of voters in Buyaga. To whom did you apply? A. I applied to the Government Agent at Kibale Saza H.Q. in Buyaga county.

Q. You remember the person's name? A. No, I cannot remember. I did not ask for his name.

Q. Did you ask his status, his official status? A. Yes, he was the person who was instructing the people how to vote.

Q. Was he a European, an Asian or an African? A. He was a European.

Q. What day of the week was it? A. It was a Thursday, and the 24th September.

Q. When did you first go to see your advocate, your counsel for the purpose of bringing this action? A. Soon after my application had been refused on the 24th I went to see the counsel.

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Cross-Examination.

21st October 1964 - continued.

Q. So you saw your advocate on the 25th of September? A. I don't quite remember the date, but I noted it in my diary.

Q. So you don't remember the date on which you went to give instructions to your advocate to bring this action? A. If I could be allowed to refer to my diary I could remember it.

Q. Were you informed by your advocate, after he had filed this action, that the action had been filed? A. Yes.

Q. When was that? A. I could remember with the help of my diary.

Q. Do you remember when the action itself was filed, the date? A. If I refer to my diary, I can remember it.

Q. Are you aware that this action was filed this month? A. Yes, I am.

Q. Are you aware of the fact that this is a very important constitutional case? A. Yes, I am.

Q. And yet you don't remember the date on which the case was filed? A. I think it was after the first of this month.

Q. The first week or the second week. A. I am sure it was during the first week.

Q. If I were to inform you that the action was filed on the 9th October, could you remember? I mean the 6th of October. After the action had been filed and you had been informed that the action had been filed, what was the purpose of applying to enter on the register? A. I wanted to make doubly sure. It was not the same person I applied to; this was a different person. I wanted to make sure that he also would refuse my application.

Q. So you told this court that on the 12th October, six days after you had filed your action, you applied once again to have your name entered on the register? A. Yes. I wanted to make sure.

Q. Are you aware that during the year 1963 there was a general exodus or entry into Buyaga of Baganda exservicemen? A. I went there as a settler, not an exserviceman.

Q. Are you aware that there was a general exodus or a big entry of large numbers of ex-servicemen into Buyaga? A. I see many settlers there but I cannot differentiate them. I don't know whether they are exservicemen or not.

Q. You told this court, did you not, that you have lived all your life, for 21 years, in Kapeka, Bulemezi? A. Yes, that is correct.

Q. I take it that you had never gone to Buyaga or Bugangazzi before April the 20th, 1963? A. I have been there at first to see the elder.

Q. When were you there to see the elder? A. In February, 1963.

Q. February, 1963, was your first time to go to visit Buyaga and Bugangazzi? A. Long before that I used to do some trading in that area.

Q. You used to trade, so that is another job again. Are you still a trader? A. No, I am not still a trader.

Q. When did you stop trading. A. I ran short of money which I used to trade with.

Q. When? Which year? A. Round about 1960.

Q. So in 1960 you were a trader, until 1960 you were a trader? A. Yes, I used to trade in fish.

Q. Then when did you become a cultivator? A. I became a cultivator in 1963 when I went to Kyakanena.

Q. So you became a cultivator when you went to Buyaga in 1963? A. No, even before that, even when I was a trader, when I used to trade in fish, I used also to cultivate; after cultivation I would go and trade in fish.

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Cross-Examination.

21st October 1964 - continued.

JONES J.: I suppose what he means is he became a cultivator solely when he went to Buyaga and ceased to be a fishmonger.

C.J.: I am sorry, I must say it is very difficult to get the distinction. I am not very familiar with the term. What exactly is meant by a cultivator, when you say you are a cultivator? You are not a farmer, by any chance? A. I could not do this sort of farming in this area. I am an ordinary cultivator who cultivates his plot on a small area.

C.J.: Just around your house? A. I use all my efforts to dig.

Q. I take it that you had a house at Kapeka? Before you went to Buyaga? A. Yes, I had.

Q. What happened to that home? A. I left it to my brothers and my parents who could not work for themselves.

Q. Is it on your own mailo land? A. No, it is not my mailo land. If I had mailo land then I should not have left that place.

Q. It is a kibanja? A. Yes.

Q. But you are still maintaining that kibanja? A. I left it to my brothers and my parents.

Q. Is the kibanja yours? There is a difference between leaving the kibanja in the hands of your brothers while you are still holding the title to the kibanja, and completely giving away the kibanja to one of your brothers. Which of the two? A. No, it is not mine. I gave it over to them.

JONES J.: He handed over the kibanja to his family?

Q. Who is paying the rent? A. I paid the busulo for last year before I went.

Q. Who is going to pay this year? A. Either my brothers or my parents will do it.

Q. Have you had some financial assistance in your new place, at Kyakanena? A. I use my own hands to dig.

Q. You dig by yourself? A. Yes, certainly and I went there for that.

Q. With no financial assistance of any kind from any source? A. I have no financial assistance from anywhere except from my crops which I grow.

Q. And nobody assists you? A. Nobody helps me.

Q. Even these people who are under you, as you say, in the village, do not assist you? A. Well, that is up to us; if we want to make a farming club we can do it. We can do some digging at my place and then the next day at another man's place.

Q. What sort of tenancy have you got in Kyakanena? Are you still a kibanja holder there? A. Yes, I am still a kibanja holder.

Q. You don't own the mailo? A. No, I don't own the mailo. I am just a tenant.

Q. How did you get that kibanja? A. This land was Government land; it was vacant, within Buganda and I went to settle there.

Q. But who gave you the kibanja? A. The village chief, the mutongole chief gave me the kibanja.

Q. What is his name? What is his full name? A. Pio.

Q. Is the chief still there who gave you the kibanja? A. Yes, he is still there.

Q. So you have been settled there for one and a half years and you still don't know the full names of that man who gave you the kibanja? A. His name is Lwebembera.

Q. When you applied on the 12th October to be registered, to whom did you apply? A. I applied to the person who was in charge of instructing the people how to vote.

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Cross-Examination.

21st October 1964 - continued.

Q. Was he a European, an Asian or an African? A. He was an African.

Q. What is his name? A. I don't remember his name. I did not ask him his name. He is a Musoga by tribe.

JONES J.: Did you show him your registration slip for Kapeka which could prove that you were a registered voter in Kapeka? A. Yes, I did. I showed him my slip but he did not accept it. Instead he asked me to go back to Kapeka where I would vote in case of any voting.

SHERIDAN J.: Have you anything in writing showing that your application to vote in Buyaga was refused? A. I have nothing in writing but all the people in Buyaga and Bugangazzi counties were told to attend a meeting.

C.J.: When you were first refused, did you tell your lawyer that? You went and applied to be registered as a voter but you were refused. Did you give that information to your lawyer? A. Yes, I did.

C.J.: Well, I ask you that because it is not mentioned anywhere in your plaint that you applied to be registered and you were refused. Do you know why that was not mentioned in your plaint, because that should be the thing you would complain about to your lawyers? A. Yes, I made that complaint.

C.J.: To your lawyer? A. Yes, I did.

C.J.: Do you know why it was not mentioned in your plaint? A. No, I don't know.

MR. BINAISA: On the second occasion, after you had already filed your action, six days after you had filed your action, you made a second application and yet you were aware that your lawyer had not included in the plaint this complaint of yours. What did you do? A. I did not know what was contained in my plaint.

C.J.: When you went to your lawyer why did you not tell him to write, that perhaps if he

applied on your behalf he might succeed? It might be that they did not like your face or something; why did you not ask your lawyer to write on your behalf to the Registration Officer to have you registered? Did you tell him to do that for you? A. No, I just took my plaint. I could not ask him to write to the Registration Officer there.

MR. BINAISA: Since when did you form the intention of voting in the referendum? A. On hearing that there was going to be a referendum in Buyaga and Bugangadzzi counties, I was interested to know what sort of referendum or what sort of voting it would be because I knew we had finished voting.

Q. Since when did you form the intention of voting in the referendum? A. When the Prime Minister announced that there would be a referendum in these counties, I also decided to vote.

Q. So you are anxious to vote in the referendum? A. I am not anxious to vote in this referendum, in these my counties, unless all the people have agreed that the vote will take place, that the referendum will take place.

C.J.: I did not get that. A. I don't want a referendum in my counties.

Q. So now you want to take part in the referendum by voting?

C.J.: I am sorry, I would like to have what he said before. What did he say, I did not record that. A. I don't want a referendum to take place in my counties unless all the people have agreed.

Q. So even if in your plaint you are asking for a declaration asking this honourable Court to declare that you are entitled to vote, yet you don't want to vote?

MR. LE QUESNE: With respect, that was not what the witness said. He did not wish a referendum; whether it is a referendum he wishes to vote in or not is, I suggest, another question.

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Cross-Examination.

21st October 1964 - continued.

JONES J.: Unless all the people agree to a referendum - they want to control the ....

MR. BINAISA: So you are complaining now that there should be no referendum? A. For my part, I should not like it.

JONES J.: What he is saying is, I do not want a referendum until everybody wants it but as there is going to be one in any case, I want to put my vote.

MR. BINAISA: You do not want a referendum? A. Without instructions from the Kingdom of Buganda I do not like it.

Q. Could we take it that you can hardly do anything until you are instructed by the Buganda Government? A. Yes, I am a subject of this Government and I do according to the wishes of the Government.

Q. Is it right that the Government instructed you to bring this action? A. No. I brought this action on my own because I was refused to register.

C.J.: I am sorry, gentlemen, I would like to indicate that we think that by 11.30 we should have a short break for about 15 to 20 minutes.

MR. BINAISA: So, on that occasion, on the occasion of bringing this action, that was the solitary occasion in which you acted independently? A. We as Baganda seeing that something dangerous might happen to our tribe, have to take action before this particular thing happens.

Q. Lastly, I want to ask Mr. Kabuye, why, if you say that there should be no referendum, this is not pleaded in your plaint, if you are against the referendum as such? A. I did not draft the plaint.

JONES J.: I thought you were going to ask some questions about the registration slip, Mr. Attorney General. You wanted to clarify the position with regard to the slip as you said it did not appear to belong to this man.

MR. BINAISA: Mr. Kabuye, you say on the plaint your names are three names, Yowana Petro Kabuye. A. That is correct.

Q. On this registration slip you are Kabuye, Kanyamugule, Yowana, Petro. A. Yes, during the registration, we used to put our own names and even our father's names.

Q. I just wanted you to explain how that name of Kanyamugule appears in the registration slip.

Re-Xd.

MR. LE QUESNE: Mr. Kabuye, you were asked some questions as to whether you were a chief. Have you ever been invested by H.H. the Kabaka as a chief? A. No.

Q. When you applied to be registered on the 24th September, you told us you applied to the Government Agent at Kibale. A. Yes.

Q. Did you see him by yourself or did you go to a public meeting? A. I just went to a public meeting. We had been called together.

C.J.: I am sorry. Is one right in assuming he did not ask the Government Agent? You put two questions, he answered one.

MR. LE QUESNE: I was about to go further. At the meeting did you yourself speak to the Government Agent? A. When the Government Agent refused all those who had not registered as voters in that area to vote, then I did not speak to him.

Q. Before the Government Agent refused, as you have told us . . .

C.J.: I think we better get this clear. I thought his answer was that many people applied.

MR. LE QUESNE: My Lord, so I understood.

C.J.: And that he did not personally apply.

MR. LE QUESNE: That I was trying to clear up.

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Cross-Examination.

21st October 1964 - continued.

Re-Examination.

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Re-Examination

21st October 1964 - continued.

JONES J: He has said once that he himself had been refused by the Government Agent. You have to clear it up.

MR. LE QUESNE: Certainly. At that meeting, is it right that many people applied to the Government Agent to be registered as voters? A. Yes, there were many people. They also had their registration slips but he refused all these people.

Q. And were you one of the people who applied to the Government Agent? 10

C.J.: No. That is not right. You put it to him indirectly. He has already said that he did not bother to speak to the Government Agent after he had seen that all those who applied were refused to be registered and you are putting it so directly. Would you put it in a different way, please.

MR. LE QUESNE: I understood the witness to say just now that after the Government Agent had refused all those who were not on the list he did not speak to him after that. I was attempting to put it to him . . . 20

C.J.: But do not make it direct. That is a leading question.

MR. LE QUESNE: I am so sorry. Did you speak to the Government Agent at any stage of this meeting? A. I was not able to speak to him because he refused.

Q. Did you show him this document which you have produced today? A. Yes, I did. I did and he said "I do not like these slips. These people did not register in this area". 30

Q. So, is this right that you showed the Government Agent that piece of paper but you did not speak to him?

MR. BINAISA: My Lord, I do object to the second part of the question. It is a leading question.

MR. LE QUESNE: I hoped I was putting to the witness what he was saying.

C.J.: He did not say that. There appears to be a new element saying that he attended a public meeting.

JONES J.: What he did say was "I showed him my slip and he told me to return to Kapeka".

MR. LE QUESNE: Then the witness has just said in effect the same thing. He said he showed the slip to the Agent and the Agent said "I do not like these slips, the people are not registered here" and I understood in answer to the question before that the witness had told Your Lordships that he had not spoken to the Government Agent himself. I am afraid I got into trouble through asking the same question twice.

MR. BINAISA: I should sustain my submission because of the new element. My learned friend is only permitted during re-examination to ask questions on those matters that have come out in cross-examination.

JONES J.: It came out in cross-examination. I asked the question specifically whether the registration slip had been shown to the Government Agent.

MR. BINAISA: But not about the meeting.

C.J.: Meeting is a new element.

JONES J.: Mr. Le Quesne is trying to get under what circumstances was the slip presented to the Government Agent. He may have let himself into a bit of a trap.

MR. LE QUESNE: I understood, My Lords, that the witness had himself said in cross-examination that the occasions on the 24th September and 12th October were occasions of meetings.

C.J.: But he did not say that in evidence in chief, but your re-examination brought that out.

MR. LE QUESNE: I understood that he said that in cross-examination.

In the High Court of Uganda

Plaintiffs' Evidence

No. 3

Yowana Petero Kabuye.

Re-Examination.

21st October 1964 - continued.

C.J.: No, he did not.

MR. LE QUESNE: I am sorry if I introduced any new element. I will not go into it.

C.J.: In any case you have already gone into it. What I may ask, arising from your question, is, how many people altogether were present at this particular meeting? A. There were people from two counties.

C.J.: How many do you estimate? A. I could not tell this honourable Court lies. There were very many people.

C.J.: You went to the meeting of your own accord or were you summoned to come? A. We received a letter from the Saza Chief, he asked us to go, all the people in this area.

SHERIDAN J.: Can I just get down to an earlier answer. He said "I showed him my slip, he said I do not like these slips" and something else. What is it?

JONES J.: "Go back to your own county".

JONES J.: Has this man, as a matter of interest, been taken off the register at Kapeka?

MR. LE QUESNE: Have you done anything to have your name removed from the register of voters at Kapeka? A. There was no purpose in doing that.

C.J.: You should answer the question yes or no. Did you apply to have your name removed from the register at Kapeka? A. No, I did not.

JONES J.: You have no kibanja, you have no interest at all in Kapeka at the present moment? A. I have no interest. I am interested in the new place.

DEFENDANTS' EVIDENCE

No. 4

EVIDENCE OF SAMUEL BYOGA RUTEGA

In the High Court of Uganda

Defendants' Evidence

No. 4

Samuel Byoga Rutega.

Examination.

22nd October 1964.

Witness: Samuel Byoga Rutega - sworn.

Xd

MR. BINAISA: What is your full name? A. Mr. Samuel Byoga Rutega.

Q. Where do you work? A. I work in the Prime Minister's Office.

Q. As what? A. As Secretary to the Electoral Commission.

Q. As what? A. As Secretary of the Uganda Electoral Commission.

Q. What are your duties as such? A. I advise the members of the Electoral Commission on the technical points on Elections Ordinance on which they work and I also record minutes and carry out all the functions that the Chairman might ask me to do.

Q. Do you have anything to do with registers? A. Yes, I keep the registers. I keep the registers of electors and voters, they are under my custody.

Q. Do you know this? Have a look at that. What do you make of that? A. This is the certified copy of the register for North Mubende which is under my custody.

Q. What is North Mubende? A. North Mubende is a constituency which comprises of various counties in Mubende North.

Q. What are those counties? A. They are the counties of Buyaga, the counties of Bugangazzi and a few Gombololas in Buwekula.

Q. What do you call that register - is there any

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Defendants' Evidence

No. 4

Samuel Byoga Rutega.

Examination.

22nd October 1964 - continued.

other register besides that? A. This is the certified copy of the register for this particular constituency.

C.J.: Answer the question. Is there any other besides that; if that is the certified copy, there appears to be some other register. A. This is the register.

C.J.: Why do you call it certified? A. Because what we do, when for instance we have an election, we first of all use the receipts - small booklets forming receipts of 100 pages - and we collect those from various polling divisions and we make out a master sheet of those registers and then we compile the certified copy.

MR. BINAISA: Is there any other register besides that? A. This is the certified register.

C.J.: We take it that is the register. A. That is the register.

C.J.: That is the register compiled by you from a list which has been prepared, it is the official register? A. Yes.

MR. BINAISA: Is that the current register? A. This is the current register.

C.J.: No objection to this going in?

MR. LE QUESNE: No.

C.J.: Let it be admitted and marked 'B'.
(Admitted and marked exhibit 'B')

MR. BINAISA: Was that the register when the National Assembly passed a resolution fixing a date of holding a referendum in the sazas of Bugangazzi and Buyaga? A. Yes.

Q. Was it again the register when the Referendum Act was passed? A. Yes.

Q. Was it the register when the regulations under the Referendum Act were signed by the Prime Minister? A. Yes.

Q. Has the Electoral Commission Ordered a new registration? A. No.

Cross-Examination.

XXd

MR. LE QUESNE: Mr. Rutega, I wonder if you could help me to understand just one thing, please. Before this register, which you have handed in, was compiled, there was I

understand an earlier register compiled in 1960. A. Yes, 1961. It was compiled in 1960 and brought into force in 1961 under General Notice No.99 of 1961.

Q. All the persons included in the 1961 register were automatically transferred to the 1962 register, is that right? A. Yes.

C.J.: The point we wish to have your answer to is this, supposing, say, about six months ago somebody who had changed his residence moved into a new place from where he had been registered before, and his name is on the register; supposing he applied to be registered, what would the Electoral Commission do? A. If it is a general election, Sir, ...

C.J.: There is no general election. I said "six months ago". A. It would be up to the Electoral Commission to decide.

JONES J.: You think it is possible to have the electoral roll amended to expunge a man from one constituency and to put him in in another? A. Under the National Assembly (Elections) Ordinance, section 11 confers all these powers on the Electoral Commission and it would be up to the Electoral Commission to actually decide whether, in fact, they should compile new registers.

C.J.: There is no question of compiling a new register; you are getting mixed up. Compiling a new register would be for the whole country. We are asking you a specific question about a specific issue. If a man moved from one county to another county, and was registered in the county from which he had moved and then, as soon as he moves to the new place, he says "Well, I have decided to stay here and am not going back to where I was before." Can he apply to the Electoral Commission to be registered and be re-registered? A. There is no provision for that.

SHERIDAN J.: Do you know of any case where an election has not been pending, where a man who has moved from one constituency to another has applied to the Electoral Commission, to say "I have ceased to live in that constituency, I am now living here, please change my name on the register"? A. No.

C.J.: You mean that since 1962 not a single case has occurred? A. No, not to my knowledge.

In the High Court of Uganda

No. 5

Judgment

30th October 1964.

No. 5

JUDGMENT

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL CASE No. 669 of 1964

1. THE KABAKA'S GOVERNMENT)
2. YOWANA PETERO KABUYE) ..... PLAINTIFFS

versus

1. THE ATTORNEY GENERAL)
2. MR. E.R. NORRIS, the Referendum Administrator) ..... DEFENDANTS

Before - The Honourable the Chief Justice, Sir Udo Udoma,
The Honourable Mr. Justice Sheridan,
The Honourable Mr. Justice Jeffreys Jones.

J U D G M E N T

In this suit, which, in accordance with the provisions of the Constitution Cases (Procedure) Act, was heard by three Judges of this Court, the plaintiffs' claims against the defendants are as follows:-

1. A declaration that the Referendum Act and any Regulations purportedly made thereunder are ineffective.

2. A declaration that s. 3 of the Referendum Act is ineffective and/or is ultra vires the Constitution.

3. An injunction to restrain the defendants and the Government of Uganda by themselves, their servants or agents or otherwise from holding a referendum, or making any preparation for the holding of a referendum or doing any other things under the Referendum Act or the Regulations purportedly made thereunder.

4. A declaration that the second plaintiff is a person entitled to vote in a constituency established in the County of Buyaga under s.46 of the Constitution of Uganda within the meaning of s.26(1) (b) of the Uganda (Independence) Order in Council, 1962.

We think that for the proper appreciation of the issues involved and contested in this case it is necessary to set out in full in this judgment the pleadings filed by both parties.

In their plaint the plaintiffs pleaded as follows:-

1. The first plaintiff is incorporated by statute under the title of the Kabaka's Government, and sues as the Government of the Kingdom of Buganda. The address for service of the plaintiffs is care of Mr. J.W.R. Kazzora, Advocate, P.O. Box 2588, Kampala.

2. The first defendant is sued as the representative of the Government of Uganda. The second defendant is the Referendum Administrator purportedly appointed under the Referendum Act and is sued in that capacity. Their address for service is care of The Attorney-General's Chambers, Ministry of Justice, P.O. Box 183, Kampala.

3. The first plaintiff is interested in these proceedings on behalf of large number of Baganda who are in the same position as the second plaintiff namely, they are entitled in accordance with s.44 of the Constitution of Uganda (hereinafter referred to as "Constitution") to vote in the elections for members of the National Assembly for constituencies in the Counties of Buyaga and Bugangazzi, but are not entitled to vote in the referendum proposed under the Referendum (Buyaga and Bugangazzi) Act 1964 (hereinafter referred to as the Referendum Act).

4. The second plaintiff resides at Kyakanena Village, Muluka Sabadu, Gombolola Musale in the County of Buyaga and has resided at that address since the 20th day of April, 1963.

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30th October 1964 - continued.

5. The second plaintiff is a citizen of Uganda, aged 47 years, and was on the 28th day of November 1961 registered under Section 44 of the Constitution as a Voter in the constituency of Kapeka which is not in either the County of Buyaga or the County of Bugangazzi.

6. The second plaintiff is a person entitled to vote in constituencies established in the counties of Buyaga and Bugangazzi under s.26 of the Uganda (Independence) Order in Council 1962, but he is not entitled to vote in the referendum under s. 3 of the Referendum Act.

7. The Constitution of Uganda was published as the Schedule to the Uganda (Independence) Order in Council, 1962, S.I. No. 2175. Section 26 of that Order in Council provides:-

(1) In order to ascertain the wishes of the inhabitants of the County of Buyaga and the County of Bugangazzi as to the territory of Uganda in which each of those counties shall be included a referendum shall be held in accordance with the following provisions -

(a) The referendum shall take place on such date, not being earlier than 9th October, 1964, as the National Assembly may, by resolution appoint;

(b) The person entitled to vote in the referendum in a county shall be the person entitled to vote in any constituency established in that county under s.46 of the Constitution of Uganda;

(d) Subject to the foregoing provisions of this subsection, the referendum shall be organised and conducted in such manner as Parliament may prescribe.

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8. The Constitution of Uganda contains the following provisions:

Section 1 This Constitution is the supreme

law of Uganda and, subject to the provisions of sections 5 and 6 of this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Section 44 A person who -

(a) has attained the age of twenty-one years;

(b) is a citizen of Uganda; and

(c) has been resident in Uganda for six months immediately preceding the date on which he applies for registration as a voter,

shall, unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by Parliament, to be registered as a voter for the purposes of elections of elected members of the National Assembly.

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9. On the 11th September 1964 assent was given to the Referendum Act passed by Parliament of Uganda to which the Plaintiffs will refer at the hearing for its full terms and purported effect.

Section 3 of the Referendum Act provides as follows:-

(1) The register of voters prepared for each polling division in the County of Buyaga and in the County of Bugangazzi, as the case may be, for the elections in 1962, of elected members of the National Assembly shall be the Register of voters for the purpose of this referendum; and accordingly every person whose name is included in that register shall be entitled to cast a vote in that polling division in favour of one or other of the alternatives.

(2) For the avoidance of doubts, it is

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hereby declared that the register of voters referred to in the preceding subsection is the same register as was used for the general election in 1962 for the election of the elected members of the Lukiiko of Buganda.

10. In purported exercise of powers granted by the Referendum Act, the Prime Minister of Uganda made on the 11th September, 1964 the Referendum (Buyaga and Bugangazzi) Regulations, 1964, purporting to make provision for the holding of a referendum and matters connected therewith, and on the 9th day of September 1964 the second defendant was appointed the Referendum Administrator.

11. The defendants have made all necessary arrangements for a referendum under the Referendum Act and under the said Regulations, and intend to hold such referendum on the 4th November, 1964.

12. On its proper interpretation, s.26(1)(b) of the Uganda (Independence) Order in Council, 1962 requires that the persons entitled to vote in the referendum in the counties of Buyaga and Bugangazzi shall be the persons entitled at the date of the referendum to vote in any constituency established in either county under s.46 of the Constitution of Uganda.

Under s.3 of the Referendum Act, the persons entitled to vote in the referendum are not the persons entitled at the date of the referendum to vote in such constituencies, but the persons whose names were included in the register of voters in 1962. The Referendum Act, or alternatively s.3 thereof, constitutes an alteration to section 26 of the Uganda (Independence) Order in Council, 1962. The Kabaka's Government has not consented that the Referendum Act should have effect, and the Referendum Act, or alternatively s.3 thereof, by virtue of s.30(5) of the said Order in Council, has not come into effect.

In answer to the averments contained in the plaint set out above the defendants in their written

statement of defence pleaded as hereunder set forth:-

1. Save that no admission is made as to the right of the first plaintiff to bring this action, paragraph 1 of the plaint is admitted.

2. No admission is made as to anything contained in paragraphs 3, 4 and 5 of the plaint, and no admission is made as to the right of the second plaintiff to bring this action.

3. Save that it is admitted that the second plaintiff is not a person entitled to vote in the referendum under s.3 of the Referendum Act paragraph 6 of the plaint is denied.

4. As to paragraphs 7, 8 and 9 of the plaint, the defendants will refer to and will rely on the Uganda (Independence) Order in Council 1962 S.I. No. 2175 of 1962 the Constitution of Uganda and the Referendum Act and Regulations made thereunder for their full terms and effect.

5. As to paragraph 10 of the plaint, it is admitted that the second defendant was duly appointed Referendum Administrator.

6. Paragraph 11 of the plaint is admitted.

7. The defendants will submit that the Referendum Act and the Regulations made thereunder are and were at all times valid and effective in law and do not make or purport to make any alteration to s.26 of the said Order in Council and are not in any way inconsistent therewith.

8. The Register of Voters in force at the time the Referendum Act was passed, when the Regulations thereunder were made and when the referendum is appointed to be held, is the Register duly compiled under and in accordance with the National Assembly (Elections) Ordinance 1957 which is the Register which was used for the election of the elected members of the Lukiiko of Buganda at the general election of the Lukiiko held in 1962. Part II of the said Ordinance was a prescription by Parliament as to the time and manner of registration of voters in accordance with s.44 of the

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Constitution of Uganda.

9. Save as aforesaid each and every allegation contained in the plaint is denied. It is denied that the plaintiffs or either of them are entitled to the relief claimed or to any relief.

It should be noted that on the 22nd October, 1964 in the course of the hearing of this suit the learned Attorney General, Counsel for the defendants, intimated to the Court that he did not propose to question the right of the first plaintiff to bring and pursue this action and that he was abandoning the averments contained in paragraphs 1 and 2 of the statement of defence denying any admission of such right. Consequently no objection was raised by the defendants as to the right of the plaintiffs to institute this action. It was, therefore, unnecessary for the Court to consider that issue. The claims of the plaintiffs were considered on their merits.

The only evidence for the plaintiffs was given by the second plaintiff. For the defence only one witness, Samuel Byoga Rutega (D.W.1), Secretary to the Uganda Electoral Commission, was called. He produced and tendered before the Court the current official Register of Voters for North Mubende, Exhibit B, in which are included the Counties of Buyaga and Bugangazzi.

In his evidence the second plaintiff says that he is a Citizen of Uganda of the age of 47 years. On 28th November, 1961 he was registered as a voter in the constituency of Kapeka, which is not within either the County of Buyaga or the County of Bugangazzi. On 20th April, 1963 he took up residence at Kyakanena Village, Gombolola Musala in the County of Buyaga, where he now still resides.

On 24th September, 1964 he applied to be registered as a voter in a constituency in the County of Buyaga. His application was refused. On 12th October, 1964, that is to say, six days after the plaint in this suit was filed, his application to be registered as a voter was again refused.

Under re-examination by his Counsel, it emerged

that it was at public meetings convened by his own Saza Chief and attended by a large number of people that he, like others there present, was told that because he was not registered in that area he should go back to where he was registered, and when he showed a Government Agent there present his registration slip, Exhibit A, the latter had refused to look at it.

In his address, Mr. Le Quesne, Counsel for the plaintiffs, submitted that the issue in these proceedings stated shortly is whether the Statute known as the Referendum (Buyaga and Bugangazzi) Act No. 24 of 1964 is or is not an effective Statute under s.30(5) of the Uganda (Independence) Order in Council S.I. No. 2175 of 1962. He submitted that the case of the plaintiffs is that the Act is not an effective Statute since it purports to make an alteration to s.26 of the Uganda (Independence) Order in Council S.I. No. 2175 of 1962 without the consent of the Kabaka's Government, that is, contrary to the provisions of s.30(5) of the said Order in Council.

It was contended by Mr. Le Quesne that although s.3(1) and (2) of the Referendum (Buyaga and Bugangazzi) Act No. 24 of 1964 is positive in its form, it carries the negative inference that any person whose name is not included in the Register of Voters for 1962 is not entitled to vote at the referendum in the two counties of Buyaga and Bugangazzi; and that, in order to appreciate the full effect of those provisions, it is necessary to examine the provisions of s.26 of the Uganda (Independence) Order in Council and s.44 of the Uganda Constitution 1962, which deals with the qualification of voters, to which Statutes we must also look for the true meaning of the expression "persons entitled to vote", bearing in mind that the purpose of the referendum to be held is to ascertain the wishes of the inhabitants of the two counties at the time of such referendum.

Mr. Le Quesne submitted further that the expression "persons entitled to vote" under s.26 (1)(b) of the Order in Council must mean "persons possessing the three qualifications of a voter enumerated in s.44(a)(b) and (c) of the Constitution of Uganda at the date of the Referendum", and that registration stipulated for in that section is not

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a qualification but merely a part of the machinery set up for the exercise of the right to vote. Alternatively, it was submitted that the expression "persons entitled to vote" means "persons on the Register of Voters in the constituencies at the date of the Referendum", and that by the provisions of s.3 of the Referendum Act Parliament has limited the persons entitled so to vote to those on the Register of Voters for 1962. That being so, it was contended that Parliament has altered the provisions of s.26 (1) (b) of the Order in Council 1962 without the consent of the Kabaka's Government and therefore the Referendum Act, and, in particular, s.3 thereof has not come into effect.

For the defendants, the learned Attorney General submitted that the Referendum Act, and, in particular, the provisions of s.3 thereof and the Regulations made thereunder were and are valid and effective in law as they do not make nor purport to make any alteration to s.26 of the Order in Council 1962. It was therefore not necessary to seek the consent of the Kabaka's Government in terms of s.30 (5) of the Order in Council 1962.

It was further submitted that Exhibit B is the only available, current Register of Voters as no new register has been prepared by the Electoral Commission since 1962. Exhibit B, it was submitted, is the only Register of Voters compiled by the Electoral Commission pursuant s.11 of the National Assembly (Elections) Ordinance 1957, the constituencies involved having been prescribed by Resolution of Parliament in terms of s.46 of the Constitution of Uganda. It was further contended that by virtue of the provisions of s.11(4) of the National Assembly (Elections) Ordinance 1957 the Register, Exhibit B, being the only Register which was in existence on 9th October, 1962, is the only available effective register for the purpose of an election or bye-election in Uganda; and that under s.26 of the Order in Council the referendum therein provided is tied to and can only be conducted in accordance with the elections law of Uganda.

The expression "persons entitled to vote in the referendum" under s.26(1)(b) of the Uganda (Independence) Order in Council 1962, it was contended, being limited to "persons entitled to vote

in any constituencies established in those Counties under s.46 of the Constitution of Uganda", and the constituencies in Buyaga and Bugangazzi having been established under the National Assembly (Elections) Ordinance 1957, the persons entitled to vote must be those defined by s.2 of the said Ordinance.

Before dealing in detail with the legal submissions made to us, we would like to observe on the facts that the evidence of an individual application by the second plaintiff to be registered as a voter was unsatisfactory and unconvincing, and we think that a true picture emerged in his re-examination when he said that he, with others, attended public meetings and some officials told the people collectively that they would not be allowed to vote at the Referendum because they were not registered there.

It is not without significance that his application to be registered as a voter and the refusal thereof was not pleaded in the plaint filed as one would have expected it to be if that had been the case. It was, however, conceded by Mr. Le Quesne that even if the second plaintiff had applied for such registration he could not have been registered in view of s.9(2) of the National Assembly (Elections) Ordinance No. 20 of 1957 as he was not a person whose name was on the Register of Voters in force on the 1st day of November, 1961.

On a careful consideration of the evidence, we conclude that the second plaintiff has failed to satisfy us that he did at any time apply to any registration officer in charge of the appropriate polling division within which he is living to have his name entered on the Register of Voters for such polling division, and that his application was refused.

It is not disputed that Exhibit B is the only available and current Register of voters for the purpose of elections in the constituencies established in the electoral district known as North Mubende in Buganda in which are included the Counties of Buyaga and Bugangazzi, and we accept the evidence of Samuel Byoga Rutega (D.W.1), Secretary to the Electoral Commission, and find as a fact that Exhibit B is the only available such

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register, and that since it was compiled in 1962, the Electoral Commission has not ordered a new register of voters to be prepared.

As the real issue in this case, as was submitted by Mr. Le Quesne, is whether the Referendum (Buyaga and Bugangazzi) Act No. 24 of 1964 is or is not an effective Statute under s.30(5) of the Uganda (Independence) Order in Council S.I. No. 2175 of 1962, the outcome of this case must of necessity turn on the interpretation of the Constitution.

The legislation to which we have been referred and which has been cited and relied upon by both Counsel, may be summarised as hereunder set forth:-

1. The Uganda (Independence) Order in Council (hereinafter to be referred to as the Order in Council): s.26 (1)(a) (b) and (d) and s.30 (5).

2. The Constitution of Uganda (hereinafter to be referred to as the Constitution): ss. 44 and 46 (1).

3. The National Assembly (Elections) Ordinance No. 20 of 1957 as amended: ss. 2, 9(2) and 11(1) and (4).

4. The Referendum (Buyaga and Bugangazzi) Act No. 24 of 1964 (hereinafter to be referred to as the Referendum Act).

5. Schedule I to the Constitution of Uganda, the Constitution of Buganda, Article 24 (herein; after to be referred to as the Constitution of Buganda).

Under s.26(1)(b) it is provided:-

"In order to ascertain the wishes of the inhabitants of the County of Buyaga and of the County of Bugangazzi as to the territory of Uganda in which each of those Counties should be included a Referendum shall be held in accordance with the following provisions:-

(a) ----------

(b) The persons entitled to vote in the

Referendum in a County shall be the persons entitled to vote in any constituencies established in that County under s.46 of the Constitution of Uganda."

According to Mr. Le Quesne the expression "persons entitled to vote under s.26(1)(b) of the Order in Council must mean persons possessing the three qualifications of a voter enumerated in s.44(a) (b) and (c) of the Constitution, registration being merely a machinery for the exercise of the right to vote; or alternatively the expression must mean persons on the Register of Voters at the date of the Referendum.

The question, therefore, is whether it is sufficient merely for a person to possess the three qualifications enumerated in s.44(a) (b) and (c) of the Constitution to be entitled to vote in the referendum or whether he must also be registered.

The provisions of s.44(a) (b) and (c) of the Constitution are in the following terms:-

"s.44. A person who -

(a) has attained the age of 21 years;

(b) is a citizen of Uganda; and

(c) has been resident in Uganda for six months immediately preceding the date on which he applies for registration as a voter,

shall, unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by Parliament, be registered as a voter for the purposes of elections of elected members of the National Assembly."

Although Mr. Le Quesne, quite rightly we think, took us beyond the provisions of s.26 of the Order in Council by referring us to s.44 of the Constitution and relying thereon for the purpose of ascertaining the true meaning of the expression "the persons entitled to vote in the referendum" he insisted that the provisions for registration

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Judgment

30th October 1964 - continued.

contained in s.44 of the Constitution only related to the machinery for the exercise of the right to vote by those qualified to vote, and was not a qualification; and that the reference in s.26 (1) (b) of the Order in Council to s.46 of the Constitution is concerned only with the delimitation of constituencies. We do not agree that the registration provided for in s.44 of the Constitution does not form part of the qualification of voters prescribed therein. We are of the opinion that registration is part and parcel of the qualifications of a voter. It is a condition precedent to the exercise of the right to vote.

The only persons legally entitled to vote must be registered voters as is provided for in the definition of voters contained in s.2 of the National Assembly (Elections) Ordinance 1957, to which we were referred by the learned Attorney General. In terms of that definition "a voter means a person qualified to be registered as a voter at an election who is so registered and at the time of an election is not disqualified from voting".

It is to be noted that even if a person possesses the qualifications of a voter enumerated in s.44 of the Constitution he can still be disqualified for registration as a voter under any law. An example of such disqualification by law may be found in the provisions of s.10 of the National Assembly (Elections) Ordinance 1957; but we think that the provisions of s.44 are wide enough to cover the limitation prescribed by Parliament contained in s.3(1) of the Referendum Act 1964.

It is our view that it is not permissible to adopt only parts of ss. 44 and 46 of the Constitution and to reject the remainder. Section 44 of the Constitution in particular must be construed as a whole as it deals with the qualifications of a person entitled to be registered as a voter.

Section 46 authorises Uganda to be divided into constituencies in such a manner as the Electoral Commission may prescribe. The Electoral Commission owes its existence to s.45 of the Constitution and derives some of its powers from the National Assembly (Elections) Ordinance 1957.

We think that s.26 (1)(b) and (d) of the Order in Council must be read together and that it was intended that Parliament should have recourse to the electoral law in determining the persons entitled to vote in the referendum. Under s.26 (1) (d) Parliament is expressly empowered to prescribe the manner in which the referendum is to be organised and conducted.

When pressed by the Court for an alternative to adopting the 1962 Register, Exhibit B, Mr. Le Quesne submitted that in order properly to carry out the intentions of s.26 (1)(b) of the Order in Council a special Register of Voters ought to have been prepared for the referendum, because, he contended, the only available current Register, Exhibit B, is one which could not be used consistently with the provisions of s.26 (1)(b) of the Order in Council since the same was compiled in 1962. With that submission we do not agree, because to prepare a special register for the two Counties only for the sale purpose of the referendum would be tantamount to preparing a special register for, in the language of the learned Attorney General 'a miniature General Election for the two Counties only'. We do not think that was the intention of s.26 (1)(b) of the Order in Council.

On a careful consideration of all the circumstances in this case, we think that it was both reasonable and competent for Parliament, in the exercise of its powers under s.26(1)(b) of the Order in Council, to have prescribed under s.3(1) of the Referendum Act 1964 the Register, Exhibit B, as the Register of Voters for the purpose of the referendum.

The provisions of s.3(1) and (2) are as follows:-

3. (1) The register of voters prepared for each polling division in the county of Buyaga and in the county of Bugangazzi, as the case may be, for the elections in 1962, of elected members of the National Assembly shall be the register of voters for the purposes of this referendum; and accordingly every person whose name is included in that register shall be entitled to cast a vote in that polling division in favour of one or other of the alternatives.

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No. 5

Judgment

30th October 1964 - continued.

(2) For the avoidance of doubts, it is hereby declared that the register of voters referred to in the preceding subsection is the same register as was used for the general election in 1962 for the election of the elected members of the Lukiiko of Buganda.

On our finding, it is clear that the register, Exhibit B, is the register of voters prescribed under s.3 (1) and (2) of the Referendum Act 1964 set out above. We are satisfied that it is the only available, current register of the persons entitled to vote in the constituencies established in the Counties of Buyaga and Bugangazzi pursuant to s.46 of the Constitution.

We appreciate that the Register, Exhibit B, has not been revised, altered or replaced since 1962. No new registration, we find, has been ordered by the Electoral Commission. But it is provided in s.11 (4) of the National Assembly (Elections) Ordinance 1957 that the Register of Voters in existence on 9th October, 1962 shall continue to have effect until altered or replaced under the Ordinance. We think that, even if a special register had been compiled for the sole purpose of the referendum, there would still have been a gap of at least two or three months while it was being prepared before the holding of the referendum, and that would have necessitated the exclusion of some of the inhabitants of the two Counties whose wishes are to be ascertained.

It may well be that persons whose names were on the Register of Voters on 1st November, 1961 and who had not been inhabitants of the two Counties but were prepared to give up their residences in constituencies outside the Counties, could have applied and been registered under s.9 (2) of the National Assembly (Elections) Ordinance 1957 and would have been entitled to vote in the referendum, but as on his own admission, the second plaintiff was not on the Register of Voters on 1st November, 1961, we consider it unnecessary for the purpose of this judgment to enquire into that issue. In the absence of evidence and further argument we refrain from expressing any view on that issue under s.9 (2) of the National Assembly (Elections) Ordinance 1957 and on the

further question whether or not the provisions of s.9 (2) of the Ordinance were or were not temporary provisions, the force of which has now been spent, on which we were invited to express opinion by the learned Attorney General.

On the view we take that the whole of s.44 of the Constitution must be considered in order to determine who is entitled to vote under s.26 (1)(b) of the Order in Council; that the persons legally entitled to vote must be registered voters; and that the Referendum Act and in particular s.3 (1) thereof does not alter s.26 of the Order in Council but follows it, the question of obtaining the consent of the Kabaka's Government under s.30 (5) does not therefore arise. We hold that the Referendum Act and the Regulations made thereunder are of full force, effect and virtue, and are not in any way inconsistent with the provisions of the Constitution of Uganda. The claims of the first and second plaintiffs therefore fail. The declarations and injunctions sought are refused. This suit is dismissed with costs.

(sgd) E. UDO UDOMA

.....
Chief Justice.

(sgd) D.J. SHERIDAN

.....
Judge.

(sgd) D. JEFFREYS JONES

.....
Judge.

30.10.64.

In the High Court of Uganda

No. 6

DECREE

No. 6

Decree

30th October 1964.

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL CASE No. 669 of 1964

1. THE KABAKA'S GOVERNMENT
2. YOWANA PETERO KABUYE
) ..... PLAINTIFFS

versus

1. THE ATTORNEY GENERAL
2. MR. E.R. NORRIS, the Referendum Administrator
) ..... DEFENDANTS

D E C R E E :

THIS SUIT coming on for final disposal before the Honourable the Chief Justice Sir C. Udo Udoma, the Honourable Mr. Justice D.J. Sheridan, the Honourable Mr. D. Jeffreys Jones in the presence of Mr. J.G. Le Quesne, Q.C., and Mr. J.W.R. Kazzora Counsel for the Plaintiffs and Mr. G.L. Binaisa Q.C. and Mr. P. Nkambo-Mugerwa Counsel for the Defendants :

I T I S O R D E R E D AND D E C R E E D that the Referendum Act and the Regulations made thereunder are of full force, effect and virtue and are not in any way inconsistent with the provisions of the Constitution of Uganda.

THAT the claims of the First and the Second Plaintiffs therefore fail.

THAT the declarations and injunctions sought are refused.

A N D I T I S F U R T H E R O R D E R E D that the Plaintiffs shall pay the Defendants costs of the suit.

GIVEN under my hand and the seal of the Court this 30th day of October 1964.

(sgd) P.K. Mpungu.
Deputy Chief Registrar High Court of Uganda

In the High Court of Uganda

No. 7

Order Granting Final Leave To Appeal.

16th December 1964.

No. 7

ORDER GRANTING FINAL LEAVE TO APPEAL

FROM THE HIGH COURT OF UGANDA AT KAMPALA

U G A N D A :

CIVIL CASE NO. 669 OF 1964

B E T W E E N :

1. THE KABAKA'S GOVERNMENT
2. YOWANA PETERO KABUYE

(Plaintiffs) Appellants

A N D

1. THE ATTORNEY GENERAL OF UGANDA
2. E.R. NORRIS ESQ. THE REFERENDUM ADMINISTRATOR

(Defendants) Respondents

Appeal from the judgment/decree and order of the High Court of Uganda holden at Kampala dated the 30th day of October 1964.

O R D E R :

UPON APPLICATION made to this Court by Counsel for the Appellants on the 10th day of December 1964 for final leave to appeal to Her Majesty in Council after conditional leave to appeal having been granted to them on the 11th day of November 1964 as a matter of right by virtue of Section 96(1) of the Constitution of Uganda as read with Rule 3 of the Rules regulating Appeals to Her Majesty in Council which form Schedule to the Appellate Jurisdiction Act 2 of 1962 :

AND UPON HEARING Counsel for the Appellants and Counsel for the Respondents :

AND UPON being satisfied that all the conditions subject to which conditional leave to appeal was granted have been complied with by the Appellants herein :

In the High Court of Uganda

No. 7

Order Granting Final Leave To Appeal.

16th December 1964 - continued.

THIS COURT DOTH ORDER that the Appellants do have final leave to enter and prosecute their appeal to Her Majesty in Council from the judgment and Order of the High Court of UGANDA dated the 30th October 1964 :

AND it is further ordered that the costs of and incidental to this application be costs in the intended appeal.

DATED at Kampala this 16th day of December, One thousand nine hundred sixty four.

SGD. P.K. MPUNGU

FOR CHIEF REGISTRAR,

UGANDA HIGH COURT.

IN THE PRIVY COUNCIL No. 56 of 1964

ON APPEAL

FROM THE HIGH COURT OF UGANDA AT KAMPALA

B E T W E E N :

THE KABAKA'S GOVERNMENT and
YOWANA PETERO KABUYE Appellants
(Plaintiffs)

- and -

THE ATTORNEY GENERAL OF UGANDA
and E.R. NORRIS ESQ.,
The Referendum Administrator
Respondents
(Defendants)

RECORD OF PROCEEDINGS

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London, W.C.2.
Solicitors for the Appellants.

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~~7, New Court~~,
61/62 Lincoln's Inn, ~~Fields~~
London, W.C.2.
Solicitors for the Respondents.