

~~P.C.~~  
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Judgment  
26, 1965

IN THE PRIVY COUNCIL

No. 33 of 1964

ON APPEAL  
FROM THE HIGH COURT OF UGANDA AT KAMPALA

UNIVERSITY OF LONDON  
BUSINESS ADMINISTRATION  
- FEB 1966  
LONDON, W.C.1.

B E T W E E N:

THE KABAKA'S GOVERNMENT (Defendant)  
Appellant

- and -

ATTORNEY GENERAL OF UGANDA (Plaintiff)  
Respondent

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C A S E FOR THE APPELLANT

Record

1. This is an appeal by the Defendant-Appellant above-named from the Judgment and Decree of the High Court of Uganda, dated the 4th May, 1964, whereby it declared that the implementation of Schedule 9 to the Constitution of Uganda, should be in accordance with the interpretation of the Schedule contended for by the Plaintiff-Respondent.

pp.17-40

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2. The Kabaka's Government is the Government of Buganda, a Kingdom with Federal status within Uganda. Disputes having arisen between the Kabaka's Government and the Government of Uganda in regard to the true meaning of the said Schedule 9, which governs the financial relationship between the Central Government of Uganda and the Kabaka's Government, the Defendant-Appellant acting on behalf of the Government of Uganda (hereinafter called the Central Government), instituted the action, from which this appeal arises, to obtain a declaration from the High Court as to the proper interpretation and implementation of the said Schedule.

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Record

3. The Uganda (Independence) Order in Council 1962 which came into force on the 9th October, 1962 introduced the Constitution of Independent Uganda and the 9th Schedule was made part of that Constitution by Section 107 which reads as follows:-

"(1) The Government of Uganda shall make payments to the Kabaka's Government in accordance with the provisions of the Agreement set out in Schedule 9 to this constitution.

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(2) The amounts required for making payments under this section shall be a charge on the Consolidated Fund."

Paragraph 1 of the Schedule, which is vital, reads as follows:-

"1. The Delegations of the Central and Kabaka's Governments have agreed that Buganda's financial requirements, in addition to her independent sources of revenue (including graduated tax), and calculated on lines similar to the figures for local authorities block grants, should be provided as follows:-

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(a) fifty per cent. by assignment of certain revenues raised in Buganda (with minimum yield guaranteed) - it is intended that these should be from petrol and diesel duty and the items mentioned in paragraph 3 below; and

(b) fifty per cent. by an annual statutory contribution from general revenue (not to be reduced without consultation with the Kabaka's Government)."

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4. The following historical facts provide the general background to the problem arising on this appeal:

(a) The Kingdom of Buganda was (and still is) the largest and most developed part of Uganda and, prior to independence, its relationship with the British Government was regulated by certain formal Agreements.

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(b) In 1961 when it became clear that the British Government was preparing to grant independence to Uganda, a movement for secession which started in Buganda appeared to be a serious obstacle to the attainment of early Independence for Uganda as a whole.

10 (c) In October 1961 the British Government in Uganda (hereinafter called the Protectorate Government) held talks with the leaders of Buganda as a result of which the Buganda Agreement of October 1961 was concluded. This Agreement, among other things, assured Buganda of her federal status within Uganda.

(d) Soon after the Buganda Agreement was signed, the political leaders of Uganda, including Buganda were invited to a Constitutional Conference, as a result of which the Constitution granting internal self government was introduced by the Uganda Constitution Order in Council of 26th February, 1962.

20 (e) In June 1962 the final Constitutional Conference was held in London by Her Majesty's Government to which delegates, including those of Buganda, were invited. The object of the Conference was to obtain the views of the different parts of Uganda in regard to the Constitution of Independent Uganda.

30 Following on this Conference, the Uganda (Independence) Order in Council 1962 and the Uganda Independence Act 1962 were passed granting Uganda Dominion Status and a new Constitution of which the disputed 9th Schedule forms part.

5. Facts of more immediate relevance are as follows:-

40 (a) At the Constitutional Conference held in London in 1961, the Governor of Uganda presented a paper containing proposals for the financial relations between the Protectorate Government and the Local Administrations including Buganda. These proposals are in Appendix G to the Report of the Uganda Constitutional Conference in London 1961 (Cmd. 1523) and has been produced as Exhibit B at the trial.

(b) The said Appendix G was intended as a

Record

temporary measure until the proposed Economic Commission made their recommendations.

(c) The period 1960/1961 was a period of economic depression following upon an economic boycott operating in Buganda.

(d) The Economic Commission published their report in May 1962 in which Appendix G was generally described as harsh.

(e) Appendix G was put into operation with effect from 1st July 1962. 10

(f) The financial year for all local administrations, including Buganda, was altered from a period of twelve months commencing on the 1st July of each year to a period of twelve months commencing on 1st January of each year. The first financial year under the new arrangement commenced on 1st January 1964 and the period 1st July to the 31st December 1963 was regarded as a special budgetary period.

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p2 15-  
p3 115

6. In the amended plaint of the 16th December, 1963, the Plaintiff-Respondent contended that - 20

"paragraph 1 of the said Schedule means that Buganda's financial requirements in addition to her independent sources of revenue (including graduated tax) are to be calculated for the purposes of the said Schedule in the same way as the block grants made to local authorities, that is to say, in accordance with the following procedure: 30

(1) The total amount of the recurrent grants made by the Government of Uganda to the Kabaka's Government in respect of the financial year ending on the 30th June, 1962, shall be taken as the starting point.

(2) To that amount there shall be added in respect of services transferred from the Government of Uganda to the Kabaka's Government -

(a) where the service is transferred with effect from the beginning of a financial year of the Government of Uganda, the 40

estimated full net cost of the service to the Government of Uganda in the preceding financial year;

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(b) where the service is transferred with effect from a date in the course of a financial year of the Government of Uganda, then -

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(i) for that financial year, the appropriate proportion of the estimated full net cost of the service to the Government of Uganda for the twelve months preceding that date (that is to say, an amount which is in the same proportion to such estimated full net cost as the part of that financial year which follows that date is to the whole year);

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(ii) for succeeding financial years, the estimated full net cost of the service to the Government of Uganda for the twelve months preceding that date.

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(3) From the resulting total there shall be deducted the additional revenue estimated to accrue to the Kabaka's Government in respect of the financial year ending on the 30th June, 1963, as a result of the implementation of the recommendations (or any of them) set out in paragraphs 2 and 6 of Appendix G to the Report of the Uganda Constitutional Conference, 1961, provided that in respect of the period ending on the 30th June 1963 only, there shall be no deduction in respect of the estimated additional revenue accruing to the Kabaka's Government for that financial year from graduated tax levied on non-Africans."

7. The Plaintiff-Respondent further contended that -

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"Once Buganda's financial requirements have been calculated in accordance with the aforesaid procedure, the figure thereby arrived at is not subject to annual re-calculation, except to the extent necessary to give effect to paragraph 4(2)(b) hereof. Subject to any change which

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may be made as a result of the operation of section 20 of the Uganda (Independence) Order in Council, 1962 (which requires the financial arrangements between Uganda and the Federal States to be reviewed by the Government of Uganda in consultation with the Governments of the Federal States not later than the 30th June, 1966). The said figure will continue to be used for the purposes of the said Schedule unless and until it is varied as the result of a review carried out in pursuance of paragraph 2 thereof." 10

8. In relation to paragraph 4 of the said Schedule, the Plaintiff-Respondent contended that -

p3 132-  
p4 13

"(a) the words "further services" mean services which may in the future be made the subject of arrangements under section 79 of the Constitution of Uganda (not being services for the administration of which the Kabaka's Government is responsible by virtue of section 14(1) of the Uganda (Independence) Order in Council, 1962); 20

(b) The amount of the additional sums required for any such service is to be calculated by the procedure described in paragraph 4 (2) hereof or, if some other procedure is prescribed in the arrangement to which the service is subject, by that other procedure".

9. In its Amended Defence, dated the 27th December 1963, the Defendant-Appellant stated that the implementation contended for by the Plaintiff-Respondent was contrary to the true meaning of Schedule 9 and pleaded that - 30

p11 18-  
p12 141

"(a) Under the provisions of paragraph 1 of Schedule 9 to the Constitution of Uganda, Buganda's financial requirements fall to be calculated, wherever possible, on lines similar to the calculation of the financial requirements of local authorities that has to be made for the purpose of determining the block grants payable to them. 40

(b) The calculation of the financial requirements of local authorities referred to in sub-paragraph 9(a) above, fall to be made

not upon the figures of actual cost of services but upon figures and formulae in the nature of figures contemplated in Schedule G to the Report of the Uganda Constitutional Conference, 1961.

10 (c) The procedure for the determination of block grants to local authorities (as distinct from the calculation of their financial requirements) has no relevance to the calculation of Buganda's financial requirements under paragraph 1 of the said Schedule 9.

(d) The calculation of Buganda's financial requirements must, under paragraph 1 of the said Schedule, be made for each financial year in advance and the financial provision to be made by the Government of Uganda based upon such calculation must be determined for each financial year in advance.

20 (e) The annual financial provision to be made by the Government of Uganda under paragraph 1 of the said Schedule once ascertained in accordance with sub paragraphs (a), (b) and (d) of this paragraph, has to be made available to the Kabaka's Government in the form indicated in sub paragraphs (a) and (b) of paragraph 1 of the said Schedule 9, subject however to any review, under the provisions of paragraph 2 of the said Schedule, of the arrangements provided in the sub paragraphs 30 (a) and (b) of paragraph 1.

(f) The provisions for review in paragraph 2 of the said Schedule 9 do not affect the statutory obligation that Buganda's financial requirements shall be calculated for each financial year under the principal part of paragraph 1 of the said Schedule.

40 (g) Buganda's financial requirements, in respect of which financial provision has to be made under paragraph 1 of the said Schedule, include all reasonable financial requirements and are not confined to expenditure on "transferred services" and on other services referred to in paragraph 4 of the Plaintiff.

(h) Paragraph 4 of the said Schedule 9 obliges

Record

the Government of Uganda to make financial provision for expenditure incurred by the Kabaka's Government in respect of any further services, that is to say, any services for which the Kabaka's Government assumes financial responsibility in the course of a financial year after the calculation of the financial provision to be made by the Government of Uganda for that particular financial year has been concluded.

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(i) The said Schedule 9 does not authorise any deduction to be made on account of any revenue accruing to Buganda from her independent sources of revenue (including Graduated Tax).

(j) In regard to paragraph 5 of the said Schedule 9, the Defendant-Appellant pleaded, that non-eligibility to grants as such is a consequence of Buganda getting out of the grant structure for local authorities and entering into the arrangements contained in the said Schedule 9; and nothing in the said paragraph 5 authorises any deduction either in the calculation of Buganda's financial requirements or from the financial provision to be made by the Government of Uganda under paragraph 1 of the said Schedule 9".

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10. In accordance with the provisions of the Constitutional Cases (Procedure) Act 1962, the case was heard by a Bench of three Judges of the High Court (Sir Udo Udoma, C.J. Bennet J., and Slade J.).

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p15 125-  
p16 125

11. At the outset the Court ruled as inadmissible a number of documents which the Plaintiff-Respondent sought to mark in evidence. The rejected documents are mentioned in the Index of Reference to the Record of Proceedings.

12. The Court having considered certain exhibits marked in the case and after hearing counsel for the parties gave judgment on the 4th May 1964 substantially holding that the implementation of Schedule 9 contended for by the Plaintiff-Respondent is in accordance with the true meaning of the Schedule and that the Plaintiff-Respondent was entitled to a declaration accordingly and to costs of the action.

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13. Their Lordships' reasons for their decision on the interpretation of Schedule 9 may be summarised as follows -

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(a) Their Lordships began by an examination of the financial relations between the Protectorate Government and the subordinate Governments up to and including the year 1961 and concluded that -

p25 1125-  
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"Broadly, it may be said that the Protectorate Government had therefore complete control over the revenues and expenditure of all subordinate Governments and administrations. The Buganda Government, no less than the other governments, was subject to that control."

(b) Their Lordships, having examined the facts and events of the period of internal independence particularly of the financial year commencing on the 1st July 1962, made this observation:

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p27 140

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"From the examination of these matters we conclude, and it is not, as we see it, in dispute, that the block grant system was applied in its entirety to the defendant from the time of its introduction. Having considered the manner in which, first, the Protectorate Government provided financial assistance to the defendant prior to internal self-government under the March Constitution, how control over the defendant's revenues and expenditure was maintained, and the method by which, after the March Constitution came into operation, financial assistance was to be provided until further arrangements were made, and having observed that at that period of time the defendant was, in effect, in no different position from the point of view of financial dependence, from the other Kingdoms and districts of Uganda, we are able to turn to the consideration of the position arising under the Independence Constitution, including the Schedule."

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(c) Their Lordships after examining the provisions of section 107, (which introduces Schedule 9 Section 109), section 108, (which regulates the financial relations between the

p27 141-  
p29 116

Record Central Government and the Federal States other than Buganda) and Section 19 of the Uganda (Independence) Order in Council, which provides for the financial contribution to be made to Buganda, for the period from the 1st October 1962 to the 30th June 1963, observed:

- p29 1117-  
26 "The principal distinction as we see it, is that while in respect of the other Federal States the Uganda Government retains some control over the amount of the contribution to be made towards the cost of services administered by the Governments of those States and may through Parliament prescribe terms and conditions subject to which payment of such contribution shall be made, no such control exists in respect of, and no such terms and conditions may be prescribed for, Buganda". 10
- (d) Adverting to Schedule 9, their Lordships then observed that the language of paragraph 1 of Schedule 9, was capable of three possible meanings and then said that - 20
- p29 1134-  
42 "It is clear, as we said earlier, that there are at least three widely differing meanings of which paragraph 1 of the Schedule is capable. Whichever of the meanings is to be adopted, in order to ascertain and give effect to the intention underlying the financial provisions of the Independence Order in relation to the Kingdom of Buganda, some violence must be done to the language of that paragraph". 30
- p29 144-  
p30 112 But they were clearly of the view that the financial contribution to be made under the paragraph was not a sum which had already been calculated at the date on which the Independence Constitution came into force.
- p30 113-  
p31 122 (e) Then followed a reference to the arguments of Counsel for the Plaintiff-Respondent. In this part of the Judgment their Lordships disposed of the argument, for the Defendant-Appellant, that the interpretation contended for by the Plaintiff-Respondent would discriminate against the Appellant-Defendant and leave Buganda in a position worse than before Independence. 40

(f) Their Lordships then stated the gist of the Plaintiff - Respondent's case and concluded that the intention underlying section 107 (which introduces Schedule 9) was as contended for by the Plaintiff-Respondent;

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"After considering all matters proper, in our judgment, to be considered, we have come to the conclusion that the intention underlying section 107 of the Independence Constitution and its dependent Schedule, which, as we have seen, makes provision for the other Federal States, is not so much to alter a method of calculation of the amount of aid to be supplied, a method which had been applied to the defendant in common with the other Federal States, as to effect changes in the method by which that amount of aid is to be supplied to the defendant. There is, we think, no dispute that the intention underlying subparagraphs (a) and (b) of paragraph 1 of the Schedule is that once the amount of money to be provided to the defendant has been calculated, one half of that sum is to be provided by the assignment of certain revenues, the Uganda Government ensuring that the revenue so derived does not fall below the amount while the remaining half is to be paid annually by the Uganda Government. We think that the use of the word "statutory" occurring in subparagraph (b) implies no more than that the amount required for making payment to the defendant is to be a charge on the Consolidated Fund as provided by section 107(2) of the Independence Constitution."

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(g) Having reached the conclusion as stated in subparagraph above, their Lordships thought it desirable "to rewrite paragraph 1 in such a way as to preserve its essential features, to do minimum violence to the words occurring in it, but nevertheless to express what, in our opinion, that underlying intention is." The paragraph was re-written as follows -

p32 129-  
p33 17

"1. The Delegations of the Central and Kabaka's Governments have agreed that in order to make provision for Buganda's financial requirements over and above the revenues raised from her own

Record

independent sources (including graduated tax), an amount, calculated in accordance with the formula adopted by the Central Government for the purpose of ascertaining the amount of the block grant payable to local authorities, will be provided by the Central Government in the following manner -

- (a) as to one half of such amount, 10  
by the assignment of certain revenues raised in Buganda, it being intended that such revenues should be raised from petrol and diesel duty and the items mentioned in paragraph 3 below, the Central Government guaranteeing that such assigned revenues will yield not less than the sum required to be provided under this sub-paragraph; and
- (b) as to the remaining half of 20  
such amount by an annual contribution from general revenue which shall not be reduced without consultation with the Kabaka's Government."
- p33 117-33 (h) Then followed their Lordships' reasons for reading the words ".....similar to" as being equivalent to "in accordance with".
- p33 134- (i) Their Lordships then held that the  
p34 134 calculation required to be made by the principal part of paragraph 1 is not intended to be annual except to the extent of providing for "further services" under paragraph 4 of Schedule 9. 30
- p34 135- (j) In regard to the words "further services",  
p35 11 their Lordships held that they referred to services administered under the provisions of section 78 or 79 of the Constitution.
- p35 116-28 (k) In conclusion their Lordships expressed the view, without so holding, that the Defendant-Appellant is not excluded from such specific grants to which the grant structure are not expressly excluded by paragraph 5 of Schedule 9. 40

14. The Appellant respectfully submits that the Judgment of the High Court is erroneous inter alia,

for the following reasons:

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(a) The High Court has taken the view that, in Schedule 9, the old system of calculating the block grant for all subordinate Administrations, is preserved, the only difference being the provision in sub-paragraphs 1(a) and 1(b) in regard to the manner in which the financial provision is to be made.

10 It is submitted that this conclusion has been largely influenced by -

(i) the erroneous view that, prior to Independence, the control over revenue and expenditure and the financial relations between the Protectorate Government and the Subordinate Administrations were substantially the same in Buganda as in the case of the other Subordinate Authorities;

20 (ii) the undue stress laid on the historical background in the interpretation of the relevant parts of the Constitution.

It is submitted that by far the greater part of the revenue of Buganda was collected directly by the Kabaka's Government under the graduated Tax Law 1955 and the Land Tax Law, both taxes being collected under the authority of Buganda Laws which the Protectorate Government had no power to alter.

30 Unlike in the case of the other subordinate administrations, the Central Government had no direct control over public expenditure in Buganda. Under the March Constitution, the Finance Minister of Buganda was obliged to send a copy of his Annual Estimates to the Finance Minister of the Protectorate Government before they were laid before the Lukiko (The Parliament of Buganda), but there was no obligation beyond considering observations that the Protectorate Government may make on the estimates.

40 By far the largest part of the revenues of the Protectorate Government were collected from Buganda and, as the economic depression of 1960/1961 showed, the Government's finances depended largely on the good will and economic prosperity of Buganda.

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(b) It is submitted that, assuming the paraphrase of Schedule 9 to be right, the interpretation accepted by the High Court is in the teeth of a vital part of paragraph 1, namely, the words "in addition to her independent sources of revenue (including Graduated Tax)". There is no warrant in these words for a deduction of all of the new Graduated Tax on non-Africans; and such deduction, if based solely upon sub-paragraph (1) of paragraph 10 of Appendix G to Report of the 1961 Conference, would be equally unwarranted. 10

(c) As to their Lordships' interpretation of paragraph 5 of Schedule 9, it is respectfully submitted the words "the Kabaka's Government is excluded from the Local Authorities Grant Structure" clearly negative the idea that paragraph 10 of Appendix G, which outlines the essentials of that Grant Structure, is applicable to the Kabaka's Government. 20

(d) It is respectfully submitted that the High Court has erred in interpreting paragraph 2 of the Schedule as requiring the computation, under the principal part of paragraph 1, of the annual financial provision to be made, not annually, but once in three or five years.

As the purposes of review under paragraph 2 have been expressly mentioned, it is reasonable and proper not to extend its scope to the computation under the principal part of paragraph 1 of the total annual financial provision; and particularly so because Uganda is an under developed country where rapid progress in health and education were to be expected. 30

(e) In regard to the meaning of the words "further services", the view of the High Court is erroneous because it has not sufficiently considered the significant difference between Section 107 (which regulates payments to Buganda) and Section 108 which regulates payments to Federal States other than Buganda. Under Section 108 what is payable is a contribution towards the cost of services administered in pursuance of an arrangement under Section 79 of the Constitution. But there is no such limitation in Section 107. 40

It is submitted that the services in respect of which financial provision has to be made by the Central Government are services which the Constitution obliges the Kabaka's Government to provide and that in any event these include all the services referred to in the Seventh Schedule to the Buganda Agreement 1961 and as provided in Section 19 of the Uganda (Independence) Order in Council.

10 15. It is submitted that although Appendix G to the Report of the Constitutional Conference 1961 is relevant to the construction of Schedule 9 to the extent it explains the grant structure current at the time the 9th Schedule became law, it would be legally wrong to regard it as rigidly controlling the interpretation of the Schedule, most especially because the Schedule was of temporary application and Section 108 of the Constitution contemplates the payments to the other Federal States to be in  
20 accordance with terms and conditions prescribed by Parliament.

16. If the submission in the immediately preceding paragraph is right, it is reasonable to give such a meaning to the words of paragraph 1 as would, continue to have a meaning when Parliament prescribes, for the other Federal States, terms and conditions different from those in sub-paragraph 10 of Appendix G. If the problem of interpreting the words "Buganda's financial requirements.....  
30 calculated on lines similar to figures for local authorities block grants" is approached in this way, they can be given the meaning contended for by the Defendant-Appellant without doing any violence to the language of the Schedule. The figures referred to in paragraph 1 of Schedule 9 are figures (like cost of road-mile etc) used by the Protectorate Government for fixing standard costs (as distinct from actual costs) upon which block grants are calculated. This interpretation  
40 takes care of what must be regarded as basic, namely that services of a similar kind should be paid for on the same lines.

17. If the interpretation submitted in paragraph 16 above is adopted, it follows that the ordinary and natural meaning can be given to paragraph 5 of Schedule 9. It is submitted that the words "As..... the Kabaka's Government is excluded from

Record

the local authorities grant structure" clearly mean that paragraph 10 of Appendix G which governs the calculation of the grants to local authorities has no application to Buganda.

18. It is inherent in the arrangements of Appendix G for calculating the contribution of the Protectorate Government towards the cost of services administered by a subordinate authority, that the whole cost of a particular service would not be met by the Protectorate Government. From the words "contribution towards the cost ....." in Section 109, one could reasonably understand that the same arrangement would continue after independence. Hence the words "in addition to...." in paragraph 1 of the Schedule must mean (if absurdity is to be avoided) that the annual financial provision to be made is in addition to the independent sources of revenue of Buganda.

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23. The Defendant-Appellant humbly submits that this appeal should be allowed for the following amongst other

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R E A S O N S

1. BECAUSE the interpretation of Schedule 9 adopted by the High Court does unnecessary violence to the language of Schedule 9.
2. BECAUSE the interpretation of Schedule 9 adopted by the High Court is tied rigidly to paragraph 10 of Schedule G.
3. BECAUSE the High Court was mistaken in regard to the financial relations between the Kabaka's Government and the Protectorate Government.
4. BECAUSE the interpretation of Schedule 9 contended for by the Defendant-Appellant is consonant with the language of the Schedule.
5. BECAUSE the interpretation contended for by the Defendant-Appellant is consonant with section 19 of the Uganda (Independence) and sections 107 and 108 of the Constitution of Uganda.

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E.F.N. GRATIAEN.

DICK TAVERNE.

WALTER JAYAWARDENA.



No. 33 of 1964

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE HIGH COURT OF UGANDA  
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BETWEEN:

THE KABAKA'S GOVERNMENT  
(Defendant) Appellant

-- and --

THE ATTORNEY GENERAL  
OF UGANDA  
(Plaintiff) Respondent

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C A S E

ON BEHALF OF THE  
APPELLANT

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