

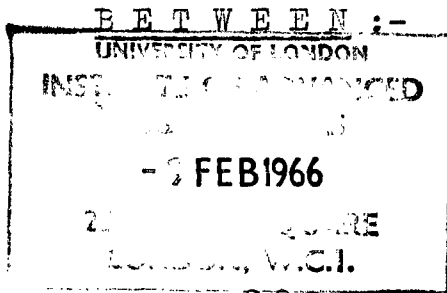
Judgment
26, 1965

IN THE PRIVY COUNCIL

No. 33 of 1964

ON APPEAL FROM THE HIGH COURT OF

UGANDA AT KAMPALA



THE KABAKA'S GOVERNMENT
(Defendants)

Appellant

-and-

ATTORNEY GENERAL OF UGANDA
(Plaintiff)

Respondent

- 80965

CASE FOR THE RESPONDENT

Record

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1. This is an appeal from a judgment of the High Court of Uganda at Kampala (Udo Udoma C.J., Bennett and Slade J.J.) dated the 4th May, 1964, in proceedings instituted by the Respondent in consequence of differences having arisen between the Government of Uganda and the Kabaka's Government as to the true interpretation of Schedule 9 to the Constitution of Uganda (hereinafter called "the said Schedule") which relates to the financial relationships between the two Governments.

p.16

p.1.

p.4.

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2. The following facts are relevant to this Appeal and are not and have never been in dispute:-

(1) Up to and including the year 1961 the Uganda Protectorate Government controlled the expenditure of all Governments, administrations and other authorities in Uganda and collected all revenues (with certain exceptions immaterial to these proceedings).

p.25. 1.26
et seq

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(2) Financial provision in aid of the activities of these Governments, administrations and other authorities was made by the Protectorate Government by means of recurrent grants made for specific purposes which, generally speaking, were to be applied only for those purposes.

p.25 1.32
et seq
and
p.57.

Record

- p.25. 1.38
et seq.
- (3) The Protectorate Government had, therefore, virtually complete control over the revenues and expenditure of all subordinate Governments and administrations, including those of the Buganda Government.
- p.59. 1.15.
- p.25. 1.44
et seq.
- (4) In September and October, 1961, a constitutional conference was held in London which preceded the conferment of internal self-government on Uganda in March, 1962, by virtue of the Uganda (Constitution) Order in Council, 1962, and under the Constitution of Uganda (hereinafter called "the March Constitution") which was contained in the Second Schedule to the said Order in Council. At that time the financial year of the Uganda Government commenced on 1st July of one year and ended on 30th June in the next year; consequently the amount of financial assistance to be provided by the Uganda Government for the year ending 30th June, 1962, had been determined by the time the said conference was held. The future fiscal policy of Uganda was not determined by that conference and pending its future determination certain proposals advanced by the Governor of Uganda were adopted as the basis of financial arrangements on which Uganda could proceed to the stage of internal self-government without prejudice to such future financial arrangements as might be considered desirable. These proposals were embodied in the Report of the Conference as Appendix G (hereinafter called "the Appendix") by the terms of paragraph 147 of the Report.
- p.26. 1.19.
et seq.
- (5) The March Constitution contains no reference to the financial relations between the Uganda Government and the Appellant relevant to these proceedings.
- p.26. 1.22.
et seq.
and
p.42 et seq.
- (6) With effect from the commencement of the financial year beginning on 1st July, 1962, the former system of specific recurrent grants (see

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subparagraph (2) above) was replaced by the "block grant" system as recommended in the Appendix and this new system was applied to all authorities including the Appellants. A block grant is a grant made as one payment to assist the recipient in carrying out a variety of functions which it is required to perform and is not subject to adjustment in the light of the actual expenditure of the recipient. The Appendix makes proposals for deficiency grants and expansion grants for which authorities might become eligible in certain circumstances.

(7) A block grant is to be calculated by adding to the amount of the recurrent grants paid for the financial year 1961/62 the total net cost, for the previous year, of services transferred from the Uganda Government to the recipient authority, and deducting from the resulting total the additional revenue accruing to the recipient authority by virtue of the levy of graduated tax on persons not previously liable to that tax and of the receipt of other revenue previously accruing to the Uganda Government. Control of estimates by the Uganda Government was still envisaged.

p.26. l.46
et seq.
p.42. et
seq.
and p.58.

(8) In March, 1962, after the March Constitution came into operation, the Uganda Government Ministry of Finance by letter (Exhibit A) addressed to the Omuwanika, the Appellant's Minister of Finance, provided a detailed statement of the block grant which it estimated would be payable in the ensuing financial year, and drew the Omuwanika's attention to the relevant parts of the Appendix and to certain matters of detail which affected the calculation of the amounts due.

p.27. l.11
et seq.
p.42.

(9) As appears from the foregoing

(i) the block grant system was applied in its entirety to the Appellant from the time of its introduction; and

p.27. l.21
et seq.

(ii) in the period immediately following the March Constitution the Appellant

p.27. l.34
et seq.

Record

was, in effect, in no different position from the point of view of financial dependence from the other Kingdoms and Districts of Uganda.

- (9) Uganda attained independence on the 9th October, 1962, upon which date the Constitution of Uganda (apart from one subsection and one section which is referred to below) came into effect by virtue of Section 3 of the Uganda (Independence) Order in Council, 1962. 10

3. By Section 2 of the Constitution of Uganda, Uganda is declared to consist of Federal States, Districts and the territory of Mbale. Buganda is one of the Federal States named in that Section and has, by virtue of Section 4(1), a separate constitution set out in Schedule 1 to the Constitution of Uganda. Buganda, as a Federal State, possesses the legislative and executive powers set out in Chapter VIII of the Constitution of Uganda and the latter powers are either those vested by virtue of Section 77 or delegated under the provisions of Sections 78 and 79 of the Constitution of Uganda. Executive functions may not be entrusted to any of the Appellant's officers or authorities nor may powers be conferred or duties imposed on them under Section 78 without the Appellant's consent. Powers or duties may not be conferred upon an officer or authority of the Appellant for the purpose of the administration by the Appellant of a service unless there are in force arrangements with respect to that service made between the Uganda Government and the Appellant under the terms of Section 79. By the provisions of Section 14 of the Uganda (Independence) Order in Council, 1962, the Appellant is declared to be responsible for the administration in Buganda of certain services for the administration of which provision had been made in the Buganda Agreement, 1961, as if an arrangement under Section 79 of the Constitution of Uganda had been entered into between the two Governments. 20 30 40

4. Section 107 of the Constitution of Uganda provides that:-

"(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. 50

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

5. The terms of the said Schedule are as follows:-

"Schedule 9 to the Constitution of Uganda. Agreement between the Uganda and Buganda Government Delegations on the Financial Relationships between the Government of Uganda and the Kabaka's Government.

1. The Delegation 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:-

(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).

2. At intervals of from three to five years there will be a review of these arrangements, not only to consider the rate of annual statutory contribution, but also to consider - in the light of actual yields - whether there should be any change in the revenues selected for assignment.

3. Revenue from stamp duty on mailo transfers and from licences on powered two-wheeled vehicles will be included in the assignments above. As to the other recommendations in paragraph 67 of the Fiscal Commission's Report, it is now agreed

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that the Kabaka's Government should be able to levy entertainment tax on entertainments for which it is the licensing authority. The Buganda Delegation, however, reject the proposal that Buganda should raise revenue from the licensing of unpowered bicycles or unmanufactured "black" tobacco.

(4) Additional sums which may be required in respect of further services for which the Kabaka's Government assumes financial responsibility will be made available by increasing the amount of the statutory contribution.

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(5) As, in accordance with its own wishes, the Kabaka's Government is excluded from the local authorities grant structure, it will not be eligible for deficiency or "catching up" grants, nor for grants to assist with the cost of salary increments".

6. By virtue of the proviso to Section 3 of the Uganda (Independence) Order in Council, 1962, Section 107 of the Constitution of Uganda came into effect on 1st July, 1963, which was the date of the commencement of the financial year next following the date (9th October, 1962), when the said Order in Council came into operation.

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p.27. 1.44.

7. The principal questions as to the interpretation of the said Schedule to be determined in this Appeal are:-

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p.31. 1.23
et seq.

p.30. 1.13
et seq.

(i) Whether Buganda's financial requirements are to be calculated in the same way as the block grants made to local authorities (see Paragraph 2(7) above) or are to be calculated by assessing the sum of money required by the Appellant for the performance of such of its functions, the discharge of such of its duties and the exercise of such of its powers as stem from the provisions of the Constitution of Uganda or of any statute, the said sum, without any deductions whatever, being the sum to be provided in the manner described in subparagraphs (a) and (b) of paragraph 1 of the said Schedule.

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p.33. 1.34.
et seq.

(ii) Whether once Buganda's financial requirements have been calculated the figure

thereby arrived at is subject to annual recalculation (other than to the extent rendered necessary by the transfer of further services from the Government of Uganda to the Appellant or as is consequent upon the provisions for review contained in Section 20 of the Uganda (Independence) Order in Council, 1962, and in paragraph 2 of the said Schedule).

10 8. These proceedings were commenced by the Respondent's issuing a Plaint, dated 30th August, 1963, and amended on 16th December, 1963, in the High Court of Uganda at Kampala, by which the Respondent claimed, on behalf of the Government of Uganda, a declaration that the said Schedule is properly to be implemented in accordance with the contentions set forth in Paragraphs 4, 5 and 6 of the Amended Plaint or, in the alternative, that the Court should declare how the said Schedule is to be implemented.

p. 1
p.1 1.19
p.4 11s.
12 - 19.

20 9. These contentions of the Respondent were as follows :-

A. (Paragraph 4 of the Amended Plaint)
That 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:

p.2 1. 5
et seq

30 1. The total amount of the recurrent grants made by the 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 -

40 (a) where the service is transferred with effect from the beginning of a financial year of the Government of Uganda, the estimated full net cost of the service to the Government of Uganda in the preceding financial year;

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

Record

then -

(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.

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 to 6 of Appendix G to the Report of the Uganda Constitutional Conference, 1961, which paragraphs were set out in the Second Annexure to the Amended Plaintiff 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.

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p. 5 et seq.

B. (Paragraph 5 of the Amended Plaintiff).

p. 3 1.17
et seq.

That 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 the terms of subparagraph A. (2) (b) above, and that, subject to any change which 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

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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.

Record

C. (Paragraph 6 of the Amended Plaintiff)

That in relation to paragraph 4 of the said Schedule :-

p. 3 l. 34

10 (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 (which provides for the entering by the Government of Uganda into arrangements with the Government of a Federal State for the administration by that State of services in the State for the purpose of any matter within the executive authority 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 subparagraph A(2) above or, if some other procedure is prescribed in the arrangement to which the service is subject, by that other procedure.

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10. By the Defence and Counterclaim, dated 2nd October, 1963, and amended on 27th December, 1963 the Appellant denied that the aforesaid contentions of the Respondent are in accord with the true meaning of the said Schedule. In particular the Appellant -

p. 7

p. 8

40 (i) denied that under the provisions of paragraph 1 of the said Schedule Buganda's financial requirements fall to be calculated in the same way as the block grants made to local authorities:

p. 8 l 16

(ii) contended that the deduction during any period of any part of Buganda's independent sources of revenue (including graduated tax) is contrary to the express

p. 8 l.24

<u>Record</u>	provisions of the said Schedule; and	
p. 8 1.27	(iii) averred that the question as to whether there should be any deduction in respect of graduated tax levied on non-Africans had been expressly agreed on by the two Governments so that there was no dispute or difference thereon to be settled in these proceedings.	
	11. In the Counterclaim the Appellant,	
p. 9 et seq.	<u>inter alia</u> :-	10
p. 9 1. 21 et seq.	(1) set out certain findings and recommendations alleged to be those of the Uganda Fiscal Commission (which was appointed in January, 1962, to report on the fiscal relations between the Government of Uganda and the Regional Governments);	
p. 10 1.11 et seq.	(2) alleged that these recommendations in respect of Buganda were far more advantageous to Buganda than the provisions of the said Schedule as interpreted by the Respondent;	20
p. 10 1. 15 et seq.	(3) alleged that the Appellant rejected the said recommendations and made the agreement with the Government of Uganda contained in the said Schedule;	
p. 10 1. 28 et seq.	(4) alleged that if the interpretation of the said Schedule contended for by the Respondent were adopted the result would be that :-	
	(i) Buganda's financial position would be worse than it was at the time when the said Schedule was enacted; and	30
	(ii) Buganda's position would be less favourable than that of other local authorities;	
p. 11 1. 1 et seq.	(5) alleged that the purpose of the said Schedule was to place Buganda in a financially better position than she was under the arrangements set out in the said Appendix and to enable her to perform the obligations placed upon her by the Constitution of Uganda;	40
	(6) contended that :-	

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

Record
p.11 1.25
et seq.

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(ii) 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.

p.11 1.31
et seq.

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(iii) The provisions for review in paragraph 2 of the said Schedule 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.

p.12 1.4
et seq.

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(iv) 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 Plaint (see Paragraph 9A above.)

p.12 1.10
et seq.

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(v) Paragraph 4 of the said Schedule obliges the Government of Uganda to make financial provision for expenditure incurred by the Appellant in respect of any further services, that is to say, any services for which the Appellant 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.

p.12 1.17

(vi) The said Schedule 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).

p.12 1.27
et seq.

Record
p.13 1.5
et seq.

The Appellant by way of Counterclaim prayed :-

(a) that the claim of the Respondent for the declaration prayed for in the Amended Plaint be dismissed with costs;

(b) that the Court make an order declaring that the true meaning of the said Schedule is as set out in the Amended Defence and Counterclaim and that the Government of Uganda is legally bound to make payments to the Appellant accordingly;

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(c) that in the event of the Court not being disposed to grant the declaration as prayed for, the Court declare -

(i) the true meaning of the said Schedule; and

(ii) that the Government of Uganda is legally bound to make payments accordingly to the Appellant.

p.14

12. By the Reply and Defence to Counterclaim dated 16th October, 1963, and amended on 29th January, 1964, the Respondent inter alia :-

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p.14 1. 2

(1) joined issue with the Appellant on the Defence;

p. 14 1.3
et seq.

(2) averred that the agreement referred to in the Amended Defence (see Paragraph 10 (iii) above) related only to the period ending 30th June, 1963;

p.14 1.21
et seq.

(3) denied the relevance and admissibility of the matters set out in subparagraphs (1) to (5) inclusive of Paragraph 11 above; and

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p.15 1.1
et seq.

(4) admitted that the Government of Uganda is legally obliged to make payments to the Appellant as set out in Section 107 of the Constitution of Uganda.

p.17 1.2
et seq.

13. The suit was heard by three judges of the High Court of Uganda in accordance with the provisions of the Civil Procedure (Constitutional Cases) Act, 1962.

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14. In the course of the hearing Counsel for the Respondent sought to have tendered in evidence certain documents relating to an

agreement alleged to have been reached between representatives of the Government of Uganda and of the Appellant at a meeting held at St. Ermin's Hotel, London, on 20th June, 1962, and confirmed at meetings of the Uganda Independence Conference and the Fiscal Committee thereof held on 21st, 24th, 26th and 29th June, 1962. The said documents were rejected as inadmissible in consequence of a ruling given by the High Court on 15th April, 1964, in the course of the said hearing, that the only extraneous evidence admissible in these proceedings should be such evidence as relates to the historical and factual position of the financial relationship between the Central Government of Uganda and the Appellant for the period leading up to and including 10th October, per incuriam for 9th October 1962, and as to the explanation of certain terms of art not defined in the Constitution of Uganda and the said Schedule.

Record
p.4 1.4
et seq.

p.15 1.26
et seq.

15. By virtue of the said ruling there were admitted in evidence at the hearing :-

(i) A letter dated 13th March, 1962, from the Secretary to the Treasury, Ministry of Finance, Uganda Government, to the Omuwanika, Kabaka's Government (Exhibit A);

p. 42

(ii) Appendix G to the Report of the Uganda Constitutional Conference, 1961, (Exhibit B);

(iii) Paragraph 147 at page 25 of the said Report (Exhibit B 1);

(iv) Two written statements of John G. Huddle dated 17th April, 1964, (Exhibits C and C1).

pp.56 & 61

No oral evidence was called by either party.

16. By a judgment delivered on the 4th day of May, 1964, by Mr. Justice Slade in which Chief Justice Udo Udoma and Mr. Justice Bennett concurred, the High Court of Uganda ordered and decreed that a declaration should be granted that the said Schedule is to be implemented as follows :-

p. 17

p.38 et
seq.

Record

(1) As to paragraph 1 -

(a) the amount for which provision is required to be made under paragraph 1 is to be calculated by adding together:

(i) the total amount of the recurrent grants made by the Uganda Government to the Appellant in the financial year ending on 30th June, 1962, and

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(ii) the total net cost to the Uganda Government for the year preceding transfer of any service or services transferred to the Appellant on or prior to 30th June, 1963, and

by deducting from the resulting total the amount of additional revenue estimated to accrue to the Appellant during the financial year ending on 30th June, 1963, as a result of the implementation of the proposals contained in paragraphs 2 to 6 of the Appendix G to the Report of the Uganda Constitutional Conference, 1961 (Cmd. 1523);

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(b) the amount so ascertained shall be provided to the Appellant in the manner specified in subparagraphs (a) and (b) of paragraph 1 of the Schedule, the Uganda Government being under an obligation to make good any deficiency if the amount received from the assigned revenues is less than one-half of the amount so ascertained;

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(c) the amount for which provision is required to be made under paragraph 1 having been ascertained in the manner described in subparagraph (a) hereof, it remains unchanged until such time

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as it may be altered upon a review,
and is not to be re-calculated each
year.

(2) As to paragraph 4 -

10 (a) the words "further services"
means functions, powers and duties
which may after 1st July, 1963, be
entrusted, conferred or imposed under
section 78 of the Constitution of
Uganda with the consent of the
Appellant and services which after
1st July, 1963, are administered
by the Appellant in pursuance of
arrangements made between the Uganda
Government and the Appellant under
the provisions of section 79 of the
Constitution of Uganda;

20 (b) if any additional expenditure
is incurred by the Appellant by
virtue of its assumption of
responsibility for further services
as thus defined, the Uganda Government
will pay to the Appellant such amount
as may be agreed at the time the
consent required under section 78 is
given or the arrangement required
under section 79 is made, as the case
may be, and in default of any
such agreement as to finance, the
30 Uganda Government will pay to
the Appellant an amount calculated
in the manner set out in paragraph
4(2) (b) of the plaint, and any such
amount shall, by virtue of the
provisions of section 107 (2) of the
Constitution of Uganda, be a charge
on the Consolidated Fund.

40 (3) The Uganda Government is under an
obligation by virtue of the Constitution of
Uganda to make financial provision to the

Record

Appellant in accordance with the interpretation of the Schedule given by the Court in this suit.

p.40. |1.25. The Appellant was ordered to pay the Respondent's costs of the suit.

17. The judgment of the High Court of Uganda was based upon the following grounds:-

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p.28. |1.1.
et seq. (1) Section 107 of the Constitution of Uganda clearly imposed an obligation upon the Uganda Government to make certain payments to the Appellant.

p.29. |1.2.
et seq. (2) Under the Constitution of Uganda the financial relationship between the Uganda Government and the Appellant differs from that expressed to exist between the Uganda Government and the Governments of the other Federal States in Uganda, the principal distinction being 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 contributions shall be made (see Section 108 of the Constitution of Uganda), no such control exists in respect of, and no such terms and conditions may be prescribed for Buganda.

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p.29. |1.17.
et seq. (3) Since textual changes must inevitably be made in paragraph 1 of the said Schedule if it is to be interpreted at all, the Court, provided that it could ascertain the intention of the legislator from the rest of the Uganda (Independence) Order in Council, 1962, and of the Constitution of Uganda, aided by a consideration of the surrounding circumstances and historical background, would not hesitate to modify the language used in order to give effect to the intention.

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p.31. |1.41
et seq. (4) The intention underlying Section 107 of the Constitution of Uganda and the said Schedule 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 Appellant 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 Appellant, such changes being effected by the provisions of subparagraphs (a) and (b) of paragraph 1 of the said Schedule.

- 10 (5) The use of the word "statutory" in subparagraph (b) of paragraph 1 of the said Schedule implies no more than that the amount required for making payment to the Appellant is to be a charge on the Consolidated Fund as provided by Section 107 (2) of the Constitution of Uganda. p.31. 1.11 et seq.
- 20 (6) The phrase "on lines similar to" in paragraph 1 of the said Schedule should be construed as "in accordance with", the former phrase having possibly been inserted on account of reluctance on the part of the Appellant to be apparently classified as a local authority or in order to avoid repugnancy with the provisions of paragraph 5 of the said Schedule. p.33. 1.7. et seq.
- 30 (7) In the light of the foregoing, paragraph 1 of the said Schedule, if rewritten in such a way as to preserve its essential features, to do the minimum violence to the words occurring in it, but nevertheless to express its underlying intention, might be rendered as follows:- p.32. 1.18. et seq.
- 40 "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 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 - p.32. 1.29 et seq.
- (a) as to one half of such amount,

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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

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(b) as to the remaining half of such amount by an annual contribution from general revenue which shall not be reduced without consultation with the Kabaka's Government."

p.34. 1.4.
et seq.

- (8) (i) Paragraph 2 of the said Schedule provides for "a review of these arrangements", which expression, read in conjunction with the remainder of the paragraph in question, means a review of the proportion which the annual statutory contribution is expressed to bear to the total amount of the financial assistance to be provided and of the revenues selected for assignment.

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p.34. 1.15.
et seq.

- (ii) Paragraph 4 of the said Schedule makes provision for an increase in the statutory contribution to be made by the Uganda Government in the event of the assumption by the Appellant of financial responsibility for "further services" and it is thus clearly the intention of the legislator that the Uganda Government's contribution from general revenue may be increased if further responsibilities are undertaken by the Appellant.

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p.34. 1.24.
et seq.

- (iii) Section 20 of the Uganda (Independence) Order in Council, 1962, provides for the review of the provisions of Section 107 of the Constitution of Uganda not later than 30th June, 1966.

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p.34. 1.30
et seq.

- (iv) In the light of the foregoing it seems unlikely that the legislator

intended that Buganda's financial requirements should be reviewed annually except to such extent as might be necessary for the purpose of paragraph 4 of the said Schedule.

18. In the course of the said judgment the High Court of Uganda further -

(i) rejected the submission of Counsel for the Appellant that the Court should seek a "quid pro quo" for the Appellant's having elected not to be one of the authorities eligible for full assistance from the local authorities grant structure as a whole;

p.31. 1.1
et seq.

(ii) dealt with three further points of construction which are not in issue in this Appeal; and

p.34. 1.35
to p.35.1.29

(iii) gave the following reasons for the ruling referred to in Paragraph 14 above:-

p.15.

(a) The language used in the said Schedule was such as to give rise to ambiguities and obscurities.

p.20. 1.30
et seq.

(b) In consequence of (a) above, evidence was admissible to establish the historical background to the financial relationship between the Uganda Government and the Appellant and to establish the meaning of certain technical expressions relating to financial assistance by the Uganda Government to local authorities.

p.24. 1.43.
et seq.

(c) Since it is well settled that the opinion of the draftsman with regard to the underlying intention of the legislation he has drafted is irrelevant, the opinions of those who have instructed the draftsman are equally irrelevant, whether those opinions are expressed in records of meetings or otherwise.

p.35. 1.11.

(d) Similarly, letters and other communications which may pass between persons affected by enacted legislation and which may relate to the de facto effect of that legislation, or which may declare the understanding of those

p.25. 1.17
et seq.

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persons of the intention underlying that legislation are irrelevant.

p.24. 1.34.
et seq.

(e) Evidence as to what any or all the delegations to the 1962 Constitutional Conference intended, prior to the enactment of the said Schedule, the financial relationship between the two Governments should be after Uganda became independent are inadmissible by reason of the decision in Katikkiro of Buganda v. Attorney-General (1959) E.A. 382 and (1960) E.A. 784. The application of that decision to this case is unaffected by the cases of In re Regulation and Control of Aeronautics in Canada (1932) A.C. 54, Ladore v. Bennett (1939) A.C. 468 and Pillai v. Mudanayaka (1953) A.C. 514.

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p.41.

19. By an order dated the 15th July, 1964, the High Court of Uganda at Kampala (Jones J.) granted to the Appellant final leave to present this Appeal to Her Majesty in Council.

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20. It is respectfully submitted that the High Court of Uganda erred in ruling inadmissible the documents referred to in Paragraph 14 of this Case. The Respondent does not contest any of the conclusions of the High Court of Uganda summarised in subparagraphs (iii)(a), (iii)(b) and (iii)(d) of Paragraph 18 of his Case but respectfully submits that:-

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(i) the ratio decidendi of Katikkiro of Buganda v. Attorney-General in the Privy Council in so far as the admissibility of extraneous evidence was concerned was that no sufficient ambiguity in the wording to be construed had been established;

(ii) that case was not, accordingly, in view of the conclusion summarised in subparagraph (iii)(a) of Paragraph 18 of this Case, relevant to the issue of admissibility raised herein;

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(iii) on a true application of the decisions in In re Regulation and Control of Aeronautics in Canada, Ladore v. Bennett and Pillai v. Mudanayaka the said documents were admissible;

(iv) the said Schedule is not legislation of an ordinary character in that it purports to be, and is, in the form of an agreement and is described as an agreement in the section from which it derives its effect (Section 107 of the Constitution of Uganda);

(v) the intention of the legislator was that effect should be given to the said agreement;

10 (vi) this intention cannot be fully implemented unless the true meaning of that agreement qua an agreement is ascertained;

(vii) that meaning falls to be ascertained under the rules of construction and of evidence governing the ascertainment of the meaning of any ordinary written agreement;

20 (viii) the terms of the agreement being ambiguous, extrinsic evidence is admissible to assist in ascertaining the true meaning;

(ix) by reason of the foregoing, the documents referred to in Paragraph 14 of this Case were admissible in these proceedings, alternatively were prima facie admissible and the High Court of Uganda erred in not examining their contents before ruling them inadmissible.

30 21. The Respondent respectfully submits that, save in so far as reference is made therein to the ruling complained of in Paragraph 20 of this Case, the judgment of the High Court of Uganda at Kampala was right and ought to be affirmed, and this Appeal ought to be dismissed, for the following (among other):

REASONS

40 (1) BECAUSE the intention underlying Section 107 of the Constitution of Uganda and the said Schedule is not so much to alter the method of calculation of the amount of aid to be supplied as to effect changes in the method by which that amount of aid is to be supplied to

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the Appellant;

(2) BECAUSE the phrase "on lines similar to" in paragraph 1 of the said Schedule should be construed as meaning "in accordance with";

(3) BECAUSE on a true interpretation of the said Schedule Buganda's financial requirements do not fall to be reviewed annually except to such extent as may be necessary for the purpose of Paragraph 4 of the said Schedule;

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(4) BECAUSE the documents referred to in Paragraph 14 of this Case are admissible in these proceedings;

(5) BECAUSE the judgment of the High Court of Uganda is right and ought to be affirmed for the reasons given therein.

JAMES MITCHELL.

No 33 of 1964

IN THE PRIVY COUNCIL

ON APPEAL FROM THE HIGH COURT
OF UGANDA AT KAMPALA

B E T W E E N :

THE KABAKA'S GOVERNMENT
(Defendants) Appellant

- and -

ATTORNEY GENERAL OF UGANDA
(Plaintiff) Respondent

CASE FOR THE RESPONDENT

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