

***Center for Health, Human Rights and Development and 3 Others v. Attorney General***  
**[2012] UGCC 4, Constitutional Petition No. 16 of 2011**  
**Uganda: Constitutional Court**

## **COURT HOLDING**

The petition raised acts and omissions that fell under the doctrine of a “political question,” and the Court could not find any competent question requiring constitutional interpretation.

## **Summary of Facts**

The petitioners filed this case against the government, claiming that it had failed to provide basic healthcare, maternal commodities, and maternal healthcare to expectant mothers. They cited specific cases of maternal deaths that were the direct result of this failure. The petitioners asserted that the ultimate consequences included high maternal mortality and high infant mortality. The petitioners argued that the government’s failure to provide basic maternal healthcare infringed on constitutionally guaranteed rights under Articles 22, 24, 33, 34, and 44 of the Constitution of the Republic of Uganda, and also the right of access to health services under Objectives XX, XIV (b), XV, and Article 8A. Further, the petitioners impugned the government for failing to uphold its international obligations, which included respect of the right to the highest attainable standard of health by virtue of Article 45 of the Constitution.

To this, the respondent raised the preliminary objection that the Court could not adjudicate on the issues raised by the petitioners because they involved political questions. The respondent contended that the Court would be interfering with political discretion, which by law was the preserve of the Executive and the Legislature.

## **Issues**

The Court was therefore asked to determine the following issues:

1. Whether the right to the highest attainable standard of health is a constitutional right by virtue of Article 45 of the Constitution.
2. Whether the inadequate human resources for maternal health, lack of essential drugs, and lack of emergency obstetric care services at health centres are infringements of the right to health.
3. Whether non-provision of basic maternal healthcare services in health facilities contravenes Article 8A or Objectives XIV and XX of the Constitution.
4. Whether non-provision of basic maternal healthcare packages in government hospitals, resulting in the deaths of pregnant women and their children, is a violation of the right to life as guaranteed under Article 22 of the Constitution.
5. Whether health workers’ failure to attend to pregnant women subjects women to degrading and inhuman treatment, in contravention of Articles 24 and 44(a) of the Constitution.

6. Whether the high rates of maternal mortality in Uganda contravene Articles 33(1), (2), and (3) of the Constitution.
7. Whether the families of Sylvia Nalubowa and Jennifer Anguko, who died in hospital due to non-availability of basic maternal commodities, are entitled to compensation.

## **Court's Analysis**

Pursuant to Article 137 of the Constitution, courts have jurisdiction on matters where the petition, on the face of it, shows that an interpretation of a provision of the constitution is required. However, if the issues fall under the doctrine of a “political question,” as was argued by the respondent, the Court would not assume adjudication. The Court therefore inquired whether indeed the issues it was asked to determine were covered by this doctrine.

The Court said the “political question” doctrine emanated from the concept of the separation of powers articulated in *Marbury v. Madison*, 5 US. 137, and concerns the appropriateness of courts interfering in decisions of other branches of government. The doctrine therefore prevents courts from encroaching on decisions which are the purview of other branches of government, even if it could assume jurisdiction.

Following the precedent in *Coleman v. Miller*, 307 U.S. 433, the Court said that it would consider the appropriateness under the system of government of attributing finality to the actions of the political departments, and also look at the lack of satisfactory criteria for judicial determination when determining whether the issue before it was a political question. The Court went on to cite case law where the court had suggested that even in cases where courts felt obliged to intervene when executive decisions are challenged on the grounds that the rights of the individual are clearly infringed or threatened, the courts do so sparingly.

Thereupon, the Court reviewed provisions of the Constitution that describe the role of each organ of government, and then applied these roles to the facts before it. The Court opined that much as it may have been true that government had not allocated enough resources to maternal healthcare services, the Court would be reluctant to determine the issues raised before it. It ruled that the issues concern policy matters that are the preserve of the Executive, and the courts would not interfere. While the Court acknowledged the importance of the issues raised by the petitioners, it refused to interfere in what it had determined involved the prerogative of the Executive. It further justified its stance by suggesting that the petitioners still had remedies available to them other than the route of constitutional interpretation.

## **Conclusion**

The Court struck down the petition and did not consider the merits of the case.

## **Significance**

Uganda, like many African countries, adopted a constitution that recognises social and economic rights including the right to health. For instance, Objective XIV (b) of the Ugandan Constitution says

that “The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice ... and shall ... ensure that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.” Further, the provisions of these constitutions are rarely read individually and in isolation. For instance, the provision stated above, read with Article 33 (3)—which says that “The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society”—creates legal obligations on the state to ensure that all expectant mothers receive basic maternal healthcare.

The petition brought before the Constitutional Court of Uganda depicts a scenario that is perhaps all too common in Sub-Saharan Africa. Government-run health facilities are frequently if not chronically underfunded, understaffed, lacking the basic commodities, and failing to provide the requisite standard of care. The petitioners’ case arose out of a legitimate expectation that the state be held accountable for meeting the obligations stipulated in the Constitution. Their case was based upon evidence of two maternal deaths that they argued could have been avoided if only the government had fulfilled its duty to provide basic maternal healthcare and services. However, while acknowledging the fact that there was government failure, the Court chose to rely on the political question doctrine and declined to rule on the merits of the case.

Indeed this has been the trend in some jurisdictions in Africa, where courts have not enforced social and economic rights, preferring to rely on the doctrine of the separation of powers. Other courts have refused to adjudicate such rights because they are principles of policy and therefore not justiciable nor enforceable; see, for example, *Kingaipe and Chookole v. Attorney General*, 2009/HL/86 (High Court of Zambia).

Other jurisdictions, however, have approached social and economic rights differently. In *Sandesh Bansal v. Union of India and others* (Writ Petition No. 9061/2008), the petitioner alleged that the government had failed to implement a program to reduce high maternal mortality. The High Court of Madhya Pradesh held that the shortage of infrastructure and personnel had resulted in the ineffective implementation of the program, resulting in unnecessary deaths of mothers, and that this was a violation of the right to life as guaranteed in the Constitution of India.

In another case, the Delhi High Court (Writ Petition (C) 5913/2010) on its own motion took on a case about a destitute woman who died on the street while giving birth to a baby girl. The Court noted that the government provided inadequate medical services to destitute pregnant and lactating mothers, and ordered the government to review its funding of shelters for the destitute. This judicial reasoning contrasts with the Ugandan decision.

The Ugandan decision is an example of how courts have not enforced human rights guarantees for many vulnerable persons in African countries, on the basis that these responsibilities lie with the other branches of government. Since the Court determined the issue before it was a political question, the Court did not raise questions for the Executive to address on why the two women died in circumstances that were avoidable, or inquire about what steps the government was taking to realise its obligations to provide adequate healthcare. The significance of this decision therefore lies in the Court’s inability to hold the government accountable due to its determination that the

failure to provide healthcare of expectant mothers was a political question, and therefore outside the Court's jurisdiction, even though the right to healthcare is guaranteed to the women of Uganda in the Constitution.

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**(2015), Constitutional Appeal No. 01 of 2013**  
**Uganda, Supreme Court**

## **COURT HOLDING**

The petition raised competent questions for the Constitutional Court to determine under Article 137(4) of the Constitution. Therefore, the Constitutional Court should have heard, interpreted, and determined the issues raised by the petitioners as they implicated constitutional rights.

The Constitutional Court could not decline to entertain a petition under Article 137 of the Constitution on the pretext that this encroached on the discretionary powers of another organ of the state.

The doctrine of political question is of limited application in Uganda. The Constitutional Court had erred in dismissing the petitioners' claim without hearing the merits, on the ground that it raised a political question.

## **Summary of Facts**

This was an appeal of the preceding case summary which was a ruling from the Constitutional Court rendered in Constitutional Petition No. 16 of 2011 in which the Appellants had challenged the Government of Uganda for failing to provide basic maternal health services. The petitioners claimed that the failure to provide basic maternal healthcare infringed on constitutionally guaranteed rights under Articles 22, 24, 33, 34, and 44, as well as the right of access to health services under Objectives XIV(b), XV, XX, and Article 8A of the Constitution of the Republic of Uganda 1995 (the Constitution).

The Constitutional Court dismissed the application without hearing its merits on the ground that the petition did not disclose competent questions that needed interpretation, and that the petition concerned a political question that it could not adjudicate upon.

The Appellants therefore filed the appeal on three grounds. The first was that the Constitutional Court did not correctly apply the doctrine of political question. Second, the Constitutional Court erred in law in holding that the petition did not raise competent questions requiring constitutional interpretation. Third, the Constitutional Court erred in law when it decided that the petition called it to review and implement health policies.

The Appellants argued that Article 137(1) of the Constitution vests the Constitutional Court with powers to interpret the Constitution, so that it had powers to review any Executive act that violated or threatened any rights guaranteed by the Constitution. The Appellants cited *Ismail Serugo v. Kampala City Council & Another*, (Constitutional Appeal No. 2 of 1998) to support the argument