



**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION**



*(Coram: Yohane B. Masara, PJ; Richard Wabwire Wejuli, DPJ; Richard Muhumuza,
Gacuko Leonard & Kayembe Ignace Rene Kasanda; JJ)*

REFERENCE NO. 15 OF 2020

LEGAL BRAINS TRUST..... APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDARESPONDENT**

27TH NOVEMBER 2025

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This Reference was filed on 26 May 2020 under Articles 23(1), 27(1) and 30(1) of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rule 25(1) of the East African Court of Justice Rules of the Court, 2019 (“the Rules”).
2. The Applicant contests the legality of Judge Jane Frances Abodo’s appointment as Director of Public Prosecutions of Uganda on 17 April 2020. He contends that the appointment is not in compliance with Treaty obligations and Ugandan law.
3. The Respondent defends the legality of the appointment.
4. The Applicant, Legal Brains Trust (LBT) Ltd, describes itself as a democracy and human rights watchdog incorporated under the laws of Uganda with the main purpose of promoting the Rule of Law. Its address for purposes of this Reference is: *c/o Centre for Legal Aid, Teachers House, 2nd Floor, Room 204, Plot 28/30 Bombo Road, P.O. Box 29285 Kampala, Uganda Telephone contacts +256-757-200-204, +256-414-200-203, e-mail: isaackmaze@yahoo.co.uk.*
5. The Respondent is the **Attorney General of the Republic of Uganda**, with among others, a function to represent the Government of Uganda in Court as well as in other legal proceedings, sued in his official capacity as the principal legal advisor to the Government of Uganda and his address is: *The Republic of Uganda Ministry of Justice and Constitutional Affairs, Directorate of Civil Litigation, Baumann House, Parliament Avenue, P.O. Box 7183 Kampala, Uganda.*

B. REPRESENTATION

6. The Applicant is represented by Isaac K. Ssemakadde, an Advocate duly instructed to act on its behalf. The Respondent is represented by George Kalemera, Commissioner of Civil Litigation, Imelda Adong-Principal State Attorney and Barbara Nakembe- Senior State Attorney, all of whom are from the Attorney General's Chambers.

C. THE APPLICANT'S CASE

7. The Applicant challenges the appointment of Judge Jane Frances Abodo as Director of Public Prosecutions on 17th April 2020, alleging breaches of Articles 6(d) and 7(2) of the Treaty and the laws of Uganda, including judicial incompatibility, lack of equal opportunities, opacity, and non-compliance with domestic procedures.

8. The Applicant's case is supported by Affidavits deponed by Ivan Sengendo, a director of the Applicant.

9. The Applicant alleges that:

a) The President of Uganda acted unlawfully by appointing Judge Jane Frances Abodo, a sitting Judge of the High Court of Uganda, as Director of Public Prosecutions, without a lawful recommendation from the Public Service Commission. Furthermore, the Uganda Judiciary and Judicial Service Commission (JSC) unlawfully acquiesced in releasing Judge Abodo, thereby enabling her to engage in extrajudicial activities within the Executive branch, contrary to constitutional norms;

b) Judge Jane Frances Abodo neither applied through a transparent process nor competed fairly for secondment

to the DPP position, as the opportunity was not extended to other judges;

- c) **The Public Service Commission disregarded established recruitment procedures for the DPP vacancy by failing to conduct an open, transparent, fair, and competitive selection process. Instead, it clandestinely recommended Judge Abodo to the President;**
- d) **The Appointments Committee of the Parliament of Uganda conducted an in-camera vetting and approval of Judge Abodo, omitting a report to the plenary session of Parliament for debate and formal ratification;**
- e) **This secretive vetting process precluded the press and the public from scrutinizing the candidate;**
- f) **Judge Jane Frances Abodo failed to resign her judicial office prior to assuming the DPP role;**
- g) **Simultaneous membership in the Judicial and Executive branches is impermissible;**
- h) **Ugandan law, including the Uganda Code of Judicial Conduct and constitutional provisions, prohibit judicial officers from engaging in full-time extrajudicial roles, such as the DPP- ranked third in the order of precedence under the Uganda Advocates Act, that impair judicial duties, create an appearance of impropriety, or compromise judicial independence;**

- i) Deploying scarce judicial human resources to executive positions, like the DPP, when the Judiciary is already understaffed, contravenes good governance. This role could have been filled by numerous qualified individuals from the pool of State Law Officers or Private Legal Practitioners;**
- j) These actions and decisions collectively contravene the fundamental and operational principles of the East African Community, as enshrined in Articles 6(d) and 7(2) of the Treaty. Specifically, they breach the principles of good governance, including democracy, rule of law, accountability, transparency, and equal opportunities and fail to uphold universally accepted human rights standards; and**
- k) Such conduct does not meet the threshold of being demonstrably justifiable or acceptable in a free and democratic society.**

10. Based on the foregoing, the Applicant seeks to remedy these alleged violations and restore compliance with Treaty obligations and domestic law. The reliefs sought are more specifically outlined in the Reference and we shall not restate them verbatim but summarily, they are:

- a) A declaration that the actions and decisions of the Judiciary, Judicial Service Commission, Public Service Commission, President, and Parliament of Uganda in the nomination, vetting, approval, and appointment of Judge Jane Frances Abodo as Director of Public Prosecutions**

and the acceptance of the appointment by Judge Jane Frances Abodo contravened Articles 6(d) and 7(2) of the Treaty, thereby infringing fundamental and operational principles of good governance and hence null and void;

- b) Orders annulling the said actions; and
- c) A permanent injunction restraining Judge Jane Frances Abodo from further acting as DPP, award costs and interest on the costs of the Reference till payment in full.

D. THE RESPONDENT'S CASE

11. The Respondent defends the appointment as lawful under the Constitution of the Republic of Uganda and consistent with the Treaty obligations. His case is supported by Affidavits from Hon. Lady Justice Jane Frances Abodo, Frank Musingwiire and Jane L. Kibirige.

12. The Respondent contends that:

- a) In January 2020, the position of Director of Public Prosecutions in Uganda became vacant, and the Secretary to the Uganda Public Service Commission was duly informed of this vacancy;
- b) Subsequently, the Minister of Justice and Constitutional Affairs formally requested the Chairperson of the Public Service Commission (PSC) to advise the appointing authority regarding the vacancy in the office of the DPP;
- c) In response, and in compliance with established procedures, the PSC requested H.E. the President of

Uganda to provide an opinion on a suitable candidate for the post, which the President subsequently provided;

- d) Considering the opinion offered by the President, the sensitivity and importance of the role, and the necessary qualifications for the DPP position, the PSC strictly adhered to the established recruitment and selection procedures, thereafter providing appropriate advice to the appointing authority regarding the appointment;
- e) In accordance with the law, H.E. the President executed the Instrument of Appointment for Judge Jane Frances Abodo as the DPP, which was subsequently transmitted to Parliament for its approval;
- f) The Parliament of Uganda, in compliance with relevant legal requirements, vetted, approved, and communicated the decision of the Appointments Committee to H.E. the President;
- g) All actions, including the decision by H.E. the President to appoint Judge Jane Frances Abodo as DPP, her acceptance of this appointment, her subsequent application for special leave of absence from Judicial Service instead of resignation, and the granting of that leave, were carried out lawfully and in accordance with established legal provisions;

- h) There exists no legal impediment barring a qualified judicial officer from being appointed to the position of Director of Public Prosecutions;**
- i) The position of Director of Public Prosecutions is not part of the Executive branch of Government, and consequently, there is no statutory requirement for a sitting High Court Judge to resign upon being appointed to the role of DPP;**
- j) The appointment of the Director of Public Prosecutions is a prerogative exercised by H.E. the President, and the said appointment was fully compliant with the laws and regulations of Uganda;**
- k) Accordingly, the Respondent prays for the dismissal of the Reference, with costs.**

E. SCHEDULING CONFERENCE

13. At the Scheduling Conference held on 1st March 2024, the following issues were framed for determination:

- i. Whether the actions of H.E the President of the Republic of Uganda, the Public Service Commission, the Parliament of Uganda, the Uganda Judiciary and the Judicial Service Commission with respect to the appointment of Judge Jane Frances Abodo as director of public Prosecutions (DPP) were unlawful and contravened Article 6(d) and 7(2) of the Treaty for the establishment of the East African Community; and**

- ii. Whether any remedies are available to the parties.

F. THE COURT'S DETERMINATION

ISSUE 1: Whether the actions of H.E the President of the Republic of Uganda, the Public Service Commission, the Parliament of Uganda, the Uganda Judiciary and the Judicial Service Commission with respect of the appointment of Judge Jane Frances Abodo as director of public Prosecutions (DPP) were unlawful and contravened Article 6(d) and 7(2) of the Treaty for the establishment of the East African Community.

a) Submissions

14. The Applicant submits that the appointment of Judge Jane Frances Abodo, an incumbent High Court judge, as Director of Public Prosecutions fundamentally violates the principles of judicial independence and separation of powers enshrined in Articles 6(d) and 7(2) of the Treaty. These Articles mandate Partner States to uphold good governance, democracy, and the rule of law, principles intrinsically tied to an independent judiciary free from Executive entanglement. The Applicant anchors this contention in Ugandan jurisprudence, notably **Jim Muhwezi vs Attorney General (Constitutional Petition No. 10 of 2008)** and **Bob Kasango vs Attorney General, Constitutional Petition No. 16 of 2016**, where Uganda's Constitutional Court unequivocally held that judicial officers cannot simultaneously occupy Executive positions such as DPP without first relinquishing their judicial roles through resignation.

15. This doctrine of judicial incompatibility, the Applicant argues, is not merely a domestic legal nicety but a universal bulwark of constitutional integrity, reflecting a broader normative commitment to judicial autonomy that resonates with the Treaty's foundational ethos.
16. That in **Jim Muhwezi** (*supra*), the Constitutional Court invalidated the appointment of a judge as Inspector General of Government (IGG), an executive oversight role, after an exhaustive review of precedents affirming that judicial officers must remain structurally and functionally distinct from executive functions to preserve impartiality and public trust. The Court reasoned that such dual roles erode the judiciary's capacity to serve as an independent arbiter, particularly in disputes involving the executive, thereby breaching Articles 128(1) and (2) of the Ugandan Constitution, which guarantee judicial independence from other branches.
17. That similarly, in **Bob Kasango** (*supra*), the Court struck down Justice Mike Chibita's appointment as DPP, emphasizing that his failure to resign from judicial office before assuming prosecutorial duties contravened the separation of powers and compromised the accused's right to a fair hearing under **Article 28 of the Constitution of the Republic of Uganda**.
18. The Applicant asserts that these Rulings establish a binding precedent under Uganda's Constitutional Framework, directly applicable to Judge Abodo's case, as the DPP's role under **Article 120(3) of the Constitution of the Republic of Uganda**, directing prosecutions and exercising executive discretion, mirrors the executive nature of the IGG's functions, placing it at odds with judicial impartiality.

19. Beyond domestic law, the Applicant invokes international and regional standards to fortify its position, arguing that judicial incompatibility is a globally recognized principle essential to Treaty compliance.
20. That **Article 18 of the Protocol to the African Charter on Human and Peoples' Rights**, on the establishment of an African Court, prohibits Judges from engaging in “*any activity that might interfere with the independence or impartiality*” of their office; a standard echoed in **Article 13 of the Protocol on the Statute of the African Court of Justice and Human Rights**, which deems judicial functions incompatible with roles like “*agent, counsel, or lawyer*” for the Government.
21. The Applicant contends that the DPP’s prosecutorial mandate of representing the State in criminal proceedings, effectively casts Judge Abodo as an Executive agent, creating a palpable risk of perceived or actual bias, especially in politically sensitive cases. This, it argues, undermines Article 6(d)’s commitment to good governance, which **Baranzira Raphael & Another vs The Attorney General of the Republic of Burundi, EACJ Reference No. 15 of 2014**, defines as accountability to transparent, equally enforced laws, and Article 7(2)’s pledge to uphold universally accepted human rights standards, including judicial independence as articulated in the International Covenant on Civil and Political Rights, (**ICCPR Article 14(1)**).
22. The Applicant further enriches its argument by dissecting the DPP’s constitutional role under **Article 120(3) of the Constitution of the Republic of Uganda**, which includes initiating prosecutions, directing police investigations, and exercising discretionary powers rooted in executive policy rather than legal adjudication. This prosecutorial

function, it submits, is inherently executive, aligning with Chapter 6 of the Ugandan Constitution, whereas judicial office under Chapter 8 demands neutrality and detachment from such partisan duties. That permitting Judge Abodo to straddle these roles, even temporarily, risks entangling the judiciary in executive decision-making, contravening the separation of powers doctrine.

23. Drawing from **Seychelles Human Rights Commission vs Speaker, 2023 SCCA 58, (paras 49, 51)**, the Applicant emphasizes that independence encompasses not just a judge's mindset but the judiciary's structural autonomy from other branches, a boundary breached when a judge assumes an executive post like DPP without severing judicial ties.
24. Moreover, the Applicant challenges the Respondent's reliance on a purported "*leave of absence*" as a legal fiction incapable of curing this incompatibility. It argues that such leave, lacking explicit grounding in the Public Service Standing Orders 2010 or Constitutional mandate, fails to address the deeper structural conflict: a judge on leave retains judicial status and pension rights, perpetuating the perception of judicial-executive overlap.
25. That unlike a resignation, which decisively terminates judicial authority as **Jim Muhwezi** and **Kasango** (*supra*) allegedly mandate, leave suggests a reversible commitment, undermining public confidence in judicial neutrality, a core Treaty value. The Applicant posits that this arrangement violates the Uganda Code of Judicial Conduct (Canon 4.1), which prohibits extrajudicial activities that "*cast reasonable doubt on the judge's capacity to act impartially,*" reinforcing the argument that only resignation aligns with Treaty and domestic obligations.

26. It is the Applicant's case that Judge Abodo's appointment as DPP, without resigning her judicial office, constitutes a grave breach of judicial independence and separation of powers, striking at the heart of Articles 6(d) and 7(2) of the Treaty. It urges this Court to recognize that such a violation not only contravenes Uganda's Constitutional precedents but also jeopardizes the EAC's regional commitment to democratic integrity, necessitating a declaration of unlawfulness to safeguard the rule of law.

27. On his part, the Respondent robustly defends the appointment of Judge Jane Frances Abodo as Director of Public Prosecutions, asserting its full compliance with the Ugandan Constitution and its consistency with Articles 6(d) and 7(2) of the Treaty.

28. That central to this defense is Article 120(2) of the Ugandan Constitution, which stipulates that the DPP must be "*a person qualified to be appointed a judge of the High Court.*" The Respondent submits that Judge Abodo, as an incumbent High Court judge, indisputably satisfies this eligibility criterion, possessing not merely the minimum qualifications but the actual experience and stature of a sitting judicial officer. That far from creating a conflict, her judicial background enhances her suitability for the DPP role, aligning with the constitutional intent to appoint a highly competent legal professional capable of upholding the office's prosecutorial responsibilities under **Article 120(3) of the Constitution of the Republic of Uganda.**

29. This interpretation, the Respondent argues, reflects a purposive reading of the Constitution, ensuring that eligibility standards serve practical governance rather than erecting artificial barriers.

30. To address the Applicant's claim of judicial incompatibility, the Respondent contends that any potential conflict between Judge Abodo's judicial status and her DPP role is decisively resolved by her placement on a leave of absence, a mechanism grounded in **Section C-F of the Public Service Standing Orders 2010**. Specifically, **Section C-F (paras 1-3)** permits public officers, including judicial officers under the administration of the Judiciary as a public service entity (per Article 257(1)(y) of the Constitution), to be granted special leave for exceptional circumstances, such as temporary secondment to another public office. The Respondent submits that this leave, formalized in Judge Abodo's appointment letter (Annexure B of Abodo's Affidavit), suspends her active judicial duties, thereby severing any operational overlap between her judicial and prosecutorial functions.
31. That, unlike resignation, which the Applicant demands, leave preserves her judicial status and pension rights, a pragmatic balance that respects her career while enabling public service in a critical role. This approach, the Respondent argues, aligns with the principle of judicial economy articulated in **Hassan Basajjalaba & Another vs Attorney General of the Republic of Uganda, EACJ Reference. No. 8 of 2018, para 44**, where efficient management of judicial resources is deemed integral to good governance under Article 6(d) of the Treaty.
32. The Respondent further distinguishes this case from **Jim Muhwezi vs Attorney General** (*supra*) upon which the Applicant heavily relies. In Jim Muhwezi, the Constitutional Court invalidated a judge's appointment as Inspector General of Government (IGG) due to an explicit constitutional prohibition under **Article 223(4) of the Constitution of the Republic of Uganda**, which bars judicial officers

from holding the IGG office without resignation. The Respondent emphasizes that no analogous provision exists in Article 120 of the Constitution, which governs the DPP, rendering Jim Muhwezi inapposite. Where the Constitution intends to exclude judicial officers, it does so expressly, as with the IGG, but its silence on the DPP signals legislative intent to permit such appointments, provided procedural safeguards like leave are in place.

33. The Respondent further submitted that this distinction is reinforced by **Bob Kasango vs Attorney General** (*supra*), where Justice Mike Chibita's DPP appointment was voided pre-**Administration of the Judiciary Act 2020 (AJA)**, before leave mechanisms were clarified. The Respondent notes that Section 20 of the **AJA**, enacted post-appointment, now explicitly authorizes judicial leave for public service roles with Judicial Service Commission approval, retroactively validating Judge Abodo's transition and distinguishing her case from Kasango's stricter context.
34. Beyond domestic law, the Respondent invokes comparative authority to bolster its position. In **Bato Star Fishing vs Minister of Environment [2004] ZACC 15**, the Constitutional Court upheld discretionary executive appointments where statutory criteria were met, emphasizing that procedural flexibility serves public interest without compromising legality. Similarly, Judge Abodo's headhunted appointment, recommended by the Public Service Commission (Annexure A, Musingwiire's Affidavit), appointed by the President, and approved by Parliament, complies with Article 120(1)'s tripartite process, negating incompatibility claims.

35. The Respondent argues that Treaty Article 6(d)'s rule of law standard, as defined in **Baranzira vs Attorney General Republic of Burundi** (*supra*), is satisfied when national laws are transparently followed, not when extraneous public participation is imposed. Here, leave under Section C-F ensures judicial independence by preventing Judge Abodo from adjudicating while DPP, addressing the Applicant's fair hearing concerns without evidence of actual bias.
36. The Respondent also situates its argument within the Treaty's pragmatic framework contending that Article 7(2) obliges Partner States to maintain human rights standards, but the Applicant's speculative assertion, that a judge-DPP erodes trust, lacks empirical support. That the DPP's executive role, while distinct from judicial adjudication, benefits from judicial expertise, enhancing prosecutorial integrity, a public good aligned with Article 6(d)'s governance goals.
37. The Respondent argued that leave mechanism, far from a legal fiction, reflects Uganda's adaptive constitutional practice, harmonizing judicial and executive needs without breaching Treaty principles. He cited **Henry Kyarimpa vs the Attorney General of Uganda, EACJ Appeal No. 6 of 2014**, in which this Court held that Applicants bear the burden of proving Treaty violations, a threshold unmet here in the absence of concrete prejudice.
38. Similarly, the Respondent submits that Judge Abodo's eligibility under **Article 120(2) of the Constitution of the Republic of Uganda**, coupled with her leave of absence under **Section C-F of the Public Service Standing Orders, 2010**, resolves any incompatibility, distinguishing her appointment from Jim Muhwezi's specific prohibition. That this lawful process upholds Uganda's constitutional framework

and Treaty obligations, ensuring judicial independence and effective governance without necessitating resignation.

b) The Court's Determination

39. This Court's jurisdiction, as delineated under Article 27(1) of the Treaty, is confined to interpreting and applying the Treaty, not usurping the interpretive authority of Uganda's domestic courts over its Constitution.
40. Our mandate is thus to assess whether Judge Jane Frances Abodo's appointment as Director of Public Prosecutions on 17th April 2020 contravenes the principles of good governance, democracy, and the rule of law under Articles 6(d) and 7(2) of the Treaty, rather than to definitively resolve constitutional disputes reserved for Uganda's judiciary.
41. The Applicant relies heavily on **Bob Kasango vs Attorney General** (*supra*) where Uganda's Constitutional Court declared a sitting judge's appointment as DPP void for breaching judicial independence under Article 128 of the Constitution, arguing that these precedent binds Judge Abodo's case.
42. However, this Court notes that **Kasango** (*supra*) remains under appeal before Uganda's Supreme Court, rendering its legal finality uncertain (**Basajjabalaba vs Attorney General of Uganda** (*supra*)). In **Basajjabalaba**, the Court declined to preempt domestic adjudication, emphasizing judicial efficiency and respect for Partner State sovereignty. Accordingly, we evaluate Judge Abodo's appointment against the current legal framework and evidence before us, mindful that Treaty compliance hinges on demonstrable breaches, not

unresolved domestic interpretations. See **Henry Kyarimpa vs Attorney General of Uganda** (*supra*).

43. Article 120(1) of the Ugandan Constitution establishes a tripartite appointment process for the DPP, namely; recommendation by the Public Service Commission, appointment by the President, and approval by Parliament. This framework embeds checks and balances to ensure accountability and procedural integrity, reflecting the rule of law as a cornerstone of Article 6(d) of the Treaty. The Respondent substantiates compliance through Frank Musingwiire's affidavit and annexed Public Service Commission Recommendation No. 1/2020, which confirm that the Public Service Commission evaluated and recommended Judge Abodo prior to her presidential nomination and parliamentary approval.

44. This evidence directly rebuts the Applicant's claim of procedural irregularity, distinguishing this case from **Karuhanga vs Attorney General of Uganda, Constitutional Petition No. 39 of 2013**, where the Ugandan Constitutional Court invalidated a judicial appointment for lacking commission input. In **Karuhanga**, Justice Ekirikubinza held that bypassing the Judicial Service Commission under **Article 142 of the Constitution of the Republic of Uganda** undermined its independence, a principle extensible to the Public Service Commission under Article 166(2) of the Constitution. Here, Public Service Commission involvement satisfies constitutional intent, ensuring that executive discretion is tempered by institutional oversight, a safeguard absent in **Karuhanga** (*supra*).

45. Logically, this adherence to Article 120(1) of the Constitution aligns with Treaty standards of transparent, accountable governance; negating claims of arbitrariness.
46. The **Administration of Judiciary Act 2020 (Section 20)**, further fortifies the Respondent's position by providing that "*a judicial officer may, with the approval of the Judicial Service Commission, be granted leave of absence to serve in another office in the public service.*" Although enacted post-appointment, this statute clarifies legislative intent to reconcile judicial and public service roles, offering a mechanism unavailable at the time of **Kasango** (*supra*).
47. The Respondent's evidence, Judge Abodo's Affidavit at para 11 and appointment letter (Annexure B), demonstrates that she was granted special leave under **Section C-F Public Service Standing Orders 2010**, suspending her judicial duties upon assuming the DPP role.
48. This leave, formalized pre-Administration of Judiciary Act 2020, aligns with Uganda's evolving legal framework, as Section 20 retroactively legitimizes such transitions. The Applicant's insistence on resignation, rooted in **Kasango** and **Jim Muhwezi cases** (*supra*) overlooks Article 120(2) of the Constitution, which deems the DPP eligible if "*qualified to be appointed a judge of the High Court.*" Requiring resignation for a sitting judge, already exceeding this threshold, imposes an extra-constitutional burden, undermining the provision's plain meaning and legislative flexibility.
49. Judicial independence, as **Seychelles Human Rights Commission vs Speaker** (*supra*) articulates, includes structural autonomy, but leave ensures Judge Abodo adjudicates no cases while serving as DPP, preserving that autonomy in practice.

50. This pragmatic resolution is in consonance with good governance under Article 6(d), balancing judicial integrity with public service needs.
51. The Applicant's fair hearing concerns, that a judge-DPP blurs prosecutorial and judicial roles, risking bias, rests on a theoretical conflict rather than concrete evidence of prejudice in 2020. Judicial independence under Article 6(d) demands practical impairment, not speculative leaps. The Applicant cites no instance where Judge Abodo's DPP tenure influenced judicial proceedings or compromised litigants' rights, a burden the Applicant ought to have discharged.
52. In **Doctors for Life International vs Speaker of the National Assembly and Others (CCT 12/05) [2006] ZACC 11**, public participation was required for legislative legitimacy, but Executive appointments like the DPP's involve representative oversight, not direct public veto.
53. Leave eliminates dual functionality, as Judge Abodo ceased judicial duties, negating any overlap. International norms, such as **Article 14(1) of International Covenant on Civil and Political Rights**, protect fair trials through institutional safeguards, not absolute role prohibitions, and Uganda's tripartite process, evidenced by PSC, Presidential and Parliamentary actions, meets this standard. The Applicant's reliance on **Kasango** (*supra*), falters given its pending appeal and the **AJA's** clarification, rendering this ground unpersuasive.

Equal Opportunities

54. The Applicant alleges that the head hunting process employed by the Public Service Commission to appoint Judge Jane Frances Abodo as

Director of Public Prosecutions denied equal access to this public office, thereby breaching Article 6(d) of the Treaty as well as Article 13(2) of the **African Charter on Human and Peoples' Rights**, guaranteeing every citizen "*the right of equal access to the public service of his country,*" and Article 25(c) of the **International Covenant on Civil and Political Rights**, ensuring the right "*to have access, on general terms of equality, to public service.*"

55. The Applicant contends that the PSC's failure to advertise the DPP vacancy, opting instead for a closed selection process, excluded other eligible Ugandans, contravening these international norms and undermining the democratic accountability enshrined in the Treaty.

56. In response, the Respondent defends the PSC's discretion under Regulation 17(3) of the PSC Regulations 2009, which permits non-advertised recruitment methods like head hunting when justified by urgency and sensitivity, a practice, he contends, was upheld as lawful in **Bato Star Fishing (Pty) Ltd vs Minister of Environmental Affairs and Tourism and Others [2004] ZACC 15**, where the Constitutional Court affirmed executive flexibility when serving the public interest. The Respondent asserts that this approach complied with Uganda's constitutional framework and Treaty obligations, negating any violation.

57. Article 172(1)(a) of the Ugandan Constitution vests the President with authority to appoint heads of departments, including the DPP under Article 120(1) of the Constitution, "*acting in accordance with the advice of the Public Service Commission.*" Complementing this, Regulation 17(3) of the PSC Regulations 2009 explicitly empowers the Public Service Commission to "*determine the method of recruitment,*" including "*direct appointment*" without advertisement, where efficiency

and public interest demand it. The Respondent's evidence, Frank Musingwiire's affidavit and annexures such as the Public Service Commission Recommendation No. 1/2020 demonstrates that the Public Service Commission, citing the DPP role's sensitivity and the urgency of filling a vacancy amid rising case backlogs, headhunted Judge Abodo, a qualified High Court judge, before recommending her to the President.

58. The Applicant's founding Affidavit sworn by Sengendo on 22 May 2020 asserts exclusion of other candidates, claiming this as unrebutted evidence under Rule 41(1) of the Rules, which deems unchallenged pleadings admitted unless specifically denied. However, Musingwiire's Affidavit directly counters this by detailing the Public Service Commission's deliberative process, shifting the evidentiary burden back to the Applicant. This Court finds that Rule 41(1) of the Rules applies only to wholly unopposed allegations, not where, as here, sworn testimony refutes the claim, requiring the Applicant to substantiate exclusion beyond mere assertion.

59. Crucially, the Applicant adduces no evidence from excluded candidates or records of denied applications, demonstrating that eligible individuals were actively prevented from seeking the DPP role. Its argument rests on an inference, that non-advertisement inherently denies equal opportunity. Under the common law maxim *ei incumbit probatio qui dicit* ("he who alleges must prove"), this inference falls short of proof.

60. Article 6(d) of the Treaty obligates Partner States to uphold good governance, including equal opportunities, but does not prescribe a uniform recruitment template beyond compliance with domestic law.

The PSC's discretion under its Regulation 17(3), rooted in Article 166(2)'s advisory mandate, is a lawful method recognized in Uganda's constitutional framework, as affirmed in **Eberuku Pius vs Moyo District Local Government (HCMA No. 5/2016)**, where fair exercise of discretion, even in the absence of explicit rules, suffices if rationally justified. Here, urgency and sensitivity evidenced by PSC minutes referenced in **Musingwiire's Affidavit** at para 5, provide such justification, aligning with **Bato Star Fishing's** endorsement of pragmatic executive flexibility when serving the public interest. In **Bato** (*supra*), the Court's approval of the Department's focus on internal transformation of existing rights holders over admitting new entrants in the capital-intensive deep-sea trawl sector suggests that a closed or selective process may be permissible if it aligns with statutory objectives and is transparently justified. The Court upheld the allocation process in this case, finding it transparent and consistent with the published guidelines, despite limited redistribution for transformation. **Bato** broadly upholds the lawfulness of executive flexibility in decisions serving public interest, agreeing where justified by complexity, expertise, urgency or sensitivity.

61. Neither the African Charter nor the **International Covenant on Civil and Political Rights** (ICCPR) mandates open competition where national law, transparently applied, ensures accountability, as Article 120(1)'s tripartite process does through Public Service Commission advice, Presidential action, and Parliamentary approval. The Applicant's reliance on **British American Tobacco vs Attorney General of Uganda, EACJ Reference. No. 7 of 2017** falters, as that case addressed legislative transparency, not executive appointments. Resultantly, we are convinced that in the instance, Public Service

Commission discretion satisfies domestic and Treaty standards, thus rendering allegations of denial of equal access to the public office of DPP unproven.

Transparency, Accountability and Democratic Participation

62. The Applicant contends that the in-camera processes adopted by the Public Service Commission and Parliament's Appointments Committee in appointing Judge Jane Frances Abodo as Director of Public Prosecutions breached the Treaty's principles of transparency, accountability and democracy under Article 6(d), and the democratic participation enshrined in Article 7(2).

63. Citing **Burundian Journalists Union & Others vs Attorney General of Burundi, EACJ Reference No. 7 of 2013**, the Applicant argues that secrecy in Public Service Commission deliberations and parliamentary vetting denied public scrutiny, undermining good governance as a Treaty obligation. It asserts that the lack of open hearings or published records, particularly during the COVID-19 lockdown, excluded citizens from monitoring a critical public appointment, contravening the EACJ's precedent that transparency is integral to democratic legitimacy.

64. In response, the Respondent justifies confidentiality under **Rule 165(2) of the Rules of Procedure of the Parliament of Uganda**, which mandates closed sessions for the Appointments Committee, and **Section 19 of the Public Service Act, Cap. 288**, which privileges Public Service Commission minutes as confidential unless disclosure is authorized. The Respondent submits that such secrecy is a lawful mechanism to protect sensitive deliberations, consistent with Uganda's constitutional framework and Treaty compliance.

65. Article 6(d) of the Treaty obliges Partner States to ensure accountability to transparent, equally enforced laws, a standard this Court has interpreted as requiring procedural integrity over absolute openness (see: **Baranzira Raphael vs Attorney General of the Republic of Burundi** (*supra*). Uganda’s Constitution supports this balance: Article 90(1) empowers Parliament to “*appoint standing committees and other committees necessary for the efficient discharge of its functions,*” while Article 94(1) authorizes it to regulate its own procedures, including through Rule 165(2), which explicitly states that “*the proceedings of the Committees on Appointments shall be closed*”. This delegation reflects a constitutional design prioritizing efficiency and confidentiality in executive vetting, distinct from the legislative process scrutinized in **Doctors for Life International vs Speaker of the National Assembly and Others** (*supra*). In **Doctors for Life**, the South African Constitutional Court mandated public participation in law-making, holding that “*public involvement in the legislative process is an integral part of democracy*”, as it shapes norms binding all citizens.
66. However, appointments like the DPP’s are executive acts, initiated by the President under Article 20(1), subject to parliamentary oversight, not public referendum.
67. The distinction is critical. Legislation demands broad input to reflect diverse interests, whereas appointments fill specific roles to execute existing laws, a function ill-suited to plenary exposure.
68. Rule 170 further mandates the Committee to report to Parliament without debate, ensuring representative accountability within constitutional bounds.

69. Article 38 of the Uganda Constitution guarantees every citizen the right to “*participate in the affairs of government, individually or through his or her representatives, in accordance with law,*” a mediated process fulfilled through elected parliamentarians, not direct public involvement in every decision.
70. The Applicant’s demand for plenary debate misreads Article 89 of the Constitution, which governs voting majorities, as tempered by Article 90’s delegation authority, a lawful modification under parliamentary self-regulation.
71. No evidence suggests secrecy, concealed corruption or bad faith. The Respondent’s Affidavit from Jane L. Kibirige, at para 7, confirms the Committee’s due diligence, reporting to Parliament per Rule 170.
72. The Applicant’s reliance on **Burundian Journalists Union** (*supra*) falters, as that case addressed media bans, not appointment processes, and **Henry Kyarimpa** (*supra*) required proof of substantive prejudice, not procedural preference. Moreover, the COVID-19 lockdown context justified expedited vetting to maintain governance continuity, a pragmatic necessity in the then emergency situation that this Court takes judicial cognizance of.
73. Article 6(d) of the Treaty does not mandate public access where domestic law, transparently applied, ensures accountability, as here through Public Service Commission advice per Musingwiire’s Affidavit.
74. This ground fails.

Contravention of National Law

75. The Applicant alleges that the Public Service Commission, the President and Parliament committed *ultra vires* acts in appointing Judge Jane Frances Abodo as Director of Public Prosecutions, asserting that their actions exceeded constitutional and statutory authority, thereby breaching Articles 2, 120, and 166 of the Ugandan Constitution.
76. Specifically, it contends that the Public Service Commission's headhunting violated Article 166(1)'s mandate to ensure transparent recruitment, that the President's nomination usurped Public Service Commission autonomy under Article 120(1) of the Constitution, and that Parliament's in-camera committee approval contravened Article 2's supremacy of constitutional law by bypassing plenary oversight.
77. These alleged breaches, the Applicant argues, negate the rule of law under Article 6(d) of the Treaty, as they flout Uganda's foundational legal framework.
78. The Respondent counters that each step complied with constitutional and statutory processes, asserting that headhunting was lawful, the President acted on Public Service Commission advice, and Parliament's committee process was constitutionally sanctioned, aligning with domestic law and Treaty obligations.
79. We find the Respondent's position persuasive. The Public Service Commission's headhunting aligns with Regulation 17(3) of the PSC Regulations 2009, which authorizes the Commission to "*determine the method of recruitment,*" including direct appointment, and Article

166(2), which vests it with advisory powers to recommend public officers.

80. Frank Musingwiire's Affidavit and Public Service Commission Recommendation No. 1/2020 evidence a deliberative process, citing urgency and Judge Abodo's qualifications, consistent with **Eberuku Pius vs Moyo District Local Government, HCMA No. 5/2016**, where discretionary recruitment was upheld if rationally exercised.
81. The President's nomination under Article 120(1) of the Constitution, requiring him to appoint the DPP "*on the recommendation of the Public Service Commission*", followed PSC advice not initiation, thus distinguishing this from **Gerald Karuhanga vs Attorney General** (*supra*), where the Constitutional Court voided a judicial appointment for bypassing commission input. In **Karuhanga**, the Court found that the President could not initiate the process of appointing a Chief Justice independently.
82. Parliament's approval via the Appointments Committee under Rule 165(2), which mandates closed sessions, fits Article 90(1)'s delegation of functions for efficiency.
83. Article 2's supremacy is not offended, as no provision mandates plenary action for appointments; Rule 170's reporting requirement ensures oversight within constitutional bounds. No legal authority voids these steps. Regulation 17(3), Article 120(1), and Rule 165(2) are *intra vires* and their transparent application satisfies the Treaty's rule of law standard, defined as accountability to enforced laws.

The Judiciary and the Judicial Service Commission's Culpability

84. The Applicant faults the Judiciary and the Judicial Service Commission for failing to object to Judge Jane Frances Abodo's appointment as Director of Public Prosecutions, arguing that this acquiescence breached good governance under Article 6(d) of the Treaty. Citing **Hassan Basajjabalaba and Another vs Attorney General of Uganda** (*supra*), where this Court defined good governance as encompassing "*efficient management of resources, which would include human resources*" the Applicant asserts that the Judiciary and Judicial Service Commission's silence condoned an incompatible transfer, undermining judicial independence and human resource management standards.

85. It contends that the Judicial Service Commission, tasked under Article 146 of the Ugandan Constitution with overseeing judicial appointments and discipline, had a duty to intervene, and that its inaction facilitated a breach of Treaty principles by allowing a sitting judge to assume an executive role without resignation.

86. The Respondent counters that prior to the Administration of Judiciary Act 2020, the Judicial Service Commission had no statutory mandate to regulate DPP appointments, which fall outside its judicial purview, and that post the Act, the appointment aligns with lawful HR practices.

87. We find no merit in the Applicant's claim. Pre-2020, the Judicial Service Commission's role, as delineated in Article 146(1) of the Constitution and Section 4 of the Judicial Service Commission Act 1997, was limited to advising on judicial appointments, promotions, and discipline within the Judiciary, with no statutory duty to intervene in

DPP appointments, a public service role under Article 120(1) of the Constitution, governed by the Public Service Commission.

88. The Applicant's reliance on **Jim Muhwezi** (*supra*), where a Judge's appointment as IGG was voided, imposes no parallel obligation on the Judicial Service Commission, as that ruling addressed constitutional incompatibility, not Judicial Service Commission oversight, and Article 223(4) of the Constitution would explicitly bar judicial officers from the IGG appointment, unlike the DPP's framework.
89. **The Administration of Judiciary Act 2020**, effective 19 June 2020, validates judicial leave for public service roles with Judicial Service Commission approval, reflecting legislative intent to harmonize judicial and executive functions. Judge Abodo's Pre-Act leave under the Public Service Standing Orders 2010 aligns with this intent, ensuring judicial economy by efficient resource use as a facet of good governance.
90. The Applicant's un rebutted affidavit sworn by Sengendo claims JSC acquiescence "*condoned an illegality*," however, it lacks specificity, no evidence details JSC deliberations, objections, or HR breaches, thus failing the evidentiary burden under **Kyarimpa vs AG EACJ** (*supra*). Rule 41 of the Rules deems unchallenged allegations admitted only if wholly unopposed, but here, the Respondent's pre-2020 context rebuts any duty, rendering this ground speculative and meritless.
91. In the final result, the issue as to whether the actions of H.E the President of the Republic of Uganda, the Public Service Commission, the Parliament of Uganda, the Uganda Judiciary and the Judicial Service Commission with respect to the appointment of Judge Jane Frances Abodo as Director of Public Prosecutions were unlawful and

contravened Article 6(d) and 7(2) of the Treaty is answered in the negative.

G. REMEDIES

92. The Applicant sought declarations of illegality, nullification of the appointment, and orders for lawful re-recruitment.

93. Having found that the appointment is lawful, these remedies are denied.

H. COSTS

94. The Applicant prayed for costs.

95. Whereas per Rule 127 of the Rules, costs follow the event unless for good reasons the Court orders otherwise, reflecting the broadly public interest nature of the matter, we deem it appropriate that each party shall bear its own costs.

I. CONCLUSION

96. The Applicant fails to discharge its burden which requires empirical evidence of Treaty breaches, not mere procedural critique. Its claims of judicial incompatibility, unequal access, opacity, and *ultra vires* acts rely on inferences rather than concrete proof of exclusion, bias, or illegality, a deficiency fatal under the maxim that “*The burden of proof lies on the one who asserts, not on the one who denies.*” (*ei incumbit probatio qui dicit*).

97. In the absence of that said evidence, the appointment stands as lawful.

98. The appointment of Judge Jane Frances Abodo as Director of Public Prosecutions on 17th April 2020 fully complied with Ugandan law and did not contravene Articles 6(d) and 7(2) of the Treaty.

J. FINAL ORDERS

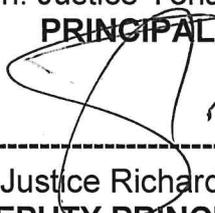
99. The Reference is dismissed in its entirety.

100. Each party shall bear its own costs.

Dated, signed and delivered at Arusha this 27th day of November 2025.



Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



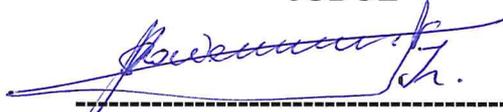
Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE



Hon. Justice Richard Muhumuza
JUDGE



Hon. Justice Dr Leonard Gacuko
JUDGE



Hon. Kayembe Ignace Rene Kasanda
JUDGE