

Prof. Gilbert Balibaseka Bukenya Vs Attorney General (Const. Pet.No. 30 Of 2011) [2011] UGCC 9 (10 August 2011)

SUBJECT: criminal charges preferred against your petitioner for acts in his official capacity as Vice President of Uganda contravention the Constitution of the Republic of Uganda, 1995.

Subject: whether an Acting IGG has authority to perform the functions of IGG under constitution.

Charging your petitioner, by the Inspector General of Government for the offences of abuse of office contrary to section 11 of the Anti Corruption Act 2009 and Fraudulent Practice contrary to section 95 (1) (d) of the Public Procurement and Disposal of Public Assets Act 2003, before the Anti-Corruption Court based on acts done in his official capacity as the Vice President of Uganda, is inconsistent with and in contravention of Articles 98 (5), 108 (3) and 112 of the Constitution of the Republic of Uganda, 1995. The petitioner on various occasions during that term of office chaired Subcommittee meetings in preparation of CHOGM 2007 following a directive from His Excellency the President of Uganda. Article 98 (4) gives immunity to him while in office.

DECISION:

The Constitution intended the “immunity” under Article 98 (4) and (5) to be the exclusive preserve of the Head of State, Head of Government and Commander-in-Chief of the People’s Defence Forces and the Fountain of Honour. It thus emerges very clearly that the Vice Presidency is distinct from and inferior to the Presidency. Immunity is a right or privilege given by law. It cannot therefore be inferred from the language used. There must be clear and unequivocal expression conferring that right or privilege. The office of the Vice Presidency is not covered under Article 98 (4) and (5).

Article 223 and Section 2 of the IG Act No. 5/2002 provides that: “Inspector-General” means the Inspector-General of Government appointed under section 3 of the Act and includes a Deputy Inspector General. It is correct that the Inspectorate is manned by the IGG and such number of Deputy Inspectors General as Parliament may prescribe. There is no position designated as Acting IGG currently. However, the current IGG, Mr. Raphael Obudra Baku is substantively a deputy IGG who now happens to be carrying out the duties of IGG since the position of the substantive IGG has not yet been filled. This, however, does not nullify his position and powers as Deputy IGG who is

capable of prosecuting offences. We do consider this to be an internal administrative arrangement which does not affect the capacity of the officer to perform his constitutional duties.