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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CORAM: OWINY - DOLLO, DCJ; KAKURU, EGONDA-NTENDE, CHEBORION
BARISHAKI, MADRAMA IZAMA JJA/JJCC.

CONSTITUTIONAL PETITION No. 09 OF 2019

10

BETWEEN

1. HON. SSEKIKUBO THEODORE }

2. HON. AMODING MONICA }

3. HON. TINKASIMIRE BARNABAS }

4. HON. NAMBESHE JOHN BAPTIST }

15 5. HON. NSAMBA OSHABE PATRICK }

6. HON. MBATEKAMWA GAFFA } PETITIONERS

7. HON. LYOMOKI SAMUEL }

8. HON. AKELLO SILVIA }

9. HON. AMERO SUSAN }

20 10. HON. ACIDRI JAMES }

11. HON. ADOME BILDARD MOSES }

AND

NATIONAL RESISTANCE MOVEMENT } RESPONDENT

25

JUDGMENT OF OWINY - DOLLO; DCJ

The Petitioners herein are members of Parliament of Uganda; and are,
as well, members of the National Resistance Movement (hereafter the
NRM), which is one of the recognized political parties in the country.

30 They have petitioned this Court under the provisions of Article 137 of
the Constitution; challenging resolutions made by the Central Executive
Committee of the NRM, and the NRM Parliamentary Caucus. The brief
facts of the case are that on the 19th February 2019, the Executive
Committee of the NRM met at Chobe Safari Lodge under the Chair of the
35 Committee, H.E. Yoweri Kaguta Museveni. The Executive Committee

5 resolved in that meeting that H.E. Yoweri Kaguta Museveni should be the sole candidate of the NRM in the Presidential election due in 2021; and this position should obtain in subsequent elections.

Subsequent to this, at a retreat held in Kyankwanzi from 13th to 20th March 2019 – which the Petitioners claim the Government Chief whip, without any explanation or giving them a hearing, denied them access to attend and participate in the deliberations – the NRM Parliamentary Caucus discussed and adopted the Chobe Safari Lodge resolution of the Central Executive Committee that H.E. Yoweri Kaguta Museveni be the NRM's sole Presidential candidate for the 2021 Presidential election; and for the period thereafter. The Petitioners therefore contend that: –

- (i) *The resolution at Chobe Safari Lodge by the Central Executive Committee of the NRM, and the one at Kyankwanzi in the retreat by the NRM Parliamentary Caucus, that H.E. Yoweri Kaguta Museveni should be the sole candidate for the NRM in the 2021 Presidential election and thereafter, are inconsistent with and in contravention of Articles 1(1), (2), (4), 2 (1), (2), 8A, 20 (1), (2), 21 (1), 28 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), 29 (1) (b) (d) and (3), 42, 43 (1) (2), 44, 45, 69, 70, 71 (1) (c), 72, 73, 74, 77 (1), (2), 78 (1), 79, 80, 81, 83, 99 (3), 103 (1) (2), and 105 of the Constitution of the Republic of Uganda.*
- (ii) *Because the term of office of the Central Executive Committee of the NRM expires on the 30th June 2020, it therefore lacked the authority to resolve that H.E. Yoweri Kaguta Museveni, or any other person, should be the sole candidate of the party in the 2021 Presidential election, and thereafter; hence the resolution in this regard had no legitimacy.*
- (iii) *The arbitrary act by the Government Chief Whip, of denying the Petitioners the right to participate in the Kyankwanzi NRM*

5 *Parliamentary Caucus retreat, where the Chobe Safari Lodge resolution was discussed and adopted by the Caucus, is inconsistent with and in contravention of articles 8A, 20 (2), 21 (1), 29 (1) (a) (b) (d) and (e), 45, and 71 (1) (c) of the Constitution.*

10 (iv) *The making of the Chobe Safari Lodge resolution and its adoption, both done in the presence of H.E. Yoweri Kaguta Museveni who is the President of the Republic of Uganda, is consistent with and contravenes the provisions of article 99 (3) of the Constitution.*

15 Therefore, the Petitioners consider the two resolutions null and void to the extent of the inconsistencies with the provisions of the Constitution identified and listed above. It is the Petitioners' prayer that this Court should declare the Chobe Safari Lodge resolution, and its adoption by the NRM Parliamentary Caucus, as offending the various provisions of the Constitution identified and listed above; and are, accordingly, null
20 and void. Some of the Petitioners – namely, Hon. Ssekikubo Theodore, Hon. Sam Lyomoki, Hon. Monicah Amoding, Hon Barnabas Tinkasimire, Hon John Baptist Nambeshe, Hon. Susan Amero, Hon. Gaffa Mbwarekamwa, and Hon. Silvia Akello – swore affidavits in support of the petition; in which they stated facts in agreement with the pleadings
25 set out in the petition and summarized above.

The Respondent opposed the petition in its answer thereto, and refuted the allegations by the Petitioners that it had taken decisions which are inconsistent with and contravened provisions of the Constitution. It however conceded that, indeed, the impugned resolution was made by
30 its Central Executive Committee; but justified and gave explanation for the making of the impugned resolution as set out below; namely that: –

(i) *The Central Executive Committee has the mandate and responsibility to, inter alia, ensure that there is proper national*

- 5 *leadership, superintend over the activities of the Respondent, and promote NRM policies.*
- (ii) *The retreat held at Chobe Safari Lodge was for deliberations on the theme: "Building on solid achievements: Consolidating the unity of the National Resistance Movement, and the*
10 *Transformation of Wanainchi towards achieving Vision 2040."*
- (iii) *The retreat chose, for its deliberation, the thematic areas of ideology, strategy, patriotism, the economy, environmental conservation, resource mobilization, corruption, and constitutional amendments; with the intention of reaching*
15 *consensus on each of them.*
- (iv) *It was in the course of discussing the theme of "ideology and strategy" that the Central Executive Committee resolved to "emphatically recommend to the membership of the Movement and its organs that His Excellency Yoweri Kaguta Museveni continues leading the Movement and the State in 2021 and*
20 *beyond – as we eliminate the bottlenecks to transformation."*
- (v) *In resolving thus, the Central Executive Committee acted within its mandate and in compliance with the law; hence their recommendation and guidance to the membership of the*
25 *Movement is not unconstitutional at all.*
- (vi) *The recommendation contained in the resolution of the Central Executive Committee is a political question which is not for judicial consideration or for constitutional interpretation.*
- (vii) *No one with the requisite qualification has been barred by the*
30 *Respondent, from contesting for the position of Presidential candidate for the NRM in the Presidential elections due in 2021.*
- (viii) *As a matter of strategy, any of the Respondent's organs may recommend one of the Respondent's members for selection by the members of the Respondent as its Presidential flag bearer.*

- 5 (ix) *The attendance of the Central Executive Committee meeting by His Excellency Yoweri Kaguta Museveni, who is the National Chairman of the Respondent, did not invalidate the Central Executive Committee's recommendation.*
- 10 (x) *The petition is premature; because it is the responsibility of the National Conference of the NRM, as its supreme organ, to elect the NRM's Presidential candidate in national elections, from a person or persons recommended by the National Executive Council.*
- 15 (xi) *The Respondent's Parliamentary Caucus retreat held at Kyankwanzi was well attended by members of the Caucus, distinguished members of the Respondent, and invited guests. It was the Petitioners who declined to attend.*
- 20 (xii) *The Parliamentary Caucus resolved in the meeting to adopt the Chobe Safari Lodge resolution by the Central Executive Committee to recommend to the members of the NRM, and its national leadership organs, that H.E. Yoweri Kaguta Museveni should continue as leader of both the NRM and the State up to 2021 and beyond.*
- 25 (xiii) *In doing so, the Parliamentary Caucus complied with the law all the time; hence, there is nothing unconstitutional in its recommendation and guidance to the members of the Respondent.*
- 30 (xiv) *There is no bar to anyone with the requisite qualification to contest for the position of Presidential candidate for the NRM in the 2021 Presidential elections.*
- (xv) *The attendance of the Parliamentary Caucus retreat by H.E. Yoweri Kaguta Museveni, who is the National Chairman of the Respondent, does not invalidate the resolutions made therein;*

5 *and in any case, it is not a matter for constitutional interpretation.*

 (xvi) *The absence of the Petitioners in the Parliamentary Caucus retreat does not vitiate the proceedings of the retreat; and does not render the recommendation made therein illegal or*
10 *unconstitutional.*

 (xvii) *The non-attendance of the Parliamentary Caucus retreat by the Petitioners is not a matter for constitutional interpretation.*

The Respondent contended further that, in fact, the petition contests the Respondent's resolutions aforesaid, claiming that they were not
15 done in compliance with the provisions of the Political Parties and Organizations Act; which does not require constitutional interpretation, but instead an action in the High Court for the enforcement of alleged rights which have been violated by the impugned resolutions and actions of the Respondent or its agents. In support of the reply to the
20 petition, was the affidavit in reply sworn by Oscar John Kihika the Director Legal services for the Respondent. he provided evidence in support of the contention of the Respondent produced above. The Respondent then pleaded with this Court to find that the petition is devoid of merit; and should therefore be dismissed.

25 It however gave notice of preliminary points of objection it would raise at the trial that would necessitate striking out the petition. The grounds of objection are that: -

- (i) The petition does not raise any issue that would require interpretation of any provision of the Constitution.
- 30 (ii) The petitioners ought to have sought relief in other Courts with jurisdiction, under the law, to attend to their complaints.

- 5 (iii) The Respondent has not committed any act or omission in the petition that would call for the interpretation of any provision of the Constitution.
- (iv) The petition offends the rules regarding pleadings, as it is not specific as to which particular provision of the Constitution has
10 allegedly been infringed by the Respondent; and in addition, the affidavits sworn in support are argumentative and littered with falsehood.
- (v) The petition is an abuse of Court process, because the matters raised therein are for enforcement by the National Electoral
15 Commission; which has the legal mandate to do so under the Political Parties and Organizations Act, 2005.

At the hearing of the petition, the Petitioners were represented by Counsel Medard Lubega Segona appearing together with Counsel Samuel Muyizzi Mulindwa, and assisted by Counsel Johannes Balirirere.
20 the Respondent was represented by Counsel Kiryowa Kiwanuka who appeared with Counsel Usama Sebuwufu. Counsel on both sides adopted their respective conferencing notes, and the skeleton written submissions they had each filed in Court. The parties raised four issues in the conferencing notes for Court's consideration. These are: -

- 25 (1) *Whether the petition raises grounds for constitutional interpretation.*
- (2) *Whether the resolution of the Respondent's Central Executive Committee passed between the 15th February and the 20th February 2019 at Chobe safari Lodge in Nwoya District to
30 emphatically recommend to the membership of the Movement and its organs that H.E. Yoweri Kaguta Museveni continue leading the Movement and State in 2021 and beyond, so as to eliminate bottlenecks to transformation, is inconsistent with*

5 *and/or in contravention of Articles 1 (1) (2) (4), 2 (1) (2), 8A, 20 (1) (2), 21, 28 (1), 42, 43 (1), 45, 71 (1) (c) (d), and 72 (2), of the Constitution of the Republic of Uganda.*

10 (3) *Whether the Chief Whip blocked the Petitioners from attending the NRM Caucus; and if so, whether the act of the Chief Whip/Chairperson of NRM Caucus in blocking the Petitioners from attending the NRM Parliamentary Caucus Retreat without powers, without any disciplinary offence committed and or hearing, is inconsistent with and or in contravention of Articles 1 (1) (2) (4), 2 (1) (2), 8A, 20 (1) (2), 21, 28 (1), 42, 43 (1) (2), 71 (1) (c), 72 (2) and 74, of the Constitution of the Republic of Uganda.*

15 (4) *Whether the decision of the Respondent's Parliamentary Caucus adopting the 19th February 2019 Chobe resolution of the Respondent's Central Executive Committee declaring President Yoweri K. Museveni as NRM sole candidate for the 2021 presidential elections and beyond, is inconsistent with and /or in contravention of Articles 8A and 71 (c) and (d) of the Constitution of the Republic of Uganda*

25 Counsel Medard Lubega submitted that it is evident from the pleadings that the petition discloses causes of action against the Respondent. Similarly, learned Counsel submitted, the issues for determination, as are contained in the cause of action, require interpretation of the Constitution; hence the petition is properly before this Court. for this proposition of the law he cited the decision of Owiny - Dollo DCJ/PCC, 30 in the case of *Male Mabirizi & Ors vs Attorney General - Constitutional Court Petitions No. 49 of 2017, and Nos. 3, 5, 10, and 13, of 2018*; and, as well, the case of *Centre for Human Rights and Development & 3 Ors vs Attorney General - SCCA No.01 of 2013*; in both of which the Court pronounced itself on the

5 issue where it is contended in the petition that certain acts of the Respondent have infringed on the stated provisions of the Constitution.

Counsel submitted further that the Constitutional Court has jurisdiction where, on the face of it, the petition shows that there is need to interpret a provision of the Constitution. Counsel submitted that in this regard,

10 the acts of the agents of the Respondent complained of are inconsistent with and in contravention of the various provisions of the Constitution of the Republic of Uganda identified and set out in the petition; but more particularly Article 71 (1) (c) of the Constitution, which imposes on political parties the duty to adhere to the democratic principles
15 embedded in the Constitution, such as the internal organization of the political party. Indeed, Counsel pointed out, in Article 6 (1) and (2) of the Respondent's own Constitution, the principles of democracy and good governance have been incorporated. Counsel then concluded that the acts of the Respondent's agents complained of are inconsistent
20 with, and are in contravention of the Constitution of the Republic of Uganda; hence the need that the Constitution be interpreted.

In his submission in reply, Counsel Kiryowa Kiwanuka seized the opportunity to raise the preliminary points of objection the Respondent had given notice of in its pleadings in reply to the petition. Amongst
25 other points of objections, Counsel contended that the Constitutional Court is not established to handle all questions of violation of rights; but is instead clothed with jurisdiction only where the violation of rights complained of requires the interpretation of a provision of the Constitution of the Republic of Uganda. Learned Counsel relied, in
30 support of his submission, on the authorities of *Mbabali vs Sekandi - Constitutional Petition No. 28 of 2012*, reported in [2014] UGCC 15, and *Ismail Serugo vs Kampala City Council & The Attorney General - SC Const Appeal No. 2 of 1998*.

5 Counsel submitted that the acts of the agents of the Respondent, complained of, do not raise any issue for the interpretation of the Constitution of Uganda. Instead, the complainants should move the High Court for enforcement of their rights pursuant to the provisions of article 50 of the Constitution of Uganda. Counsel argued that the
10 Respondent's agents committed no wrong in recommending one person for consideration as the Respondent's candidate for the Presidential elections; as Article 44 (2) (a) of the Respondent's Constitution mandates the Respondent's National Conference to elect a Presidential candidate out of 'the person or persons' recommended to it by the
15 National Executive Council. Counsel contended that the process for the consideration of the recommendation of the Central Executive Committee is still an inchoate one since the National Conference has not yet convened to do so.

DETERMINATION OF THE ISSUES BY COURT

20 It is necessary and proper that I should, first, dispose of Issue No. 1 of the petition, which is with regard to the question of the jurisdiction of the Constitutional Court. In my judgment in the case of *Male Mabirizi & Ors vs Attorney General - Consolidated Constitutional Court Petitions No. 49 of 2017, and Nos. 3, 5, 10, and 13, of 2018*, which learned Counsel for the
25 Appellants herein cited on the issue of jurisdiction of this Court, I restated the position of the law at length as follows: -

"(i) The Remit of The Constitutional Court:

*Because of the importance of jurisdiction, and the danger of lack of it, in any judicial undertaking, it is crucial that a Court before which a
30 matter has been brought, determines whether or not it is seized with jurisdiction in such a matter. A Court may proceed on a matter that is entirely, or in part, outside of its remit; and thereby wasting much resources and effort for no good reason. The jurisdiction of the*

5 *Constitutional Court of Uganda derives from the provision of Article 137 of the 1995 Constitution; which states as follows:*

"137. *Questions as to the interpretation of the Constitution.*

10 '(1) *Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.*

(2) *... ..*

(3) *A person who alleges that -*

(a) *an Act of Parliament or any other law or anything in or done under the authority of any law; or*

15 (b) *any act or omission by any person or authority, is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate.'*

20 *Two points of importance clearly come out of this provision. First, is that pursuant to the provision of Article 137 (1) of the Constitution, the Constitutional Court is not a standing Court; but only a conversion of the Court of Appeal to sit as a Constitutional Court. Second, is that the jurisdiction of the Constitutional Court is limited to the interpretation or construction of provisions of the Constitution; and*
25 *determining whether an impugned provision of an Act of Parliament contravenes a provision of the Constitution; or whether a person, or institution has acted in a manner that violates a provision of the Constitution."*

30 The other relevant provision of Article 137 is in clause (4), which provides as follows: -

- 5 (4) *Where upon determination of the petition under clause (3) of this article the Constitutional considers that there is need for redress in addition to the declaration sought, the Constitutional Court may*
- (a) *grant an order of redress; or*
- (b) *refer the matter to the High Court to investigate and*
- 10 *determine the appropriate redress."*

While the headnote to Article 137 of the Constitution is clear that it is with regard to the interpretation of the Constitution, clauses (1) and (3) of Article 137 are manifestly independent provisions; providing for two distinctively different situations although they are both on the mandate

15 of the Constitutional Court. Clause (1) of Article 137 covers the exclusive remit, conferred on the Constitutional Court, to determine any question regarding the interpretation of the Constitution. Clauses (3) and (4), read together, are however enforcement provisions; which confer on the Constitutional Court, the powers to make declaratory

20 orders as to whether a provision in a legislation or the act of a person or authority is inconsistent with or in contravention of the Constitution, or not; and where it finds it is so, it may grant such remedy as it deems proper. This does not involve interpretation of a provision of the Constitution.

25 Although the jurisdiction conferred on the Constitutional Court is the point of convergence for the two provisions, I would apply the primary rule of interpretation and ascribe to the phrases in clauses (1), (3), and (4), of Article 137, their literal and ordinary meaning. Thus, I would use a disjunctive approach while considering the two clauses. This is

30 because clause (1) gives Court exclusive jurisdiction over questions of interpretation of the Constitution; while clauses (3) and (4) give the Court non-exclusive jurisdiction to make declaratory orders on issues of infringement of rights in general. In *S vs Marwane 1982 (3) SA 717 (AD)*,

5 Supreme Court stated, with regard to acceptable approach to interpretation of a Constitution, as follows:

10 *"... whether our courts were to regard an Act creative of a Constitution as it would any other statute, or as an Act sui generis, when construing a particular provision therein, they would give effect to the ordinarily accepted meaning and effect of the words used and would not deviate therefrom unless to give effect to the ordinary meaning would give rise to glaring absurdity; or unless there were indications in the Act – considered as a whole in its own peculiar setting and with due regard to its aims and objects – that the legislator did not intend the words to*
15 *be understood in their ordinary sense.*

For so long as this Constitution stands, the right to challenge the validity of legislation passed by the legislative authority will remain, as will the Supreme Court's power – and its duty, when properly called upon so to do – to test the validity of the challenged legislation by
20 *reference to the provisions of the Constitution."*

The views I have expressed above however run contrary to the interpretation of these clauses by the Supreme Court; namely that clauses (1), (3) and (4) of Article 137 under reference must be read conjunctively as they flow from clause (1). This Court is bound by the
25 decision of the Supreme Court; but I hope that at some point, the Supreme Court will have an opportunity to revisit the issue. Wherefore, then, the legal position pronounced by the Supreme Court in a number of cases, is that the Constitutional Court is only vested with jurisdiction to determine any issue under clauses (3) and (4) of Article 137, if such
30 issue first requires the interpretation of a provision of the Constitution, as is provided for in clause (1) of Article 137.

5 The corpus of decisions in which the Supreme Court has expounded this position of the law, includes *Attorney General vs Maj. Gen. David Tinyefuza - S.C. Const. Appeal No. 1 of 1987*, and *Ismail Serugo vs Attorney General & Anor - S. C. Const. Appeal No. 2 of 1998*. In the *Attorney General vs Maj. Gen. David Tinyefuza* case (supra), Wambuzi C.J. held that: -

10 “In my view, jurisdiction of the Constitutional Court is limited in article 137 (1) of the Constitution to interpretation of the Constitution. Put in a different way, no other jurisdiction apart from interpretation of the Constitution is given. In these circumstances, I would hold that unless
15 the question before the Constitutional Court depends for its interpretation of a provision of the Constitution, the Constitutional Court has no jurisdiction.”

In the *Ismail Serugo* case (supra), Wambuzi C.J. had this to say: -

20 “In my view, for the Constitutional Court to have jurisdiction, the petition must show, on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a Constitutional provision has been violated. If therefore any rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent Court.”

In the same case, Mulenga JSC had this to say: -

25 “It follows that a person who seeks to enforce a right or freedom guaranteed under the Constitution by claiming redress for its infringement or threatened infringement but whose claim does not call for interpretation of the Constitution has to apply to another competent Court. The Constitutional Court is competent for the
30 purpose only upon determination of a petition under 137 (3)”

This Court has, as it is bound to, obliged and followed these authorities in such cases as *Charles Kabagambe vs Uganda Electricity Board - Const.*

5 *Petition No. 2 of 1999, Joyce Nakacwa vs Attorney General & Ors – Const. Petition*
 No. 2 of 2001, Asimwe Gilbert vs Barclays Bank – Const. Petition No. 22 of 2010.
Accordingly, then, the issues of jurisdiction of this Court over the
matters raised in the instant petition must be determined pursuant to
the holdings by the Supreme Court on the matter. The duty of the Court
10 is, therefore, to establish whether Issue No. 1, under consideration,
involves interpretation of a provision of the Constitution; and if so,
make a finding that the Court has jurisdiction to entertain it.

Although the Petitioners claim that the acts of the agents of the
Respondent complained of violate provisions of the Constitution of the
15 Republic of Uganda, in reality all that they have put in issue are matters
that would offend provisions of the constitution of the Respondent.
Admittedly, the constitution of the Respondent is a consequence of the
provisions of Article 71 of the Constitution of Uganda; which provides
as follows: –

20 “71. *Multiparty political system.*

 (1) *A political party in the multiparty political system shall*
 conform to the following principles –

 (c) *the internal organization of a political party shall conform to*
25 *the democratic principles enshrined in this Constitution;”*

 (2) *Parliament shall by law prescribe a code of conduct for*
 political organizations and political parties; and provide for
 the establishment of a national consultative forum for
 political parties and organizations with such functions as
30 *Parliament may prescribe.*

5 Pursuant to the provision of clause (2) above, Parliament enacted the Political Parties and Organizations Act, 2005; whose provision, under section 7 (5) (b) thereof, prohibits the Electoral Commission from registering any such party or organization with aims, objectives, or constitution, that contravene any law. The Respondent (NRM) is a
10 registered political party. The Petitioners do not claim anywhere that any provision of the Respondent's constitution is either inconsistent with, or is in contravention of any provision of the Constitution of Uganda. Instead, it has been submitted for the Petitioners that the Respondent's constitution promotes the democratic principles directed
15 by the Constitution of the Republic Uganda for political parties and political organizations to comply with.

The two impugned resolutions of the agents of the Respondent therefore would, if proved, offend provisions of the Respondent's constitution instead. The impugned acts of the agents of the
20 Respondent do not present anything that would require interpretation of the national Constitution. Whatever rights of the Petitioners that have been infringed by the acts of the Respondent's agents would cause the taking of action for enforcement of the rights claimed to have been violated. This would not necessitate petitioning the Constitutional
25 Court, since it is not a matter requiring the interpretation of the national Constitution, which alone would, on the authorities, justify the exercise of jurisdiction by this Court.

In the joint petitions - *Asiimwe Gilbert vs Attorney General - Const. Petition No. 1 of 2010*, and *Asiimwe Gilbert vs Barclays Bank (U) Ltd, Manirahuha Charles, and Kototyo William - Const. Petition No. 22 of 2010*, the Court clarified on the
30 difference between the circumstance requiring interpretation of the Constitution, and the one requiring enforcement of rights and freedom as follows: -

5 *"The jurisdiction of this Court has been firmly resolved in a number of decisions of this Court and of the Supreme Court in its appellate capacity as the Constitutional Appeal Court. First in the case of Attorney General vs Maj. Gen. David Tinyefuza - S.C. Const. Appeal No. 1 of 1987, and again in Ismail Serugo vs KCC and Attorney General (supra). Those*
10 *authorities have been followed ever since. It was held in the above authorities that this Court has jurisdiction only under Article 137 of the Constitution to interpret the Constitution. It is not concerned with and has no jurisdiction to entertain matters relating to violation of rights under the Constitution, for which parties seek redress. Such*
15 *matter ought to be brought before a competent Court under Article 50 for redress. However, this Court is only competent to give redress under Article 50 when the matter has first come properly before it for interpretation under Article 137 and not otherwise." (emphasis mine)*

It follows from this clear position of the law that the preliminary point
20 of objection raised by the Respondent is sustained; hence, Issue No. 1 of the petition is answered in the negative due to the fact that the petition presents nothing for the interpretation of the Constitution. I would however refrain from discussing the other issues raised in the petition, since the matter could come up before a Court seized with the
25 jurisdictional competence to determine the merits thereof. Accordingly, then, I would strike out this petition; with costs to the Respondent.

In the result, this Court declares and orders as follows: -

- (i) By majority decision (Owiny - Dollo, DCJ/PCC; Cheborion Barishaki and Madrama Izama, JJA/JJCC; with Kakuru and Egonda-Ntende, JJA/JJCC dissenting): This Court has no
30 jurisdiction in the matter since the petition raises no issue for constitutional interpretation.

- 5 (ii) By majority decision (Owiny - Dollo, DCJ/PCC; Kakuru, Cheborion Barishaki, and Madrama Izama, JJA/JJCC; with Egonda-Ntende, JJA/JJCC dissenting): The petition is struck out.
- (iii) By majority decision (Owiny - Dollo, DCJ/PCC; Cheborion Barishaki and Madrama Izama, JJA/JJCC; with Kakuru and
10 Egonda-Ntende, JJA/JJCC dissenting): The Petitioners shall pay costs of the petition to the Respondent.

Dated, and signed at Kampala this ^{2nd} day of July 2020


Alfonse C. Owiny - Dollo

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**Deputy Chief Justice &
Head of the Constitutional Court**

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THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. NO.09 OF 2019

BETWEEN

- 10 1. HON. SSEKIKUBO THEODORE (NRM) MP- LWEMİYAGA COUNTY}
2. HON.AMODING MONICAH (NRM) MP- KUMI DISTRICT}
3. HON. TINKASIMIRE BARNABAS (NRM) MP- BUYAGA WEST COUNTY}
4. HON. NAMBESHE JOHN BAPTIST (NRM) MP- MAYINJA COUNTY}
5. HON. NSAMBA OSHABE PATRICK (NRM) MP- KASSANDA COUNTY
15 NORTH}
6. HON. MBATEKAMWA GAFFA (NRM) MP-KASAMBWA COUNTY}
7. HON. LYOMOKI SAMUEL (NRM) WORKERS MP}
8. HON. AKELLO SILVIA (NRM) MP- OTUKE DISTRICT}
9. HON. AMERO SUSAN (NRM) MP- AMURA DISTRICT}
20 10. HON. ACIDRI JAMES (NRM) MP- MARACHA EAST COUNTY}
11. HON. ADOME BILDAD MOSES (NRM) MP- JIE COUNTY}
.....PETITIONERS
AND
NATIONAL RESISTANCE MOVEMENT}RESPONDENT

25
CORAM: Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ
Hon. Mr. Justice Kenneth Kakuru, JA/ JCC
Hon. Mr. Justice F.M.S Egonda-Ntende, JA/ JCC
Hon. Mr. Justice Cheborion Barishaki, JA/ JCC
30 Hon. Mr. Justice Christopher Madrama, JA/JCC

JUDGMENT OF KENNETH KAKURU, JA/JCC

I have read in draft the Judgment of my learned brother Madrama JA/JCC. I agree with him that this petition ought to fail.

However, I also agree with Justice Egonad-Ntende, JA/JCC, whose judgment I have also read in draft that, this Court has jurisdiction to hear and determine the
10 constitutionality of the acts of political parties and or the provisions of their respective constitutions for the reasons he has ably set out in his dissenting judgment.

In this petition, the provisions of the National Resistance Movement (NRM) constitution are not in issue. The acts complained of by the petitioners are disputed
15 by the respondent and therefore they ought to be proved first.

I have carefully read the petition and the answer thereto, together with the evidence on record as contained in various affidavits. I have also read the submissions of counsel and the authorities cited which have been provided to us on record. I find that, the allegations of fact upon which this petition is based have not been proved
20 to my satisfaction by the petitioners to enable me answer the 2nd and 3rd issues in the affirmative.

Had those alleged facts been proved, I would have juxtapositioned them alongside the impugned constitutional provisions and answered issues 1 and 2. The process of determining the NRM party's Presidential candidate for 2021 general elections from
25 the facts before me, is still an ongoing and appears to be far from conclusion. I am not satisfied that the petitioners have proved that, the said process had been concluded at the time this petition was heard, in order for me to determine the constitutionality of the acts complained of.

5 I would for the above reasons decline to strike out this petition on account of lack of jurisdiction by this Court. However, I would dismiss it for lack of merit, the petitioners having failed to prove what they set out in their petition.

This petition is hereby dismissed with no order as to costs.

Dated at Kampala this 2nd day of July 2020.

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.....
Kenneth Kakuru
JUSTICE OF APPEAL/ JUSTICE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

[Coram: Owiny-Dollo, DCJ, Kakuru, Egonda-Ntende, Cheborion & Madrama,
JJA / JJCC]

Constitutional Petition No. 09 of 2019

BETWEEN

Hon. Ssekikubo Theodore=====Petitioner No.1
Hon. Amoding Monicah=====Petitioner No.2
Hon. Tinkasimire Barnabas=====Petitioner No.3
Hon. Mambeshe John Baptist=====Petitioner No. 4
Hon. Nsamba Oshabe Patrick=====Petitioner No. 5
Hon. Mbatekamwa Gaffa=====Petitioner No. 6
Hon. Lyomoki Samuel=====Petitioner No. 7
Hon. Akello Silvia=====Petitioner No. 8
Hon. Amero Susan=====Petitioner No. 9
Hon. Acidri James=====Petitioner No. 10
Hon Adome Bildad Moses=====Petitioner No.11

AND

National Resistance Movement=====Respondent

Judgment of Fredrick Egonda-Ntende, JA / JCC

Introduction

- [1] I have had the opportunity of reading in draft the Judgment of my brother, Madrama, JA / JCC. The pleadings and facts of this petition are set out therein in sufficient detail and I need not repeat the same in this judgment. The facts are not largely in dispute.
- [2] I agree with my brother that for this court to be seized with jurisdiction under article 137 (1) of the Constitution there must be a matter for constitutional interpretation. This means that there must be a question or controversy that needs to be answered by this court with regard to the interpretation of any provision of the Constitution of Uganda in relation to an impugned law, act or omission of any person or

authority. Where a matter is simply for enforcement of fundamental human rights and freedoms arising from a violation of the same by any person, group, association, or the state that matter can be handled by any court of competent jurisdiction.

- [3] The ordinary application of the law including the Constitution is a duty that is performed by all courts, persons, and or organs of the state as directed by the Constitution and will not ordinarily result into an action in the Constitutional Court unless a question arises as to the interpretation of the Constitution. When such a question arises, this court is seized with jurisdiction to answer that question as to the correct interpretation of the Constitution.
- [4] It is possible in my view that a particular set of facts, may give rise to multiple causes of action, for instance either in tort or contract. A party will choose what action to pursue, whether in tort or contract, as the law may prescribe. A party could similarly bring an action for judicial review, if he is challenging a decision by a person and an authority, that is not in accord with the law, or bring a constitutional petition before the Constitutional Court if on the same facts, a question for constitutional interpretation arises.
- [5] My brother, Madrama, JA, takes the view that on the facts before us in this matter, it was possible for the petitioners to bring an action for judicial review of the impugned decisions before the High Court and as a result this petition should not lie to this court. I take a different view. I am satisfied that there are a couple of questions for constitutional interpretation that should be answered by this court.

Facts Giving Rise to the Petition

- [6] Before I consider the questions that may arise for determination of this court it will be useful to set out a summary of the facts that have given rise to the Petition. The petitioners all members of the National Resistance Movement and serving members of Parliament during the current term of the August House. The National Resistance Movement is the governing political party in Uganda. On the 19th February 2019, the Central Executive Committee of the National Resistance Movement, (hereinafter referred to as NRM), chaired by his Excellency, President Museveni, the Chairman of the Party met and made a decision to recommend to the other relevant organs of the Party that President Museveni be the party's sole candidate for the 2021 Presidential elections and beyond.

- [7] Prior to this meeting petitioner no.7 had written to the Central Executive Committee, notifying of it of his intention, to seek the nomination of NRM as its presidential candidate in the 2021 presidential elections. He required to be recommended to the National Executive Committee for consideration. Petitioner no. 7 did not receive a response to his request.
- [8] The decision or resolution, for the sole candidature of President Museveni, was presented to a meeting of the Parliamentary caucus of the NRM between 13th March and 20th March 2019 and President Museveni was declared the sole presidential candidate for NRM for the 2021 elections and beyond. The Petitioners were blocked from attending this meeting by the Government Chief Whip.
- [9] The Petitioners contended that these facts and actions of the NRM organs were inconsistent with a myriad number of articles of the Constitution of Uganda. Suffice it to say at this stage that in my view there were 2 articles implicated that require serious consideration. That is articles 71 (1) (C) and 99 (3) of the Constitution.
- [10] The respondent in its response did not dispute the facts put forth by the petitioner. However, it contended that no act or omission in the petition required interpretation of any provision of the Constitution. Secondly that there are other remedies and fora available for the petitioner to pursue, and as such an action for constitutional interpretation was not tenable.

Questions for Constitutional Interpretation

- [11] My brother, Madrama, JA, stated in his judgment and I agree that there must be a question to be answered by the court in the interpretation of one or more articles of the Constitution before this court can be seized with jurisdiction. It is important at this stage to bring in view the constitutional provisions in question.
- [12] Article 71 (1) (c) states,
- ‘the internal organisation of a political party shall conform to the democratic principles enshrined in this Constitution.’
- [13] Article 99 (3) provides,

‘It shall be the duty of the President to abide by, uphold and safeguard this Constitution and the laws of Uganda and to promote the welfare of the citizens and protect the territorial integrity of Uganda.’

- [14] The first question that arises on this petition could then be formulated as ‘Is it constitutional, or in compliance with article 71 (1) (c) of the Constitution, for a political party in Uganda to ‘ring fence’ indefinitely or for eternity, a position, in that party for one individual?’
- [15] This question arises given the wording of article 71 (1) (c) of the Constitution. It requires the internal organisation of political parties to conform to democratic principles set out in the Constitution. What are the democratic principles that are set out in this Constitution? How do they apply to the impugned decision? Were the impugned meetings and decisions in compliance with those principles? This is a matter that will call for constitutional interpretation, settling answers to the questions arising from this petition.
- [16] The second question would arise depending on the answer to the first question. Should the answer to the first question turn out to be in the negative, a question would arise, whether President Museveni, in chairing the meetings that gave rise to this decision, was not in breach of his duty as the President of Uganda under article 99 (3) of the Constitution?’
- [17] I am aware of course and it has been contended by the respondent that the petitioners have recourse to other fora to seek certain remedies in relation to the many matters that they complain about in the petition. This could include organs of the NRM, the Electoral Commission with possible appeals to the Courts of Judicature, or direct action in the High Court as suggested by my brother, Madrama, JA/ JCC. The existence of those avenues, does not, in any way, deprive the petitioners of their right to raise, as they have done, questions for constitutional interpretation to this Court. The choice remains a choice to the petitioners to determine which avenue they travel. It is not for this court at this stage, or the respondents to say the petitioners, ‘You have another avenue to ventilate your grievances. Take that other avenue.’
- [18] It is only this court with the jurisdiction to interpret the Constitution where a question for interpretation arises and the petitioners are entitled to come to this court and seek answers. The Petitioners have

come to this court for answers to the said 2 questions. This court is under a duty to provide those answers. I shall proceed to do so.

Background to the 1995 Constitution and the Governance Issues

- [19] Prior to the enactment of the 1995 Constitution political parties were governed by private law rather than public law. Their internal structure and governance was a matter for private law as societies. Their accession to Public law comes with the enactment of the 1995 Constitution due to the desire by the constitutional assembly that political parties must abide in their internal organisation and management to democratic principles. Why was this so? The answer to this question is found in the Report of the Uganda Constitutional Commission published in 1993. The report states, in part,

‘5.48 Democratic governance requires building a society based on democratic behaviour in all sectors of society. It will not be enough merely to provide for the forms of a democratic government, without addressing the issue of its social and cultural roots. Unless full account is taken of the social, cultural, political and economic capacity of Uganda, whatever democratic arrangement we put in place may not be sustainable.’

- [20] The report continues in paragraph 5.53,

‘ A major problem in Uganda has been that those in power have been reluctant to subject themselves to the electoral process. But even when elections have been held, they have been marred by corruption, fraud, manipulation of the masses and other forms of abuse. It is no wonder that people dissatisfied with the results have resorted to extra legal action.’

- [21] The report reviewed the operation and governance of political parties, stating in part,

‘8.120 The internal organisation of parties can be judged by reference to several criteria which include, among others: the manner in which their leaders are chosen or elected; the relationship between party leaders and members; sources of funding; accountability; external relations; the balance between central direction and local autonomy of branches; the principles governing party regulations; the inclusion into their programmes of

people's aspirations; and the extent of internal party democracy.

8.121 There are "patron-client" types of political parties, where there is a very high status leader or patron and numerous dependent followers or clients of lower status, who give personal loyalty and sometimes homage to the leader. The leader tends to have mythical status and may usually have dictatorial tendencies. Such a leader rules the party as his personal enterprise. His leadership can never be challenged, even it is seen by the majority of members as undesirable. Discipline is strictly enforced against anybody who attempts to challenge such a leader and the direction he has chosen for the party. Such party has no internal democracy and once it captures power, there can be no hope of democracy in the nation.

8.122 There is the second type of "faction-party", where various groups are united by a common bond of shared ideology. There is competition for leadership, and even internal plots to dislodge and replace leaders. This type as well militates against democracy since groups within it are prepared to act undemocratically to capture power within the party. Their internal conflicts are reflected on the nation, is such a party is in power.

8.123 There is also the democratic type of party where everything is done in accordance with the rules set down in the party's internal organisation which itself is based on democratic principles and procedures. In such a party the contest for leadership is open to all and is done democratically in free and fair elections. The leaders share the status as the members and there is no hero-worship. Supreme power resides in the members of the party and their representative body of delegates. The local branches of the party enjoy autonomy in the affairs of their locality and in the nomination of their candidates to represent them. There is transparency and accountability and there are norms for the behaviour of party leaders and members.'

- [22] In my view the inclusion in the Constitution of provisions that govern political parties was to deal with what had been noted above as deficiencies in the internal organisation of political parties, prior to the 1995 Constitution, with intent to tethering political parties to democratic principles. The type of party intended to arise from this constitutional rebirth is clearly not the 'patron-client' type of political party. Nor is it the 'faction-type' political party. The Constitution intended to give birth to the democratic type of political parties and

impose upon existing political parties provisions that would transform them into the democratic type of political parties.

Question 1

- [23] What are these democratic principles to which political parties are to be tethered or bound too? I find some of these set out in the National Objectives and Directive Principles of State Policy. I will set out part 1 and 2 given their relevance to the issue at hand.

'1. Implementation of Objectives

(i) The following objectives and principles shall guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.

(ii) The President shall report to Parliament and the nation at least once a year, all steps taken to ensure the realisation of these policy objectives and principles.

II Democratic principles

(i) The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.

(ii) All the people of Uganda shall have access to leadership positions at all levels, subject to the Constitution.

(iii).....

(iv)

(v) All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organisations and practice.'

- [24] One of the democratic principles enshrined in the Constitution above is the requirement that all people of Uganda shall have access to leadership positions at all levels subject to the Constitution. This presupposes that there will be both choice and competition for leadership positions at all levels in the party. Ring fencing a position for one person, without choice and competition, and barring access of

other interested Ugandans in a position of leadership, such as a presidential candidate, would run counter to the constitutional requirement of access by all Ugandans to leadership positions at all levels. The internal organisation of a party that permits or facilitates such an occurrence would be inimical to this democratic principle. It may well be permissible for traditional rulers but is clearly, in my view, inconsistent with the democratic society we are building as nation. Political parties have been ordered by the Constitution, vide article 71 (1) (c) to comply with this democratic principle.

- [25] I would therefore find that the Respondent organs acted in violation of article 71 (1) (c) when they decided that President Museveni shall be the sole Presidential candidate for the respondent for 2021 elections and beyond.

Question 2

- [26] President Museveni chaired the meeting of 19th February 2019 that passed the impugned resolution. It is contended that in doing so he violated his duty under article 99 (3) of the Constitution. This provision requires the President, inter alia, 'abide by, uphold and safeguard this Constitution and the laws of Uganda'.
- [27] Of course, I take it that the President was chairing the Central Executive Committee of the respondent in his capacity as Chairman, NRM, and not as the President of the Republic of Uganda. But can it be said that at any one moment he is able to shed off his responsibilities as President of Uganda, and therefore assert that he was not in violation of the duties attached to that office? I think not. In whatever position he may act he remains the President of Uganda, and must ensure that those other powers he may enjoy or exercise, do not come in conflict with his duties as President of Uganda. This is an ever present or enduring constitutional duty enshrined in article 99 (3) of the Constitution that must be obeyed at all times.
- [28] I would therefore find that in chairing and participating in the Central Executive Committee meeting that made a decision that was contrary to the Constitution of Uganda as shown above the President contravened article 99 (3) of the Constitution of Uganda.
- [29] I would allow this petition in part to the extent set out above with costs. The other matters in the petition largely call for enforcement and or redress for violation of fundamental rights and freedoms which would

arise under article 50 and can be handled by a competent court, rather than the Constitutional Court.

- [30] Before I take leave of this matter, I would wish to reflect a little on article 137 (7) of the Constitution that provides,

‘Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.’

- [31] It has become the practice of this court to hear and determine constitutional petitions in the form of constitutional petition sessions, not in priority but alongside the other work of the court, such as election petition appeals, criminal appeals and civil appeals, without preference for the hearing and determination of pending constitutional petitions. This practice may be in error, given the direction given by article 137 (7) to hear and determine constitutional petitions as soon as possible, and where necessary, suspend any other business in order to achieve the expeditious disposal of constitutional matters.

- [32] This particular matter was heard on the 1st October 2019 and has taken over 9 months without determination, during which the panel members of the court, were engaged in the hearing of other matters, including civil and criminal appeals. Maybe this approach to business distribution in the Court of Appeal / Constitutional Court could have contributed to the delay in determining this matter after hearing. In my view the Court is eschewing its duty of expeditious disposal of constitutional matters, including the one at hand.

- [33] Given the sacred and sole duty placed upon the court by the Constitution to provide authoritative interpretation of the Constitution where there is a controversy it is imperative that the court itself complies with the duty imposed upon it by the Constitution to expeditiously determine constitutional questions lest it finds itself being called to determine if it has complied with the Constitution in the handling of the business of the court.

Signed, dated and delivered at Kampala this 2nd day of July 2020



Fredrick Egonda-Ntende

Justice of Appeal / Justice of the Constitutional Court

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Owiny-Dollo, DCJ, Kakuru, Egonda-Ntende, Cheborion, Madrama, JJA/JJCC)

CONSTITUTIONAL PETITION NO: 09 OF 2019

- 1. HON. SSEKIKUBO THEODORE (NRM) MP-LWEMMIYAGA COUNTY}**
- 2. HON. AMODING MONICAH (NRM) MP KUMI DISTRICT}**
- 3. HON. TINKASIMIRE BARNABAS (NRM) MP BUYAGA WEST COUNTY}**
- 4. HON. NAMBESHE JOHN BAPTIST (NRM) MP-MAYINJA COUNTY}**
- 5. HON. NSAMBA OSHABE PATRICK (NRM) MP KASSANDA COUNTY NORTH}**
- 6. HON. MBATEKAMWA GAFFA (NRM) MP-KASAMBYA COUNTY}**
- 7. HON. LYOMOKI SAMUEL (NRM) WORKERS MP}**
- 8. HON. AKELLO SILVIA (NRM) MP OTUKE DISTRICT}**
- 9. HON. AMERO SUSZAN (NRM) MP- AMURIA DISTRICT}**
- 10. HON. ACIDRI JAMES (NRM) MP MARACHA EAST COUNTY}**
- 11. HON. ADOME BILDAD MOSES (NRM) MP-JIE COUNTY}**

.....**PETITIONERS**

VERSUS

NATIONAL RESISTANCE MOVEMENT}.....RESPONDENT

JUDGMENT OF CHEBORION BARISHAKI, JA/JCC

I have had the benefit of reading in draft the judgment of my brother Madrama Izama JA/JCC and I agree with the analysis and the conclusion he makes that this Petition does not raise issues for constitutional interpretation which would enable the court to have jurisdiction.

The Petitioners assert that the Central Executive committee of the respondent and its parliamentary caucus contravened various provisions of the constitution.

The complaint against Central Executive Committee (CEC) of the Respondent is that it passed a resolution on 15/2/2019 recommending that H.E Y.K Museveni be the sole NRM presidential candidate for the 2021 elections.

The NRM caucus is faulted for approving the said resolution of CEC and shutting out the petitioners from the meeting where the caucus approved the resolution.

The respondent submitted that the resolution of these matters do not call for interpretation any provision of the constitution because they do not raise questions for constitutional interpretation and for this, the constitutional court does not have jurisdiction to entertain the petition.

It is disheartening that for the last 25 years from 1995 when the constitution was promulgated, this court still spends a lot of time determining the issue of its jurisdiction to hear and determine many of the constitutional petitions brought. Guidance has been given both by this court and the supreme court in many decisions and for that reason should only arise seldom.

The jurisdiction of the constitutional court is derived from Article 137 (3) of the constitution and as such the petition must raise a question as to interpretation of the constitution for the court to have jurisdiction. In **Ismail Serugo Vs Kampala City Council and Anor Supreme court constitutional Appeal No. 2 of 1998** the supreme court emphasised that; for the

constitutional court to have jurisdiction, the petition must show on the face of it that the interpretation of a provision of the constitution is required. It is not enough to allege merely that a constitutional provision has been violated.

In **Jude Mbabali versus Sekandi Constitutional Petition No.28 of 2012**, the court clarified what question would qualify for interpretation by the constitutional court when it stated that;

"A constitutional question that has to be interpreted by the constitutional court arises when there is an issue, legal or otherwise, requiring an interpretation of the constitution for the resolution of the cause out of which that issue arises from."

The Central Executive Committee is established under Article 13 of the NRM constitution and it was exercising its it`s functions provided under the same constitution. If CEC in passing the said resolution overstepped its mandate or acted erroneously, resolution of such a matter does not call for interpretation of the constitution but would have best been dealt with by way of judicial review in the High Court.

The constitution requires that a political party conforms to democratic principles enshrined in the constitution. The provisions in the NRM constitution under which CEC acted have not been challenged as not meeting the standards of the constitution.

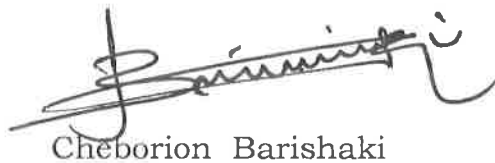
The assertion that because the mandate of CEC ends on 30/6/2020 it cannot recommend a candidate for 2021 elections is farfetched. CEC merely made a recommendation to the membership of the movement and its organs that H.E

Y.K Museveni continues to lead the state in 2021. The record does not show that a final decision has been made endorsing YK Museveni as the sole NRM Presidential candidate for the 2021 elections. This court cannot adjudicate and base its decision on speculation.

The right to attend caucus meetings if infringed can be enforced under Article 50 of the constitution by making an application to the High court and does not require an interpretation of the constitution.

This Petition should therefore be struck out with costs.

Dated this 2nd day of July 2020.



Cheborion Barishaki

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA,

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Owiny- Dollo, DCJ, Kakuru, Egonda-Ntende, Cheborion, Madrama,
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11. HON. ADOME BILDAD MOSES (NRM MP – JIE COUNTY}
- 25 PETITIONERS

VERSUS

NATIONAL RESISTANCE MOVEMENT}RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

30 The Petitioners who are all members of Parliament filed this petition under
the provisions of Article 137 of the Constitution of the Republic of Uganda
and aver that they are aggrieved by the following matters:



- 5 (a) That the act of the Central Executive Committee in its resolution
adopted on 19 February 2019 at Chobe Safari Lodge in Nwoya district
that H.E. President Yoweri Kaguta Museveni be the NRM sole candidate
for the 2021 presidential election and beyond, is inconsistent with
and/or in contravention of Articles 1 (1) (2) (4), 2 (1) (2), 20 (1) (2), 21,
10 28 (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12), 42, 43 (1) (2), 45, 69, 70,
71, 72, 73, 74, (77) (1) (2), 78 (1), 79, 80, 81, 83, 99 (3), 103 (1), 105 of
the Constitution of the Republic of Uganda and is therefore null and
void to the extent of its inconsistency.
- 15 (b) That the resolution of the Central Executive Committee of the
Respondent adopted on 19 February 2019 at Chobe Safari Lodge in
Nwoya district is inconsistent with and/or in contravention of Articles
8A, 71 (1) (c), 45 and 99 (3) of the Constitution of the Republic of
Uganda.
- 20 (c) That the Central Executive Committee of the Respondent itself did not
and does not have the mandate and legitimacy to pass the sole
candidate resolution of President Yoweri Kaguta Museveni, or any
other candidate for purposes of 21 presidential elections and beyond;
since its term of office and powers losses by 30 June 2020.
- 25 (d) That the decision and act of the Government Chief Whip and
Chairperson NRM Parliamentary Caucus in blocking to block your
humble Petitioners from attending the NRM caucus retreat at
Kyankwanzi on 13th – 20th of March 2019 wherein the impugned CEC
resolution declaring President Yoweri Kaguta Museveni as sole NRM
candidate for 2021 and beyond was discussed and adopted; is
30 inconsistent with and/or in contravention of Articles 1 (1) (2) (4), 2 (1)
(2), 20 (1) (2), 21, 28 (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12), 42, 43 (1)
(2), 45, 69, 70, 71, 72, 73, 74, 77 (1) (2), 78 (1), 79, 80, 81, 83, 99 (3), 103
(1) (2), and 105 of the Constitution of the Republic of Uganda.



5 (e) That the decision and or act of the Government Chief Whip and
Chairperson NRM Parliamentary Caucus in blocking the Petitioners
from attending the NRM caucus retreat at Kyankwanzi on 13th – 20th of
March 2019 and thereby arbitrarily banishing them from participating
10 in the NRM Parliamentary Caucus is inconsistent and in contravention
of Articles 8A, 20 (2), 21 (1), 29 (1) (a) (b) (d) and (e), 45 and 71 (1) (C)
of the Constitution of the Republic of Uganda.

(f) That the act of the Government Chief Whip and Chairperson NRM
Parliamentary caucus condemning your humble Petitioners unheard
15 wherein she acted as the complainant, prosecutor, jury and judge in
her own course is inconsistent with and/or in contravention of Articles
8A, 20 (2), 21 (1), 28 (1), 29 (1), (b) (d) and (3), 42, 44, 45 and 71 (1) of
the Constitution of the Republic of Uganda.

(g) That the decision of the Respondent's Parliamentary Caucus in
adopting the resolution of the Respondent's Central Executive
20 Committee declaring President Yoweri Kaguta Museveni as sole NRM
candidate for the presidential 2021 and beyond it is inconsistent with
and/or in contravention of Articles 8A, 71 (1) (c), 45 and 99 (3) of the
Constitution of the Republic of Uganda.

The facts in support of the petition are that on or about 19th February 2019,
25 the Respondents Central Executive Committee held a meeting at Chobe
Lodge in Nwoya district. The meeting was attended *inter alia* by his
Excellency President Yoweri Kaguta Museveni who was also the chairman of
the said committee. The committee made a decision that his Excellency
President Yoweri Kaguta Museveni be the party's sole candidate for the 2021
30 presidential elections and beyond. Between 13th and 20 March 2019 at
Kyankwazi the decision of the Central Executive Committee was presented to
the Respondent's Parliamentary Caucus, discussed and his Excellency Yoweri
Kaguta Museveni was declared the sole presidential candidate of the
Respondent in 2021 and beyond.



5 The Petitioners assert that prior to the said caucus meeting, the Government
Chief Whip blocked the Petitioners from attending the meeting without
affording them a hearing or advancing any valid reasons for her decision.
They aver that the Constitution of the Republic of Uganda requires that the
internal organisation of a political party shall conform to the democratic
10 principles enshrined in the Constitution. That the NRM's Central Executive
Committee ring fencing for 2021 presidential elections and beyond only
President Yoweri Kaguta Museveni excludes all other aspiring NRM members
from offering themselves as presidential candidate in 2021 and beyond.
Further that the Respondents Constitution requires the Central Executive
15 Committee to recommend to NEC, NRM candidates seeking nomination for
offices of presidential candidate for NRM while the Parliamentary Caucus is
vested with only one function namely to consider and adopt a common
position on any parliamentary business before the matter is tabled for debate
in the House.

20 The Petitioners further assert that the Respondent's Constitution provides
that every member shall have a right to take part in the discussions at the
organ where he or she belongs, a right to attend meetings of such organ and
a right to take part in elections and be eligible for election to any elective
office within structures of NRM. Further, there is a duty on every member to
25 participate in activities of the party. The Respondents Constitution
establishes an electoral commission and vests it with the power to organise
and carry out elections on the basis of secret ballot and decentralised voting
within the organs of NRM and the established practice is for it to set down
nomination dates, receive nomination papers, organise and conduct
30 elections.

The Petitioners assert that the declaration of President Yoweri Kaguta
Museveni as a sole presidential candidate for 2021 elections and beyond
makes the announcing and opening up of nominations for prospective and



5 aspiring NRM members impossible. They assert that President Yoweri Kaguta Museveni is the chairman of the NRM Central Executive Committee and chairing 19 February 2019 Central Executive Committee retreat at Chobe, Nwoya district giving advantage as a result of his overwhelming incumbency to extract a personal interest resolution of him being ring fenced as the sole
10 candidate in the 2021 presidential elections. They assert that the declaration of President Yoweri Kaguta Museveni as the sole candidate for the 2021 – 26 and beyond, was made by the Central Executive Committee whilst just in the middle of the current presidential term of 2016 – 2021.

The Petitioners further aver that the democratic aspirations of Uganda are
15 negated by sole candidature now and beyond which entrenches dictatorship by way of an imperial presidency for life and is devoid of any competitive checks and balances. That political parties and nascent multi-party democracy are vehicles for interest articulation and interest aggregation without which there will be a waning of peace, order, security and tranquility
20 – the hallmarks of rule of law and constitutionalism. The Central Executive Committee itself that passed the sole candidate resolution of president Yoweri Kaguta Museveni for 2021 presidential elections and beyond lacked the mandate and legitimacy since its term of office expires on 30th June, 2020. They aver that clause 46 (1) of the Constitution of the Respondent provided
25 that the term of office that members of organs of NRM shall be 5 years, unless terminated earlier, and the incumbent member shall be eligible for re-election. He asserts that the current Central Executive Committee of the Respondent was elected on 30 July 2015 for among other purposes to recommend to the National Executive Committee and National conference
30 the NRM presidential candidate for 28 February 2016 presidential elections. It cannot, therefore, extend its mandate of recommending presidential candidates beyond its term of tenure. They further assert that the blocking of the people's representatives from attending and participating in the party activities, bills and resolutions whittled away the Cardinal foundation of the

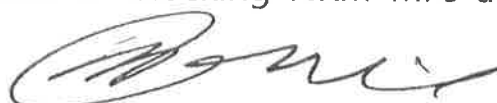


5 constitutional order. The names of the blocked NRM parliamentary caucus members/Petitioners were read at the government media centre, an official government public media platform.

The Respondents Constitution dictates that the NRM party to be; all inclusive, democratic, multi-ideological and multi interest. It is guided by democracy,
10 good governance and equal opportunities. In addition, it is guided by the principles of transparency, accountability and merit as basis of assessing positions of leadership. The Petitioners assert that the Respondents Constitution enjoins it to consolidate democracy and constitutional governance in Uganda.

15 In the premises the Petitioners seek the following declarations namely:

1. That the act of the Central Executive Committee in its resolution adopted on 19 February 2019 at Chobe Safari Lodge in Nwoya district of the that H.E. President Yoweri Kaguta Museveni be the NRM sole candidate for the 2021 presidential election and beyond, is inconsistent
20 with and/or in contravention of Articles 1 (1) (2) (4), 2 (1) (2), 20 (1) (2), 21, 28 (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12), 42, 43 (1) (2), 45, 69, 70, 71, 72, 73, 74, (77) (1) (2), 78 (1), 79, 80, 81, 83, 99 (3), 103 (1), 105 of the Constitution of the Republic of Uganda.
2. That the 19th February Central Executive Committee resolution
25 declaring President Yoweri Kaguta Museveni NRM sole Candidate/flag bearer for 2021 – 2026 and beyond is in contravention or inconsistent with the Constitution and ipso facto null and void.
3. That the Central Executive Committee of the NRM (1st July 2015 – 30th June, 2020) has no mandate, legitimacy and power to declare President
30 Yoweri Kaguta Museveni or any other person a sole candidate/flag bearer for 2021 Presidential Elections and beyond.
4. That the decision and act of the Government Chief Whip and Chairperson NRM Parliamentary Caucus in blocking NRM MPs and



5 representatives of the people from participating in matters of great
public importance to their electorate in Kyankwanzi is inconsistent with
Articles 1 (1) (2) (4), 2 (1) (2), 20 (1) (2), 21, 28 (1) (2) (3) (4) (5) (6) (7) (8)
(9) (10) (11) (12), 42, 43 (1) (2), 45, 69, 70, 71, 72, 73, 74, 77 (1) (2), 78
10 (1), 79, 80, 81, 83, 99 (3), 103 (1) (2), and 105 of the Constitution of the
Republic of Uganda.

5. That the NRM Parliamentary Caucus resolution to adopt the 19th
February Kyobe CEC Resolution Declaration of President Yoweri K
Museveni as a sole candidate for 2021 – 2026 and beyond being in
15 contravention and inconsistent with the Constitution ipso facto null
and void.

6. That the adoption of the resolution of the Respondent's Central
Executive Committee and the Parliamentary Caucus in the presence
and with the full concurrence of the President of the Republic of
Uganda is inconsistent with and in contravention of Article 99 (3) of the
20 Constitution.

7. The Petitioners prayed for costs of the petition.

The petition is supported by the affidavits of Hon. Ssekikubo Theodore
(NRM) and MP of Lwemiyaga County, Hon. Sam Lyomoki (NRM) and Workers
MP, Hon. Amoding Monicah (NRM) Woman MP Kumi District, Hon.
25 Tinkasiimire Barnabas (NRM) MP Buyaga West County, Hon. Nambeshe John
Baptist (NRM) MP Manjiya County, Hon. Amero Susan (NRM) Woman MP
Amuria District, Hon. Mbwatekamwa Gaffa (NRM) Kasambya County and
Hon. Akello Sylvia (NRM) Woman MP Otuke District. They essentially state
facts as summarized in the facts in support of the petition and attach the
30 relevant documents.

The Respondent opposed the petition and in answer to the petition averred
as follows.



- 5 That the Respondent would raise preliminary objections and contend that the petition is frivolous, misconceived and an abuse of court process and should be summarily dismissed with costs in light of the following:
- (a) The issues raised in the petition do not require interpretation of any provision of the Constitution of the Republic of Uganda.
 - 10 (b) There are other remedies and fora available under the law for the petitioner to pursue, and as an action for constitutional interpretation is not tenable in the circumstances.
 - (c) There is no act or omission of the Respondent as alleged by the petitioner that requires interpretation of the Constitution of the Republic of Uganda.
 - 15 (d) The petition in its current form offence could not rules of pleading as the petition does not specify any particular constitutional infringement; it is prolix; and is supported by affidavits that are negative, argumentative and riddled with material falsehoods.
 - 20 (e) The petition is an abuse of court process in so far as it is a disguised action for their alleged non-compliance with and/or enforcement of the Political Parties and Organisations Act 2005 which is the National Electoral Commission's Mandate and not the mandate of this court.

25 The Respondent denies the averments of inconsistency with any provision of the Constitution but admits that the committee made a decision that his Excellency Yoweri Kaguta Museveni in the party sole candidate for the 2021 presidential elections and beyond. The Respondent further in answer to the petition states as follows:

- 30 (a) It is the duty of the Respondent's Central Executive Committee to provide an exercise political leadership in the country, supervise the day-to-day activities of the Respondent and propagate NRM policies among others.



- 5 (b) The Respondent's Central Executive Committee held a retreat at Chobe Safari Lodge on the 15th to 20 February 2019 under the theme "Building on solid achievements: consolidating the unity of the National resistance movement and transformation of Wanainchi, towards achieving vision 2040".
- 10 (c) It was agreed to consider and discuss the following thematic areas with a view of reaching consensus on its thematic area; ideology and strategy, patriotism, the economy, environmental conservation, constitutional amendments, resource mobilisation and corruption.
- 15 (d) Under the theme "ideology and strategy", it was among others resolved to "emphatically recommend to the membership of the Movement and its organs, that is Excellency Yoweri Kaguta Museveni... continues leading the Movement and State in 2021 and beyond – as we eliminate the bottlenecks to transformation.
- 20 (e) The Respondent's Central Executive Committee acted within their mandate and the law at all material times and their recommendations and guidance to the membership of the Respondent is not unconstitutional as alleged by the Petitioners or at all.
- 25 (f) The Respondent's central executive committee recommendation is a political question and not a matter for judicial consideration or constitutional interpretation.
- (g) The Respondent has not stopped anyone with qualifications from expressing interest to contest for the position of presidential candidate for the NRM in the upcoming presidential elections in 2021.
- 30 (h) That any organ of a political party, in general and the Respondent in particular, is at liberty to recommend one of its members for selection by the membership as its presidential flag bearer as a matter of strategy.
- (i) The attendance of his Excellency Yoweri Kaguta Museveni as the National Chairman of the Respondent of the Central Executive



5 Committee meeting does not invalidate the Central Executive Committee recommendation.

(j) The petition is premature as it is the duty of the National Conference of the NRM (supreme organ of the Respondent) to elect the presidential candidate to be sponsored by NRM in national elections from a person or list of persons recommended by the National Executive Council.

(k) The Respondents Parliamentary Caucus held a retreat at the National Leadership Institute, Kyankwanzi from 13th March to 19th of March 2019 which was well attended by all the NRM Parliamentary Caucus members and other distinguished party leaders and invited guests. The Petitioners were at liberty to attend but declined to do so.

(l) In its retreat at the National Leadership Institute, Kyankwanzi from 13th March to 19th of March 2019, the Respondents Parliamentary Caucus resolved to adopt the Central Executive Committee recommendation to recommend to the members she of the NRM and its national leadership organs, the continuation leadership of Yoweri Kaguta Museveni of both the state and party up to 2021 and beyond.

(m) The Respondents Parliamentary Caucus acted within the law at all material times and the recommendation and guidance to the membership of the Respondent is not unconstitutional as alleged by the Petitioners.

(n) The Respondent has not stopped anyone with qualifications from expressing interest contest for the position of presidential candidate for the NRM in the upcoming presidential elections.

(o) The attendance of his Excellency Yoweri Kaguta Museveni as the National Chairman of the Respondent of the Respondents Parliamentary Caucus meeting does not invalidate the recommendations made therein and it is not a matter for constitutional interpretation.



5 (p)The non-attendance of the Petitioners of the Respondent's
Parliamentary Caucus meeting does not invalidate the proceedings
therein and does not render the recommendations passed illegal or
unconstitutional.

10 (q)The non-attendance of the Petitioners of the Respondent's
Parliamentary Caucus meeting is not a matter for constitutional
interpretation.

15 In further reply to paragraphs 1 and 2 of the petition, the Respondent
contends that the petition is a disguised challenge of the Respondents
alleged non-compliance with the Political Parties and Organisations Act and
all judicial review application which requires no constitutional interpretation
but rather hearing and vindication of rights by the High Court.

20 The answer to the petition is supported by the affidavit in reply of Oscar John
Kihika, the Director for Legal Services of the Respondent and an advocate of
the High Court and all courts subordinate thereto. The affidavit primarily
repeats and supports the averments in the answer to the petition and
provides the necessary documentation such as the constitution of the
Respondent.

25 When the petition came for hearing, learned counsel Mr. Medard Lubega
Segona for the Petitioners appearing jointly with learned counsel Samuel
Muyizzi Mulindwa and assisted by learned Counsel Mr. Johannes Balirirere
appeared for the Respondent. On the other hand, learned counsel Mr.
Kiryowa Kiwanuka appearing with learned Counsel Mr. Usamaa Sebuwufu
appeared for the Respondent. The Petitioners Hon Sekikubo, Sam Lyamoki,
Hon Amelo Susan, Sylvia Akello were present in court while also in court for
30 the Respondent was Director legal affairs of the Respondent Mr. Oscar Kihika.

Learned counsel for the parties adopted their conferencing notes and
skeleton arguments for and against the petition.



5 I have carefully considered the pleadings of the parties as well as the skeleton arguments of counsel for the parties.

In the conferencing notes of the parties, four issues are raised for consideration. I will start with the 1st issue which is:

Whether the petition raises grounds for constitutional interpretation?

10 Where there is no issue for interpretation of the Constitution, this court has no jurisdiction to entertain the rest of the petition and therefore the question of jurisdiction has to be handled first.

In the skeleton arguments Mr. Lubega Segona submitted that the complaints of the Petitioners fall squarely within the provisions of Article 137 (3) (b) of the Constitution. He submitted that on the face of the petition, there are
15 specific complaints raised that are stated to be inconsistent with or in contravention of the Constitution of the Republic of Uganda and as such a cause of action has been established. He relied on the decision of Hon. Mr. Justice Alphonse C Owiny – Dollo DCJ/PCC in **Male H Mabirizi and Others**
20 **versus Attorney General, Consolidated Constitutional Petition Number 49 of 2017 and Numbers 3, 5, 10 and 13 of 2018** and also the decision of the Supreme Court in the case of a **Centre for Health Human Rights and Development and 3 others versus Attorney General SCCA No 01 of 2013**.
The authorities consider whether the petition alleges that various provisions
25 of the Constitution have been infringed by the acts or omissions complained about. Further, Mr. Lubega submitted that the court has jurisdiction where the petition on the face of it shows that the interpretation of a provision of the Constitution is required.

The Petitioner's counsel submitted that the acts complained about of the
30 Respondent are inconsistent with and in contravention of the Constitution of the Republic of Uganda and particularly Article 71 (1) (c) of the Constitution which enjoins all political parties to abide by and conform to the democratic



5 principles enshrined in the Constitution. It provides inter alia that the internal
organisation of a political party shall conform to the democratic principles
enshrined in the Constitution. Mr. Lubega submitted that the Respondents
Party Constitution in recognising the authority and dictates of the national
Constitution itself enjoins the Respondent to be guided by the principles of
10 democracy and good governance whilst in pursuit of its aims and objectives.
Article 6 (1) of the Respondents Constitution provides that:

NRM is a national, broad-based, inclusive, democratic, nonsectarian, multi-
ideological, multi-interests and progressive mass organisation.

15 The Petitioners counsel also emphasised clause two of the Constitution of
the Respondent which provides that:

In pursuing its aims and objectives, NRM shall be guided by but, not limited to the
following principles:

(b) Democracy and good governance.

(c) National unity and non-sectarianism.

20 (d) Equal opportunities.

He submitted that the case of the Petitioners is that the Respondent's actions
were inconsistent with or in contravention of the Constitution of the Republic
of Uganda thus requiring interpretation to that effect. He submitted that this
court is seized with jurisdiction under Article 137 (3) (b) of the Constitution
25 of the Republic of Uganda to exercise its oversight role in determining
whether the actions complained about of the Respondent contravened the
respective provisions of the Constitution.

In reply Mr. Kiryowa Kiwanuka raise preliminary objections to the petition.
Firstly, he submitted that the 5th, 10th, and 11th Petitioners lack supporting
30 affidavits and their petition should be struck out.



5 Secondly, on the question of whether the petition raises grounds for constitutional interpretation, he submitted that not every alleged violation of rights gives rise to constitutional interpretation and the petition does not raise any questions for interpretation of the Constitution. Counsel further relied on **Black's Law Dictionary, 8th Edition pages 2399** for the definition
10 of "interpretation" as a process of determining what something, especially the law or legal documents, means. The ascertainment of meaning words or other manifestations of intention.

In support of his submissions he relied on **Mbabali v Sekandi; Constitutional Petition No 0028 of 2012 [2014] UGCC 15** at page 4 that a
15 constitutional question that has to be interpreted by the Constitutional Court arises where there is an issue, legal or otherwise, requiring an interpretation of the Constitution. It was further held in that petition inter alia that meanings are assigned to words of the Constitution so as to enable legal decisions to be made by the court vested with competent jurisdiction to interpret the
20 Constitution to determine whether or not the matter before it is in compliance with or consistent with the Constitution or not. Mr. Kiryowa further relied on **Ismail Serugo v Kampala City Council and the Attorney General; Supreme Court Constitutional Appeal No 2 of 1998** for the proposition that the petition must show on the face of it that an
25 interpretation of a provision of the Constitution is required. That it is not sufficient to allege merely that a Constitutional provision has been violated.

After setting out the various allegations in the petition, Mr. Kiryowa submitted that the allegations do not raise any matter for constitutional interpretation. He submitted that the right to attend caucus meetings, be
30 heard and treated fairly can be enforced through other avenues by way of judicial review or election petition among other things and not through petitioning the Constitutional Court for enforcement of rights. He further submitted that the Petitioners have not adduced any evidence in the petition



5 to show that the Respondent has denied them the right to show interest in
vying for the position of National Chairperson or NRM Presidential
Candidate. Secondly, they have not demonstrated that they presented
themselves to the Respondent's respective organs for recommendation as
NRM presidential candidates. Further that Article 44 (2) (a) of the NRM
10 Constitution provides that a presidential candidate for NRM shall be elected
by the National Conference from a candidate or candidates recommended
to the National Conference by the National Executive Council.

Mr. Kiryowa submitted that the National Conference has not convened or
considered any aspiring candidates nor have the petitioners adduced such
15 evidence and therefore the petition is prematurely brought in this court.

He submitted that an action to enforce the right or to be heard fairly or
participate in party events or to attend a meeting cannot and should not be
sought through an action under Article 137 of the Constitution. He submitted
that in **Mbabali v Sekandi** (supra) it was held that the violation of any law
20 must be addressed to and settled by an appropriate court or tribunal and not
by the Constitutional Court unless there is a question as to interpretation of
the Constitution.

Resolution of issue 1

Whether the petition raises grounds for constitutional interpretation?

25 I have carefully considered issue number 1 and as indicated above, the issue
deals squarely with the question of whether this court has jurisdiction to hear
and determine the Petitioners' petition. Whether this court has jurisdiction is
a preliminary question and has to be determined prior to considering the
merits of the petition.

30 The way the question was framed is also worthy of comment. It is a misnomer
to submit about "constitutional interpretation" because Article 137 (1) of the
Constitution of the Republic of Uganda specifically confers jurisdiction on the



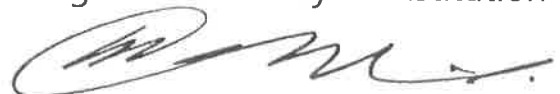
5 Constitutional Court to exclusively handle any *question as to the interpretation of the Constitution*. It is therefore to be considered whether there is any question or controversy as to interpretation of the Constitution since all persons and authorities can interpret the constitution for purposes of application or enforcement. The question for determination is therefore
10 whether there is any question as to interpretation of the Constitution.

The petition essentially challenges the resolution of the Respondent's organs to present His Excellency President Yoweri Kaguta Museveni as the sole candidate for the 2021 presidential elections. The petitioners at the same time aver that Article 46 (1) of the Respondents Party Constitution which
15 gives the term or tenure of members of the party's Central Executive Committee of 5 years was contravened. They contend that the Central Executive Committee had no mandate to pass the resolution as they did. They contend that the role of the Central Executive Committee is to recommend to the National Conference candidates to run for the office of
20 president.

Strangely, the Petitioners asserted that the Constitution of the Respondent dictates that the NRM party shall be; all inclusive, democratic, multi-ideological and multi interest. Secondly, it is guided by democracy, good governance and equal opportunities. In addition, it is guided by the
25 principles of transparency, accountability and merit as basis of assessing positions of leadership. The Petitioners assert that the Respondents Constitution enjoins it to consolidate democracy and constitutional governance in Uganda.

The petition discloses that the acts of the Respondent's party organs
30 contravened the NRM party Constitution.

It is clearly apparent that Petitioners applaud their own party Constitution to which they subscribe. They have not challenged their Party Constitution



5 because it is okay. Mr. Lubega primarily relied on Article 71 of the Constitution of the Republic of Uganda for the submission that the internal mechanisms of a party shall be democratic. Article 71 of the Constitution the Republic of Uganda:

71. Multiparty political system.

10 A political party in the multiparty political system shall conform to the following principles—

(a) every political party shall have a national character;

(b) membership of a political party shall not be based on sex, ethnicity, religion or other sectional division;

15 (c) the internal organisation of a political party shall conform to the democratic principles enshrined in this Constitution;

(d) members of the national organs of a political party shall be regularly elected from citizens of Uganda in conformity with the provisions of paragraphs (a) and (b) of this Article and with due consideration for gender;

20 (e) political parties shall be required by law to account for the sources and use of their funds and assets;

(f) no person shall be compelled to join a particular party by virtue of belonging to an organisation or interest group.

Specifically, Mr. Lubega relied on Article 71 (c) of the Constitution of the Republic of Uganda for the assertion that: *the internal organisation of a political party shall conform to the democratic principles enshrined in this Constitution*. Where the parties or the Petitioners do not have any problem with the Constitution of the NRM party which regulates the internal organisation of the political party, then they should use their internal mechanism to resolve the matter. Secondly, if the party organs do not adhere to the internal mechanism stipulated in the Constitution of the party to which the Petitioners subscribe, they can apply to the High Court for judicial review.



5 Last but not least, Article 73 of the Constitution makes provision for the regulation of political organisations through an Act of Parliament. Article 73 of the Constitution of the Republic of Uganda provides that:

73. Regulations of political organisations.

10 (1) Subject to the provisions of this Constitution, but notwithstanding the provisions of Articles 29(1)(e) and 43 of this Constitution, during the period when any of the political systems provided for in this Constitution has been adopted, organisations subscribing to other political systems may exist subject to such regulations as Parliament shall by law prescribe.

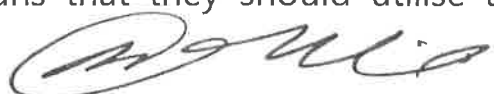
15 (2) Regulations prescribed under this Article shall not exceed what is necessary for enabling the political system adopted to operate.

Parliament has enacted the Political Parties and Organisations Act, 2005 as mandated by Article 73 of the Constitution of the Republic of Uganda. The preamble to the Act *inter alia* stipulates that:

20 AN ACT to make provision for regulating the financing and functioning of political parties and organisations, their formation, registration, membership and organisation under Articles 71, 72 and 73 of the Constitution; the prescription of a code of conduct for political parties and organisations...

25 Section 3 of the Political Parties and Organisations Act, 2005 provides that a political party or organisation may be formed. It is registered by the Electoral Commission under section 4 of the Act. Under section 6 of the Act, such a political organisation or party shall be body corporate with perpetual succession and a right to sue or be sued. Specifically, section 7 (5) (b) of the Political Parties and Organisations Act, stipulates that the Electoral Commission shall not register any political party organisation whose aims, objectives or Constitution contravenes any law.

30 In the absence of any grievance against the Constitution of the Respondent, the Petitioners should adhere to the democratic principles stipulated in the Constitution of the NRM party. That means that they should utilise the



5 internal mechanisms as clearly stipulated in their constitution and the
Political Parties and Organisations Act to challenge the acts of the organs
which are *ultra vires* or without jurisdiction. Any grievance about the acts of
the organisation or organs which the Petitioners subscribe to would be a
violation of the internal democratic principles or the constitution of the
10 political organisation which the Petitioners have not challenged as being
undemocratic or in contravention of Constitution of the Republic of Uganda.

Allegations of violation of the Constitution of the political organisation or
party is not a matter for interpretation of the Constitution of the Republic of
Uganda.

15 The jurisdiction of the Constitutional Court shall only be invoked where there
is a question as to interpretation of the Constitution as stipulated by Article
137 (1) of the Constitution. Article 137 (1) of the Constitution confers
exclusive jurisdiction on the Constitutional Court and is couched in
mandatory language and provides that:

20 Questions as to the interpretation of the Constitution.

Any question as to interpretation of the Constitution shall be determined by the
Court of Appeal sitting as a Constitutional Court.

Article 137 (1) and (2) of the Constitution provide for the subject matter that
25 the Constitutional Court has jurisdiction to adjudicate upon and also sets the
quorum of the Court of Appeal for purposes of being constituted into a
Constitutional Court to determine any *question or questions as to
interpretation of the Constitution*.

30 The key words under Article 137 (1) of the Constitution which confer the
exclusive jurisdiction of the Constitutional Court are in the phrase: *question
as to interpretation of the Constitution*. Where there is no question as to
interpretation of the Constitution, the Constitutional Court has no jurisdiction

5 to entertain the petition. The issue of jurisdiction of the Constitutional Court depends on a definition and understanding of the cited phrase *question as to interpretation of the Constitution*.

10 The word *question* in Article 137 (1) means the existence of a doubt about the meaning, scope, purpose, ambit etc. or a dispute or controversy about the meaning of an Article or Articles or their application in terms of scope, ambit etc. in short it means *a controversy as to interpretation*.

15 Secondly, Article 42 allows any person who has been unjustly treated in an Administrative decision to apply to a court of competent jurisdiction for redress. This may be for enforcement of fundamental rights and freedoms as stipulated by Article 50 (1) of the Constitution. The High Court enjoys unlimited original jurisdiction in all matters and causes and can ensure that the executive authority of a Political Party or Organisation adheres to the
20 basic principles of law and natural justice inclusive of administrative law principles of legality and rationality such as acting within the jurisdiction conferred by the Constitution of the organisation. Most importantly, the constitution of any entity such as a company or corporation governs the operation of the organisation and is binding on the subscribers thereto in
25 the absence of a claim that the Constitution is not sufficient or its provisions contravene the law or the Constitution of the Republic of Uganda, the aggrieved party should utilise the internal mechanisms of the party or entity as stipulated in its constitution or in the very least apply to a court of competent jurisdiction to enforce the provisions of the Constitution of the
30 organisation. The Constitution of the Respondent in the Article 9 thereof sets out the rights and duties of members. In Article 9 (1) (a) it provides that a member may:



5 Take part in elections and be eligible for election to any elective office within the structures of NRM or appointment of any committee, structure, commission or delegation of NRM;

It is therefore clear that the constitution of the NRM political organisation allows eligible members to participate in elections for any elective office
10 within the structures of the party or run for any other elective office as a delegate of the NRM.

Before taking leave of the matter, a cause of action is defined by Article 137 (3) of the Constitution of the Republic of Uganda because it stipulates that a petition shall include a necessary allegation or allegations that an act,
15 omission or law is inconsistent with an Article or Articles of the Constitution. Having a cause of action does not mean that the court has jurisdiction. For emphasis, making such an allegation of contravention of a provision of the Constitution or inconsistency with a provision of then Constitution does not necessarily confer jurisdiction on the Constitutional Court as the cause may
20 not involve any question or questions as to interpretation of the Constitution for the Constitutional Court to adjudicate. For instance, a petitioner may allege that his fundamental rights and freedoms have been infringed contrary to any Article or Articles in Chapter 4 of the Constitution that deals with Protection and Promotion of Fundamental and other Human Rights and
25 Freedoms. Such rights are enforceable by courts of competent jurisdiction. The distinction between having a cause of action within the preliminary question of whether there is jurisdiction was considered by the Supreme Court per Mulenga JSC, Kanyeihamba JSC and Wambuzi CJ in **Ismail Serugo v Attorney General and another; Constitutional Appeal No. 2 of 1998**
30 where they held that that it is not sufficient to only allege that a provision of the Constitution has been infringed. In addition, the petitioner must show that there is a question as to interpretation of the Constitution involved for the jurisdiction of the Constitutional Court to be invoked.



5 I noted above the phrase in Article 137 of the Constitution of "*a question as to interpretation of the Constitution*" and the use of the word '*question*' in Article 137 (1) of the Constitution of the Republic of Uganda means "controversy" or imports the meaning of an "arguable issue or question". It may also mean a substantial question has arisen when a historical perspective
10 of questions as to interpretation is adopted. The word "*question*" under Article 137 (1) means *controversy* and therefore the controversy has to be about interpretation. It follows that the jurisdiction of the Constitutional Court is restricted to determination of petitions involving questions or controversies about the meaning of a provision or provisions of the
15 Constitution.

On the other hand, the High Court as a court of competent jurisdiction with its unlimited jurisdiction can interpret any provision of the Constitution and enforce it in any administrative lawsuit or an action for enforcement of
20 fundamental rights and freedoms. I must emphasise that all judicial officers take a judicial oath to uphold the Constitution and the laws of Uganda as established there under. Any judicial officer can only uphold any provision of the Constitution by understanding it and applying or enforcing it. It is only where there is a substantial question for interpretation or a controversy
25 about interpretation of a provision or provisions of the Constitution where the Court is required to refer the question as to interpretation to the Constitutional Court for interpretation and directions and suspend all proceedings relating to the cause until after the question for interpretation has been resolved with clear declarations or directions having been issued
30 by the Constitutional Court. Article 137 of the Constitution provides that:

- (1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.
- (2) When sitting as a Constitutional Court, the Court of Appeal shall consist of a bench of five members of that court.
- (3) A person who alleges that—



- 5 (a) an Act of Parliament or any other law or anything in or done under the authority of any law; or
- (b) Any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress
10 where appropriate.
- (4) Where upon determination of the petition under clause (3) of this Article the Constitutional Court considers that there is need for redress in addition to the declaration sought, the Constitutional Court may—
- (a) grant an order of redress; or
- 15 (b) refer the matter to the High Court to investigate and determine the appropriate redress.
- (5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the court—
- 20 (a) may, if it is of the opinion that the question involves a substantial question of law; and
- (b) shall, if any party to the proceedings requests it to do so, refer the question to the Constitutional Court for decision in accordance with clause (1) of this Article.
- 25 (6) Where any question is referred to the Constitutional Court under clause (5) of this Article, the Constitutional Court shall give its decision on the question, and the court in which the question arises shall dispose of the case in accordance with that decision.
- (7) Upon a petition being made or a question being referred under this Article,
30 the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.

Historically, jurisdiction to enforce fundamental rights and freedoms and jurisdiction to interpret the Constitution were separate and severable
35 jurisdictions. The repealed **1967 Constitution of the Republic of Uganda** provided for determination of questions as to the interpretation of the Constitution by the High Court under Articles 87 and 88 of that Constitution and a separate jurisdiction for enforcement of fundamental rights and



5 freedoms. These Articles of the repealed 1967 Constitution of the Republic of Uganda provided as follows:

Article 87

1) Where any question as to the interpretation of this Constitution arises in any proceedings in any court of law, other than a court-martial, and, the court is of opinion that the question involves a substantial question-of law the court may, and shall if any party to the proceedings so requests, refer the question to the High Court consisting of a bench of not less than three judges of the High Court:

Provided that no such question need be so referred if the court is of the opinion that it is not sufficiently important to the proceedings to require a reference to the High Court.

(2) Where any question is referred to the High Court in pursuance of this Article, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

Article 87 of the repealed 1967 Constitution gave some limitations similar to Article 137 (5) of the 1995 Constitution in that it firstly dealt with references where an issue or question as to interpretation arises in a proceeding before a court of law other than a court martial (In the 1995 Constitution it is a field court martial which is excepted and not all military courts). The 1967 Ugandan Constitution used the wording that the question for reference is for determination of a question as to interpretation. Secondly, under the 1967 Constitution whether a question as to interpretation has arisen has to be in the opinion of the court which finds that it involves a substantial question of law. Under the 1967 Constitution Article 87 is read in conjunction with Article 88 which provides that:

Article 88

Where pursuant to the provisions of this Constitution any question is referred to the High Court,

(a) as to the interpretation of this Constitution; or

(b) as to whether any person was validly elected to the office of President or as a member of the National Assembly, the High Court shall proceed to hear and



5 determine the question as soon as may be and may for that purpose suspend any other matter pending before it until the conclusion of that question.

This was distinguishable from enforcement of fundamental rights and freedom. Article 22 of the 1967 Constitution provided separately for
10 enforcement of the rights and freedoms which rights were enshrined under Chapter 3 of that Constitution. It provided that:

Article 22

15 (1) Subject to the provisions of clause (5) of this Article, if any person that alleges that any of the provisions of Articles 8 to 20 inclusive has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the High Court for redress.

20 (2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of clause (1) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said Articles 8 to 20 inclusive to the protection of which the
25 person concerned is entitled:

Provided that the High Court shall not exercise its powers under this clause if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

30 (3) Any person aggrieved by any determination of the High Court under this Article may appeal there from to the Court of Appeal under Article 89.

(4) No appeal shall lie from any determination under this Article that any application is merely frivolous or vexatious.

35 (5) Parliament may make provision, or may authorize the making of provision, with respect to the practice and procedure of any court for the purpose of this Article and may confer upon that court such powers, or may authorize the conferment thereon of such powers, in addition to those conferred by this Article as may appear to be necessary or desirable for the purposes of enabling that court more effectively to exercise the jurisdiction conferred upon it by this Article.



Article 22 of the 1967 Constitution of the Republic of Uganda has its equivalent in the current Article 50 of the 1995 Constitution of the Republic of Uganda. There were therefore historically, two jurisdictions relating to enforcement of fundamental rights and freedoms and determination of questions as to interpretation of the Constitution as well as issues of whether a person is duly elected to office of President or to the National Assembly respectively. In the 1967 Constitution the above issues could only be determined by the Constitutional Court which was constituted to try particular issues by a bench of not less than three judges of the High Court.

Under the 1995 Constitutional dispensation, the Constitutional Court and the Supreme Court of Uganda have variously considered the question of what jurisdiction the Constitutional Court has. In **Constitutional Petition No 22 of 2010; Asiimwe Gilbert v Barclays Bank Uganda Ltd, Manirahuha Charles and Kototyo W. William Consolidated with Constitutional Petition No. 01 of 2010 Asiimwe Gilbert v Attorney General**, the Constitutional Court made a clear distinction between enforcement by a court of competent jurisdiction and interpretation by the Constitutional Court. The Constitutional Court unanimously held that:

The jurisdiction of this Court has been firmly resolved in a number of decisions of this court and of the Supreme Court in its appellate capacity as the Constitutional Appeal Court. First in the case of **Attorney General versus Major General David Tinyefuza Constitutional Appeal No. 1 of 1987** and again in **Ismail Serugo vs. KCC and Attorney General** (supra). Those authorities have been followed ever since.

It was held in the above authorities that *this Court has jurisdiction only under Article 137 of the Constitution to interpret the Constitution. It is not concerned with and has no jurisdiction to entertain matters relating to violation of rights under the Constitution for which parties seek redress. Such matter ought to be brought before a competent Court under Article 50 for redress.*



5 However, this Court is only competent to give redress under Article 50 when
the matter has first come properly before it for interpretation under Article 137
and not otherwise. (Emphasis added in bold)

10 The holding that the court has only jurisdiction to interpret the Constitution
sets out the special jurisdiction of the Constitutional Court. The only matter
left is that Constitutional Court did not use the clear and unambiguous words
of Article 137 (1) of the Constitution which limits its jurisdiction to
determination of *questions as to interpretation*. It follows from the analysis
below and the decision of the Supreme Court discussed below that the
Constitutional Court only has jurisdiction to adjudicate on disputes about
15 interpretation of a provision of the Constitution.

In **Ismail Serugo v Kampala City Council & Attorney General; Constitutional Appeal No. 2 of 1998** Mulenga JSC held that a distinction
should be made between an objection to a plaint on the ground that it
discloses no cause of action in terms of Order 7 rule 11 of the Civil Procedure
20 Rules and an objection on a point of law on the ground that the suit is not
maintainable under Order 6 rule 29 of the Civil Procedure Rules. This
distinction followed the East African Court of Appeal decision in **Nuridin Ali
Dewji & others v G.M.M Meghji & Co. and Others (1953) 20 EACA 132**
that there is a distinction between the rejection of a plaint under Order 7 rule
25 11 of the Civil Procedure Rules and dismissal of a suit on an issue of law
under order 6 rule 29. In line with his decision a petition may disclose a cause
of action where it complies with Article 137 (3) of the Constitution. The
disclosure of a cause of action in terms of making an averment that an act or
omission or a law is inconsistent with a provision of the Constitution does
30 not mean that the matter is for interpretation. Moreover, it is not essential
for a petitioner to be a person aggrieved. It is not essential for the petitioner's
rights to have been violated by the alleged inconsistency or contravention of
the Constitution for there to be a cause of action. Mulenga JSC held that it
was a proper case for the petition to have been dismissed under Order 6 rule



29 of the Civil Procedure Rules on a point of law rather than having it rejected under Order 7 rule 11 of the CPR at the level of pleading only. In such cases the court does not only consider the pleadings but also the evidence. Thereafter Mulenga JSC considered the issue of jurisdiction separately.

In my Judgment a petition in the Constitutional Court can only be principally for interpretation of the Constitution (as held by Mulenga JSC) when it complies with Article 137 (1) of the Constitution of the Republic of Uganda which provides that any question as to interpretation shall be determined by the Constitutional Court.

A critical examination of Article 137 (3) of the Constitution is called for because other judgments in **Ismail Serugo v Kampala City Council & Attorney General** (supra) express the need to show that a question for interpretation of the Constitution arises before the Constitutional Court exercises jurisdiction.

Article 137 (3) only provides for what shall be alleged in a petition but does not necessarily deal with jurisdiction of the Constitutional Court in light of Article 137 (1) thereof. Article 137 (1) of the Constitution of the Republic of Uganda is the *sole* Article that confers jurisdiction on the Constitutional Court. This is further illustrated by the decision of Prof. Kanyeihamba JSC in **Ismail Serugo v Kampala City Council & Attorney General** (supra) in his judgment at page 239 where he clearly held that the question of jurisdiction should be distinguished from that of cause of action in the following words:

However, I am constrained to comment very briefly on some other issues raised by the pleadings in this appeal. In my opinion, the question of cause of action must be distinguished from the matter of jurisdiction. The court may have jurisdiction while the plaint lacks a cause or a reasonable cause of action and vice versa.

In other words, a plaintiff may have a perfectly legitimate and reasonable cause but the court before which the plaintiffs filed lacked jurisdiction, just as the court may have jurisdiction but the litigant before it lacked cause of action...



His Lordship further held that *"it was erroneous for any petition to rely solely on the provisions of Article 50 or any other Article of the Constitution without reference to the provisions of Article 137 which is the sole Article that breathes life in the jurisdiction of the Court of Appeal as a Constitutional Court."* The learned justice however did not refer to any particular clause of Article 137 which has numerous other Articles other than the one conferring jurisdiction (Article 137 (1)). Further, in **Ismail Serugo v Kampala City Council & Attorney General** (supra) Wambuzi CJ puts the matter succinctly when he held at page 204 that:

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In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of a provision of the Constitution is required. It is not enough to allege merely that a Constitutional provision has been violated. If therefore any rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent court.

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By holding that it is not sufficient to only allege that a Constitutional provision has been violated, Wambuzi CJ makes it necessary for the petition to be maintainable under Article 137 (1) of the Constitution of the Republic of Uganda to have disclosed in it a question as to interpretation of the Constitution and not only an allegation of inconsistency of a Law, act or omission with a provision of the Constitution under Article 137 (3) of the Constitution. An allegation of inconsistency with an Article of the Constitution can fulfil the requirements of Article 137 (3) of the Constitution but it is not sufficient on the face of the petition to only allege breach of or inconsistency with an Article or Articles of the Constitution by any act, omission or law. For the Constitutional Court to have jurisdiction the allegation must have in it a controversy as to interpretation of the Constitution of the Republic of Uganda. It follows that the question before court should involve a controversy and substantial question about

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5 interpretation before the Constitutional Court assumes jurisdiction in the
matter. As I have noted above, a question for interpretation must be an
arguable question about interpretation and this occurs where there is some
doubt about the meaning which the person having the doubt needs cleared
or their point of view adopted by the court while the adverse party has a
10 contrary view about the meaning and scope of an Article of the Constitution.
In other words, it must be a doubt which makes the meaning of an Article
controversial and which controversy should be determined by the
Constitutional Court.

15 I must also in the same vein comment about the jurisdiction of courts of
competent jurisdiction to uphold the Constitution. Nobody can uphold any
Article of the Constitution without understanding it. Nobody can understand
a provision or provisions of the Constitution unless he or she ascertains the
meaning thereof. The meaning can only be ascertained through
20 interpretation. Every Judicial Officer takes a judicial oath to do right to all
manner of people in accordance with the Constitution. Part of the oath reads:

25 ... I will well and truly exercise the judicial functions entrusted to me and will do
right to all manner of people in accordance with the Constitution of the Republic
of Uganda as by law established...

The power of competent courts to interpret the Constitution is also
envisaged by Article 274 (1) of the Constitution which provides that:

30 274 (1) ...
subject to the provisions of this Article, the operation of the existing law after the
coming into force of this Constitution shall not be affected by the coming into
force of this Constitution but the existing law shall be construed with such
modifications, adaptations, qualifications and exceptions as may be necessary to
35 bring it into conformity with this Constitutions.



5 No one can construe a law with the necessary modifications, adaptations and
qualifications to bring it into conformity with the Constitution without having
understood and ascertained the meaning of the constitutional provision
through interpretation. The word "construe" under Article 274 (1) can be
considered in its own light. The term 'Construction' is derived from 'construe'
10 as used in Article 274 and is defined in the **8th Edition of Black's Law
Dictionary** as:

15 The act or process of interpreting or explaining the sense or intention of a writing;
the ascertainment of a document's meaning in accordance with judicial
standards...

"Construction, as applied to written law, is the art or process of discovering and
expounding the meaning and intention of the authors of the law with respect to
its application to a given case, where that intention is rendered doubtful either by
20 reason of the fact that the given case is not explicitly provided for in the law."

Henry Campbell Black, Handbook on the Construction and Interpretation of the
Laws 1 (1896)

25 "Some authors have attempted to introduce a distinction between 'interpretation'
and 'construction.' Etymologically there is, perhaps, such a distinction; but it has
not been accepted by the profession. For practical purposes, any such distinction
may be ignored, in view of the real object of both interpretation and construction,
which is merely to ascertain the meaning and will of the lawmaking body, in order
that it may be enforced." William M Life et al Brief Making and the Use of Law
30 Books 337 (3d ed. 1914)

35 "... There is no explanation of the distinction between interpretation and
construction [in Blackstone's], nor can it be inferred from the matters dealt away
under each head. The distinction is drawn in some modern works, but it is not taken
in this book because it lacks an agreed basis. Some writers treat interpretation as
something which is only called for when there is a dispute about the meaning of
statutory words, while speaking of construction as a process to which all statutes,
like all other writings, are necessarily subject when read by anyone. Others treat



5 interpretation as something which is mainly concerned with the meaning of statutory words, while regarding construction as a process which mainly relates to the ascertainment of the intention of legislature." Rupert Cross, Statutory Interpretation 18 (1976).

10 It is my judgment that the last meaning in the immediately preceding passage quoted above is the meaning of interpretation adopted by the Constitutional Court and Supreme Court. This postulates that interpretation is only called for when there is a dispute about the meaning of statutory words. This captures precisely the purpose of Article 137 (1) of the
15 Constitution which confers jurisdiction on the Constitutional Court to determine any dispute as to the meaning of statutory words in the Constitution. It is clearly the plain and unambiguous meaning of Article 137 (1) (supra) to refer questions as to interpretation to the Constitutional Court which has the exclusive mandate to resolve any such doubt or dispute as to
20 the meaning of an Article of the Constitution. For instance, a court of law before which a question as to interpretation of the Constitution arises refers the matter to the Constitutional Court to get directions about the meaning. On the other hand, the High Court ascertains the meaning of any provision of the Constitution inclusive of those dealing with fundamental rights and
25 freedoms before applying the relevant law where there is no dispute about the meaning of a provision.

The jurisdiction of the High Court and other Courts of competent jurisdiction to interpret the Constitution and not only the part which deals with
30 fundamental rights and freedoms under Article 50 was affirmed by the Court of Appeal in **Attorney General v Osotraco Ltd Civil Appeal No.32 of 2002** where it was held that the High Court has power to construe the relevant existing law with adaptations, qualifications and modifications to bring it into conformity with the Constitution. In **Osotraco Ltd v Attorney-General**
35 **[2003] 2 EA 654**, Justice F.M.S Egonda - Ntende Judge of the High Court as

he then was construed section 15 of the Government Proceedings Act to bring it in conformity with the Constitution under Article 273 (1) (now 274 (1)) of the Constitution. The Attorney General appealed against the decision to the Court of Appeal in **Civil Appeal No 32/2002 Attorney General v Osotraco Ltd Before A.E. N. Mpagi – Bahigeine, C.N. B. Kitumba, S.B. K Kavuma JJA** held:

"The learned Judge in construing section 15(1) (b) not to be in conformity with the Constitution claimed to be acting under Article 273(1) which provides: -

This court has in a number of cases pronounced itself on the import of Article 273 and ruled that it only empowers all courts to modify existing unjust laws without necessarily having to refer all such cases to the Constitutional Court. This provision enables the court to expedite justice by construing unjust and archaic laws and bringing them in conformity with the Constitution, so that they do not exist and are void.

This Article does not oust the jurisdiction of the Constitutional Court under Article 137 where it can later declare these laws unconstitutional. This Court has applied Article 273 in a number of cases. In **Pyarali Abdu Ismail v Adrian Sibo, Constitutional Petition No. 9 of 1997**, this court directed the trial Judge to construe and modify section 11(4) (b) of the Expropriated Properties Act No. 9 of 1982 which was prescribing unfair and inadequate compensation for compulsorily acquired property. Section 11(4) (b) was adapted and qualified so as to conform to Article 26(2) (b) (1) of the Constitution providing for prompt payment of fair and adequate compensation for the property. The matter had been referred to the Constitutional Court under Article 137(5). This course of action was found not to have been necessary. The judge should have moved under Article 273 (now 274), without wasting anytime and applied the Constitutional provisions. ...

The Court of Appeal affirmed the unlimited original jurisdiction of the High Court to interpret the Constitution and any law provided they do not handle questions or controversies as to interpretation.

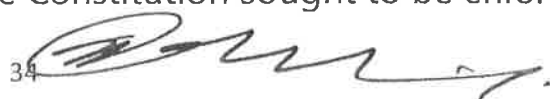


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For emphasis the **Rule of Law** or principle of legality which allows court to inquire into the violations of the law or legality of an act of omission in judicial review of administrative action was considered in **Attorney General v Kabourou [1995] 2 LRC 757** by the Court of Appeal of Tanzania. They held that the jurisdiction of the court to inquire into breach of the law, in particular the Constitution cannot be ousted. The Court of Appeal of Tanzania held that; -

One of the fundamental principles of any democratic Constitution, including ours, is the rule of law. The principle is so obvious and elementary in a democracy that it does not have to be expressly stated in a democratic Constitution...The Constitution cannot be interpreted so as to protect unconstitutional or illegal acts or deeds of the ...by the courts of law...It follows therefore that any act or deed made contrary to the Constitution or the relevant law is subject to review or inquiry by the appropriate courts of law... Under this principle, nobody is above the law of the land and similarly nobody is authorized to act unconstitutionally or illegally.

The decision of the Tanzania Court of Appeal confirms the foundation of Constitutional and Administrative Law that the court can inquire into the legality and rationality of any administrative act and may declare an act *ultra vires* a Constitution registered under a law such as the Political Parties and Organisations Act 2005. High Court and other courts of competent jurisdiction are there to *inter alia* ensure that authorities act within powers granted to them by law. Powers are granted by the Constitution and other legislation. If the court cannot read it, interpret it for meaning and apply it, then it has lost its power to uphold the Constitution and the rule of law. Furthermore, under the *ultra vires* doctrine, any aggrieved person or someone with sufficient interest can file an action for Judicial Review on grounds that someone acted *ultra vires* his or her powers conferred by the a particular registered constitution provided there is no dispute as to the meaning of the relevant Article of the Constitution sought to be enforced.



That is the situation in the current petitioner's petition under consideration. The Petitioners allege that recommendation and resolutions were passed to field a sole candidate contrary to the Respondent's Constitution.

10 Constitutions and the part which confer fundamental rights are construed in such a way as to give the beneficiaries thereof the full scope of their rights and freedoms. In **Minister of Home Affairs and another v Fisher and another [1979] 3 All ER 21** it was held by the Privy Council that the bill of rights was influenced in many countries by the United Nations Charter on
15 Human rights and calls for a generous and purposive interpretation. Lord Wilberforce at pages 25 – 26 stated that:

It is known that this chapter, as similar portions of other Constitutional instruments drafted in the post-colonial period, starting with the Constitution of Nigeria, and
20 including the Constitutions of most Caribbean territories, was greatly influenced by the European Convention for the Protection of Human Rights and Fundamental Freedoms. That convention was signed and ratified by the United Kingdom and applied to dependent territories including Bermuda. It was in turn influenced by the United Nations Universal Declaration of Human Rights 1948e. *These*
25 *antecedents, and the form of Chapter I itself, call for a generous interpretation avoiding what has been called 'the austerity of tabulated legalism', suitable to give to individuals the full measure of the fundamental rights and freedoms referred to.* (3) Section 11 of the Constitution forms part of Chapter I. It is thus to 'have effect for the purpose of affording protection to the aforesaid rights and freedoms'
30 subject only to such limitations contained in it 'being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice ... the public interest'. (Emphasis added).

This was restated in **The Queen v Big M Drug Mart [1986] LRC 332** at 364 when the Supreme Court of Canada held that in interpreting the charter on
35 rights the courts should adopt a generous rather than a legalistic approach



5 aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charters protection.

In my judgment the purpose of freedom to be elected through due process is not enforceable by the Constitutional Court but by the High Court as a court of competent jurisdiction. It would indeed be a strange result to restrict
10 the jurisdiction of the High Court to guarantee the full benefit of chapter 4 rights of the Constitution which declares, promotes and enforces fundamental rights and other freedoms including the right to belong to a political party and participate in its affairs under the law. A generous and purposive approach to protection and promotion of fundamental and other
15 human rights and freedoms allows the High Court to be actively involved in ascertaining the meaning of any provision of the Constitution and enforcing it unless and until there is a controversy or dispute about the meaning of a provision as to call for interpretation by the Constitutional Court. A restrictive approach to jurisdiction where exclusive jurisdiction is conferred on the
20 Constitution Court on all matters involving application of a provision of the Constitution is a serious bottleneck in the enjoyment of rights and freedoms as it does not secure for individuals the full benefit of upholding the Constitution by the trial courts. The bottleneck is in having hundreds of petitions seeking enforcement rather than interpretation.

25 The above proposition is supported by the Supreme Court decision in **Ismail Serugo v Attorney General** (supra) and the decision of the Constitutional Court in **Constitutional Petition No 22 of 2010; Asiimwe Gilbert v Barclays Bank Uganda Ltd, Manirahuha Charles and Kototyo W. William Consolidated with Constitutional Petition No. 01 of 2010 Asiimwe**
30 **Gilbert v Attorney General**, (supra) and is that it is not sufficient to allege a material proposition of law or fact which is denied by the other party in pleadings by stating that any article of the Constitution has been infringed



5 or threatened with infringement. There must be a dispute as to interpretation of the Constitution.

Mr. Lubega Segona relied on Article 137 (3) of the Constitution to support the allegations of inconsistency with a provision or provisions of the
10 Constitution of the Republic of Uganda in the Petition but as I have held this was not sufficient to confer jurisdiction on this court.

What is involved in the petition is all about enforcement of the Constitution of Respondent which constitution according to the Petitioners fulfils the
15 standard of democracy laid out in the Constitution of the Republic of Uganda. In other words, if the Constitution of the Respondent is enforced as it is, the Petitioners would have no grievance. In the premises, I find that there is no question as to interpretation of the Constitution of the Republic of Uganda.

20 I emphasise the point that the Petitioners have not challenged any provision of the Constitution of the Respondent which was registered according to the law and which is deemed to comply with the law under the Political Parties and Organisations Act as envisaged in Article 71, 72 and 73 of the
25 Constitution of the Republic of Uganda. The very essence of democracy is that the Petitioners who subscribe to their political party constitution should use it or have it enforced. Each Political Organisation Constitution is unique and where lawful is enforceable among its members. While the Petitioners allege inconsistency with several provisions of the Constitution of the
30 Republic of Uganda, the Petitioners stopped short of alleging that what was complained about is inconsistency with the Party Constitution of the Respondent. The Petitioners are happy with their Party Constitution and the matter rightly belongs to the High Court and this court has no jurisdiction in their case because there is no question as to interpretation of the

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5 constitution involved in the enforcement of the Constitution of the Respondent.

10 In the premises therefore, I would strike out the petition for want of jurisdiction of the Constitutional Court. In the circumstances, where the Petitioners are happy with the Party Constitution of the Respondent but are at the same time trying to challenge the Respondent's actions as being in contravention of the Constitution of the Republic of Uganda, the action is frivolous and vexatious and I would award costs to the Respondent. I would strike out the Petitioner's petition with costs.

15 Dated at Kampala the 2nd day of July 2020



Christopher Madrama Izama

Justice of Appeal