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THE REPUBLIC OF UGANDA  
IN THE CONSTITUTIONAL COURT OF UGANDA  
AT KAMPALA

(CORAM: S. T. MANYINDO - DCJ, C.M. KATO - JA, A.  
MPAGI-BAHIGEINE - JA, J. P. BERKO - JA, S. G. ENGWAU  
- JA).

CONSTITUTIONAL PETITION NO. 11 OF 1997

B E T W E E N

DR. JAMES RWANYARALE & ANOTHER ::: :: PETITIONER

V E R S U S

ATTORNEY GENERAL :::: :::: RESPONDENT

RULING OF THE COURT

This Constitutional Petition is brought by the first petitioner, James Rwanyarare (petitioning on his own behalf and for and on behalf of a group The Uganda Peoples Congress), and the second petitioner, Oweyegha Afunaduula, against the Attorney General. It is brought under Articles 50 and 137 (1), (2), (3), (4) and (7) of the Constitution and under the provisions of the Fundamental Rights and Freedoms (Enforcement Procedures) Rules - S.I. No. 26 of 1996<sup>2</sup>; and the Constitutional Court (Petitions of Declarations under Article 137 of the Constitution) Directions, Legal Notice No. 4 of 1996.

The petition seeks the following declarations:-

- (i) that no Political system has been chosen and adopted by the people of Uganda in accordance with Articles 1 (4) and 69 of the Constitution;
- (ii) that no Movement Political system as provided for in Articles 69(2) (a), 70 and 271 (1) was in existence at the time the 1996 Presidential and Parliamentary elections were held;
- (iii) that no Law establishing a Movement Political system as provided for in Articles 69(2) (a), 70, 271 (2) and (4) of the Constitution was enacted prior to the 1996 Presidential and Parliamentary elections;
- (iv) that the 1996 Presidential and Parliamentary elections were null and void and that no President and Parliament was elected in accordance with the Constitution;
- (v) that there is no President and no Parliament with Constitutional authority to enact into Law the Movement Act, 1997 and the Political Organisations Bill, 1997, and that the Movement Act, 1997 presently enacted is null and void and in contravention of the Constitution;
- (vi) that Articles 73, 74, 269 and 271(1) of the Constitution are inconsistent with Articles 1(4), 20, 21, 29 and 38 of the Constitution;

- (vii) that Articles 69, 73, 74 and 271(2) (3) and (4) of the Constitution constitute a threat and or infringements to the inherent rights and freedoms under Articles 1(4), 20, 21, 29 and 38 of the Constitution and render them unenforceable;
- (viii) That Articles 269 and 271 of the Constitution ostracise the petitioners from participating in the public affairs of Uganda through their Political Party, namely the Uganda Peoples Congress;
- (ix) that the provisions of Article 269 are a derogation of Articles 1(4), 20, 21, 29, 38, 69 and have the effect of creating a one party state in Uganda contrary to Article 75 of the Constitution.
- (x) that the restrictions imposed by Article 269 of the Constitution on Political Organisations and activities by the petitioners are unacceptable and 'demonstrably justifiable' in a democratic society as provided for in Article 43 of the Constitution;
- (xi) that Articles 73(1) and 269 of the Constitution are in conflict with Uganda's obligations under International Human Rights Conventions and Treaties as envisaged in Articles 52(1) (h), 123 and 286 of the Constitution;
- (xii) that any threat and or bar to any official or Member of the Uganda Peoples Congress and or Political Organisation called the Uganda Peoples Congress from the enjoyment of their rights and freedoms of thought, movement, conscience and the

right of their party to continued active existence and that the petitioners' membership and involvement in the management, control, direction of their party - the Uganda Peoples Congress is unconstitutional; and that those rights should be determined by the petitioners in accordance with their party's Constitution and not through elections or referenda as stipulated in the Constitution of Uganda.

The petitioners also seek orders (a) of prohibition against the respondent, his servants and or agents from any and further violations of their inherent and inalienable fundamental rights and freedoms and those of their party - the Uganda Peoples Congress, by implementing Articles 69(1), 72(2), 73(1), 74(1) and (2), 269 and 271 of the Constitution and (b) redress, including compensation and costs of the petition.

When the petition came up for trial, Mr. Nasa Tumwesige, the Director of Civil Litigation in the respondent's Chambers who represented the respondent made six preliminary points of objection. In the first objection it was submitted that this Court lacks jurisdiction to entertain petitions brought to it directly under Article 50 of the Constitution. It can entertain matters under that Article only by way of reference to it by another Court under Article 137(5).

The second point of objection was that the petition is incompetent as it is time barred in so far as it relates to Presidential and Parliamentary elections which were held in May and June 1996, respectively because

under Rule 4(1) of the Modification to the Fundamental Rights and Freedoms (Enforcement Procedure) Rules, 1992, Directions, 1996 Legal Notice No. 4 of 1996, Constitutional Petitions to this Court must be lodged in the Registry of the Court within thirty days of the occurrence of the breach of the Constitution complained of. And so the petition in respect of the Presidential and Parliamentary elections should have been presented to this Court by the end of June and July 1996, respectively. As for the alleged inconsistencies within the Constitution, the matter should have been brought within 30 days of the promulgation of Constitution which was on 8-10-95. As it is this petition was filed on 4-9-97, more than one year late. In respect of the other matters it was filed 2 years late.

The third objection was that this Court has no power to hear let alone determine complaints pertaining to the validity or otherwise of the elections of the President or Members of Parliament; the competent Courts being the Supreme Court and the High Court respectively

The fourth objection was that this Court has no jurisdiction to declare that a given provision of the Constitution is itself unconstitutional, because under Article 137, from which the jurisdiction of this Court springs, this Court is empowered to apply the Constitution as the yardstick against which offending Acts of Parliament or any other law, or anything done under the authority of any law, or act or omission by any person or authority shall be measured to determine whether it is constitutional or not.

The fifth objection concerned the competence of the Court as empanelled to declare, if it would, that the Presidential and Parliamentary

elections were null and void and, therefore, that the President and Parliament are not legally constituted or established, since four of the Justices of the Court were appointed to this Court by the very President and <sup>with the approval</sup> ~~on the advice~~ of the very Parliament whose very existence is now challenged. According to Counsel for the respondent the scenario would be that the four Justices concerned would have been illegally appointed and thus would be sitting on the Court illegally. If the petitioners do not challenge the competence of the Court as constituted then this must mean that they concede the fact that the Justices in question were appointed by properly established authorities - the President and Parliament and even the Judicial Service Commission which selected and recommended the Justices for appointment to the Court in the first place.

The sixth and last objection was that the petition was not properly before the Court to the extent that it is brought by a group, namely Uganda Peoples Congress. It was submitted that the first petitioner was not entitled to bring the petition on behalf of a group of people who are not known and who have not authorised him to do so. It was pointed out by Counsel that there would be nothing to prevent other Members of the Uganda Peoples Congress from bringing similar petitions in future and that if this petition failed with costs to the respondent which the two known petitioners were unable to meet then the respondent would not be able to recover the costs from the unknown group purportedly represented by the first petitioner.

For the petitioners it was contended that under Article 137(3) (b) this Court has jurisdiction to enforce the provisions of the Constitution and in

particular, chapter 4 thereof which relates to the protection and promotion of fundamental and other human rights and freedoms. Mr. Okumu Wenge, the leading Counsel for the petitioners took the position that the Constitutional Court is a Court of judicature under Articles 126, 129 and 137. He argued that Article 137 is not restrictive. It even envisages petitions being brought to this Court directly for breach of human rights of the individual. He thought that this Court is competent to deal with matters of enforcement of human rights and freedoms under Article 50 of the Constitution hence the reliance on that Article. According to him this jurisdiction is distinct from the interpretative role of this Court and its power to deal with references from other Courts on constitutional issues. And so, he argued, Articles 50 and 137 (3) must be read together, with the result that one may bring a petition either for enforcement or interpretation of the Constitution. Finally on this ground Mr. Okumu Wenge contended that since Parliament has not made laws for the enforcement of the rights and freedoms under chapter 4 of the Constitution as required by Article 50 (4), the petitioners had no alternative but to come to this Court to enforce their rights.

Mr. Peter Walubiri who replied on the second ground of objection submitted that the petition is not time barred for two reasons. First, Legal Notice No. 4 of 1996, cited above is invalid as it modified the Fundamental Rights and Freedoms (Enforcement Procedure) Rules, 1992, (S.I. No. 26 of 1992) which are not Rules of the Constitutional Court but the High Court when it was exercising its usual jurisdiction and not in its capacity as a referral Court in Constitutional matters. Consequently, those Rules do not apply to this Court and should never have been

modified to apply to this Court. While conceding that this petition is grounded, on, among other Laws, Legal Notice No. 4 of 1996. Mr. Walubiri strongly contended that the same was invalid as it purports to modify 'something that does not exist.'

Second, and in the alternative, he argued that assuming that Legal Notice No. 4 of 1996 is good Law, then it should be read and applied subject to Articles 50 and 137 of the Constitution which do not set a time limit for the filing of Constitutional petitions. He also relied on Article 3 (4) (a) which empowers and indeed enjoins every Citizen of Uganda at all times to defend the Constitution and Article 3(1) which prohibits anyone from taking control of Government unconstitutionally. In his opinion since the Presidential and Parliamentary elections of 1996 were not conducted in accordance with the Constitution, the present Government is unconstitutional. In such a situation, he argued, there cannot be a time limit to actions in defence of the Constitution. The time limit amounts to a fetter to the enjoyment of rights and freedoms under the Constitution.

Finally on this point Mr. Walubiri submitted that the limitation in Rule 4(1) of Legal Notice No. 4 of 1996 offends Article 28(1) which provides that in the trial of civil rights and obligations or any criminal charge, a person is entitled to a fair and speedy trial by a competent Court or tribunal.

Mr. Lubega Matovu submitted on the third ground of objection. He remarked that the petitioners do not contest the election of the President and or Parliament. They are not even aggrieved by the result of those

elections. The petitioners' case, according to Counsel is that the elections, though valid, were not conducted in accordance with the provisions of the Constitution. They merely want a declaration to that effect. But then he went on to argue that this Court can remove the President and sitting Members of Parliament by declaring that their elections were null and void as they were unconstitutionally held. This the Court would do not as a Court probing the validity of the elections but as a matter of interpretation of the Constitution.

The learned Counsel found no solace in Article 104 (4) which makes the decision of the Supreme Court in its original jurisdiction in matters challenging Presidential elections final. All the same he argued that a petitioner who fails to unseat the President in the Supreme Court can still come to this Court for a declaration that the Presidential elections were held unconstitutionally. The same argument would apply to the case of Parliamentary elections where the petitioners would go to the High Court and, finally, to the Court of Appeal. According to Counsel, this Court would still have the last word on the matter. He ended by claiming although it was not so prayed in the petition, that this Court can declare Article 104 (4) to be inconsistent with Chapter 4 of the Constitution and Articles 3 and 137 of the Constitution.

Mr. Walubiri took on the fourth objection as well. He submitted that the matter before the Court is not about elections only. The petition seeks this Court's interpretation of Articles 20, 21, 29, 38, 43, 45, 69, 70, 73, 74, 263, 264, 269, 270, 271, 273 and 287 and declaration that some of them are inconsistent with the Constitution. Specifically, they would that

this Court declare that Articles 69, 73, 74, 269 and 271 are inconsistent with Articles 1(4), 20, 21, 29, 38, 43, 45, 75, 52(h), 123 and 286. Counsel urged that it is the duty of this court to declare any provision of the Constitution unconstitutional if on the face of it the provision contradicted another provision of the constitution. It is a mere declaration of the truth of the matter.

With regard to the fifth ground of objection, Mr. Okumu Wenge submitted that a declaration that legally there is no President and no Parliament would not affect the Hon. Justices on the panel who were Judges of the High Court at the time they were elevated to the Court of Appeal since Article 266 provides that Justices of the Supreme Court and Judges of the High Court (and all these Justices were in the High Court then) holding office immediately before the coming into force of the Constitution, would continue to hold office as if they were appointed under this Constitution. In the alternative he submitted that if the Justices were appointed by non-existent authorities, their appointments would be voidable and not void.

On the sixth objection, Mr. Lubega Matovu submitted that the first respondent had properly brought the petition on behalf of the group known as the Uganda Peoples Congress ~~under~~ since under Article 50(2) a group may bring a petition on grounds of violation of their human rights and or freedoms. The group's petition is not a representative action requiring compliance with order 1 rule 8 of the Civil Procedure Rules - requiring leave of court. He also invoked Article 126(2)(e) of the Constitution which enjoins courts to administer substantive justice without undue regard to

technicalities. Mr. Walubi<sup>^</sup> who wrapped up argument on this last ground argued that it was not necessary to obtain the consent of those to be represented. Any one who is able and willing to represent them can do so even without their knowledge or consent.

We will begin by considering the point which is commonly made by counsel these days, that in Constitutional cases, rules of procedure are not binding on this court which derives its jurisdiction from the Constitution - Article 137. We do not see that Article 126 (2)(e) has done away with the requirement for litigants to comply with the Rules of procedure in litigations. The Article merely gives Constitutional force to the well known and long established principle at common law that rules of procedure act as handmaidens of justice. We do not see how justice can be properly administered without following important rules of procedure.

The framers of the Constitution were alive to this point hence the requirement in Article 126 that the principles, including that of not paying undue regard to technicalities, must be applied subject to the law. Clearly such law would include fundamental rules of procedure. In this regard we draw support from the decision of the Supreme Court in : (1) Utex Industries Ltd. -Vs- Attorney General, Civil Application No.,52 of 1995 (unreported) and (2) Ms. Kasirye, Byaruhanga & Co. Advocates -Vs- Uganda Development Bank, Civil Appeal No. 2 of 1997 (unreported). In: Utex (supra) the court had this to say:-

..... we are not persuaded that the Constituent Assembly Delegates intended to wipe out the rules of procedure of our courts by enacting Articles 126 (2)(e). Paragraph (e) contains a caution against undue regard to technicalities. We think that the article appears to be a reflection of the saying that rules of procedure are handmaids to Justice - meaning that they should be applied with due regard to the circumstances of each case. We cannot see how in this case Article 126(2)(e) or Mabosi case can assist the respondent who sat on its rights since 18/8/95 without seeking leave to appeal out of time..... Thus to avoid delays rules of court provide a time table within which certain steps ought to be taken.’

And in Kasirye, Byaruhanga & Co. Advocates (supra) the Court stated after quoting Article 126 (2) (e):-

‘We have underlined the words ‘subject to the law.’ This means that clause (2) is no licence for ignoring existing law..... a litigant who relies on the provisions of Article 126 (2) (e) must satisfy the Court that in the circumstances of the

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particular case before the Court it was not desirable to pay undue regard to a relevant technicality. Article 126 (2) (e) is not a magic wand in the hands of defaulting litigants.'

In those two cases the Supreme Court was dealing with ordinary Civil Cases but we think that the principle stated there equally applies to constitutional cases. If the framers of the Constitution had thought otherwise they would certainly have expressly said so. It was submitted for the petitioners that Legal Notice No. 4 of 1996, 'The Rules of the Constitutional Court (Petitions for Declarations under Article 137 of the Constitution) Directions, 1996 is invalid as the Chief Justice was not in law authorised to make them. Those Rules were made by the Chief Justice under section 51 (2) (c) of the Judicature Statute, 1996 (No. 13 of 1996) which states:-

- 51 (1) -----
- (2) -----
- (a) -----
- (b) -----

(c) subject to rules of Court made under this Statute, any rules of Court applicable to the High Court immediately before the coming into force of the Constitution in the exercise of its jurisdiction as a Constitutional Court shall apply to the Constitutional Court subject to such modifications

as the Chief Justice may direct in writing.”

It is common ground that the relevant Rules under section 51 (2) (c) above are 'The Fundamental Rights And Freedoms (Enforcement Procedure) Rules, 1992, which were made by the Chief Justice under section 20 of the now repealed Judicature Act, 1967 (No. 11 of 1967), in SI No. 26 of 1992. Now Legal Notice No. 4 of 1996 modified those Rules to provide for direct access to this Court by petitioners in exercise of its jurisdiction under Article 137 of the Constitution as can be seen from section 1 of Legal Notice No. 4 of 1996, which states:-

“1. These Directions may be cited as the Rules of the Constitutional Court (Petitions for Declarations under Article 137 of the Constitution) Directions, 1996.”

It seems clear to us that the Chief Justice made the Rules in SI No. 26 of 1992 lawfully under section 20 of the 1967 Judicature Act and lawfully modified the same Rules by Legal Notice No. 4 of 1996, under section 51 (2) (c) of the 1996 Judicature Act. It follows, in our judgment that the petitioners were duty bound to comply with the provisions in Legal Notice No. 4 of 1996 in bringing this petition. In any case since the application was brought partly under that Legal Notice the petitioners are estopped from saying that the Legal Notice is invalid. See: Uganda -Vs- Commissioner of Prisons, Exparte Matovu [1966] EA 514 at 528. This leads us to the matter of limitation, raised in the second ground of objection. Rule 4 (1) of Legal Notice No. 4 of 1996, clearly provides that petitions to this Court must be presented within 30 days after the date of

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the breach of the Constitution complained of in the petition. Under Rule 4 (3) the petition must be accompanied by the prescribed Court fee or else it shall be rejected by the Registrar. Accepting as we do that the petition challenges, in part, the validity of the May 1996 Presidential elections and the June 1996 Parliamentary elections then it had to be brought at the latest by the end of June and July respectively, unless the time was extended which is not the case. It follows that that part of the petition is time barred.

In so far as the petition seeks declarations that certain Articles 73, 74, 269 and 271(1) of the Constitution are inconsistent with Articles 1(4), 20, 21, 29 and 38 of the same Constitution then the petition should have been brought within 30 days of the promulgation of the Constitution, that is to say, 30 days from 8th October 1995, which comes to about the middle of November, 1995. *The same applies to all the other challenged Articles of the Constitution.*

The declarations (a) that no political system as provided for in Articles 69 (2) (a), 70 and 271 (1) & (4) was in existence at the time the Presidential and Parliamentary elections were held should have been sought either immediately before those elections were held (in order to prevent them being held) or within 30 days of the holding of those elections.

To the extent stated above the petition would be time barred, as the Rule <sup>on</sup> ~~in~~ limitation is mandatory.

We now turn to the first point of objection which is whether this Court is the right Court for the enforcement of human rights and freedom

which are enshrined in Chapter 4 of the Constitution. This petition is brought under Articles 50 and 137. There can be no doubt that this Court was established, for the first time, by Article 137 ~~as a special Court~~ to deal with questions relating to the interpretation of the Constitution. Under Article 137 (3) the petitioner must allege that:

- (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 contravenes a provision of the Constitution. It is clear therefore, that petitions for declarations by this Court can only be brought under Article 137 and in accordance with the Rules contained in Legal Notice No. 4 of 1996 and in particular Rule 3 (1) which provides that the petition under Article 137 (3) shall be in the Form specified in the Schedule to those Rules.

In our view petitions for enforcement of rights and freedoms under Article 50 do not belong to this Court for Article 50 provides:-

- ^50(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation.
- (2) Any person or organisation may bring an action against the <sup>violations</sup> ~~isolation~~ of another person's or group's human rights.

- (3) Any person aggrieved by any decision of the Court may appeal to the appropriate Court.
- (4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter. (Chapter Four).<sup>1</sup>

It seems clear to us that this Court will deal with matters falling under Article 50 only by way of reference made to it under Article 137 (5) which provides:-

"137 (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 -

- (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<sup>to</sup> the Constitutional Court<sup>for</sup> ~~of~~ decision in accordance with clause (1) of this article.

(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, 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.''

The competent Court to ~~enforce~~ the Constitution, as opposed to interpreting it which is the sole responsibility of this Court, would be one of the Courts of Judicature under Article 129, namely, the Supreme Court, the Court of Appeal, the High Court and such subordinate Courts established by Parliament. The first point of objection was thus well taken. This Court ~~is not a Court of judicature within the meaning of Article 129.~~ *has no jurisdiction in matters not covered by Article 137.*

When dealing with references under Article 137 (5) of the Constitution this Court would proceed under the Rules in Legal Notice No. 3 of 1996, 'The Interpretation of the Constitution (Procedure) Rules, 1992 (Modification) Directions 1996.

The third point of objection must also succeed for the two declarations sought in paragraphs (iv) and (v) of the prayers of the petition challenge, in no uncertain terms, the validity of the election of the President and Parliament. As far as the Presidential elections were concerned they could only be challenged under Article 104 which states:-

“104 (1) Subject to the provisions of this article, any

aggrieved candidate may petition the Supreme Court for an order that a candidate declared by the Electoral Commission elected President was not validly elected.

(2) A petition under clause (1) of this article shall be lodged in the Supreme Court Registry within ten days after the declaration of the election results.

(3) The Supreme Court shall inquire into and determine the petition expeditious<sup>ly</sup> ~~by~~ and shall declare its findings not later than thirty days from the date the petition is filed.

(4) Where no petition is filed within the time prescribed under clause (2) of this article, or where a petition having been filed, is dismissed by the Supreme<sup>Court</sup>, the candidate declared elected shall conclusively be taken to have been duly elected as President.’

It is clear from the above provisions that the only Court that can unseat the President is the Supreme Court which is the highest Court in the Land. It does so when exercising its original jurisdiction. In fact that is the only time where that Court exercises original jurisdiction as a trial Court. Given the special status and role of the President in the affairs of the State, time is clearly of essence. The election of the President must be challenged within 10 days of the declaration of the results; it may only be challenged by a losing candidate and the Supreme Court must rule on the matter one way or the other within 30 days from the date of filing the petition. The whole matter is supposed to be done<sup>with</sup> within not more than

40 days. As far as Parliamentary elections are concerned Article 86(1) clearly provides that the High Court is the right forum to hear and determine any question whether a person has been validly elected a Member of Parliament. Under Article 86(2) there is a right of appeal to the Court of Appeal against the decision of the High Court. Article 86(3) empowered Parliament to enact a law to regulate, among others, election petitions to the High Court. That law is now the Parliamentary Elections (Interim Provisions) Statute, 1996, (No. 4 of 1996). Under section 90(1) of that Statute the petitions have to be filed in the High Court by (a) a losing candidate or (b) a registered voter in the relevant constituency supported by the signatures of at least 500 voters registered in that constituency. The petition has to be filed within 30 days after the day on which the result of the election has been notified by the Electoral Commission in the Uganda Gazette.

In the premises this Court has no jurisdiction to entertain an action challenging the elections of the President or Parliament. The petitioners cannot circumvent the clear provisions of the law on the point by claiming that they are not challenging those election results when their petition clearly prays this Court to declare those elections null and void and that there is no President and no Parliament. The result would be to unseat the President and Members of Parliament which is not the function of this Court.

In view of our earlier decision that the petition is time barred, we do not find it necessary to pronounce on the question whether this Court can

in law, declare a given provision of the Constitution unconstitutional. This disposes of the fourth point of objection. Again in view of our conclusion that this Court has no jurisdiction to hear a challenge to the validity of the Presidential and Parliamentary elections, it is not necessary to determine the point whether the Court is properly constituted.

We now come to the sixth and last point of objection, namely, that the first petitioner, is not entitled to represent a group of unknown people who have not even authorised him to do so. We think it is trite that the representative capacity must be disclosed and proved. In the instant case the first petitioner would have proceeded under Rule 13(1) of Legal Notice No. 4 of 1996, which provides that subject to the provisions of those Rules, the practice and procedure in respect of Constitutional petitions to this Court shall be regulated as nearly as possible, in accordance with the Civil Procedure Act and Civil Procedure Rules made under that Act relating to trial of suits in the High Court, with such modifications this Court may consider necessary in the interest of justice and expedition of the proceedings.

Under Order I Rule 8 (1) of the Civil Procedure Rules a person may bring a representative action with leave of the trial Court. It would have been at that stage, of seeking leave, that the first petitioner would have disclosed the identity of those to be represented and whether he had their blessing to do so.

We cannot accept the argument of Mr. Walubiri that any spirited person can represent any group of persons without their knowledge or

consent. That would be undemocratic and could have far reaching consequences. For example, and as Counsel for the respondent rightly submitted, if the first and second petitioners lost the action with costs to the respondent but they were unable to raise the costs, how would the respondent recover those costs from the unknown group called the Uganda Peoples Congress? What if other Members of the Uganda Peoples Congress chose to bring similar petitions against the respondent - would the matter have been foreclosed against them on grounds of res judicata? We agree with Counsel for the respondent that the first petitioner acted unlawfully in bringing the representative action as he did. He could only bring the petition on his own behalf. The groups' petition is incompetent.

From the foregoing it is clear that this petition is partly in the wrong Court and wholly time barred. It is therefore incompetent. We uphold the preliminary objections and order that the petition be struck out with costs to the respondent. The costs shall be borne by the first and second petitioners jointly and severally.

Before we leave this case we should perhaps comment on Articles 3 and 28 which were alluded to by Counsel for the petitioners. We find Article 3 very interesting. It was introduced in the Constitution for the first time in the history of this Country. It may have been put there in the light of our sad and nasty past experiences of coup de'tats and other forms of illegal seizure of Governments by some Ugandans. It is clearly intended to spur Ugandans to resist such illegal seizures of Government in future and even empowers them to bring the culprits to book as soon as constitutional order is re-established.

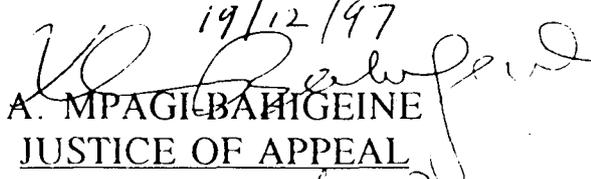
In the instant case it cannot be seriously contended that the present Government seized control of Government illegally when it was actually elected in general elections. And so Article 3 was wrongly invoked. It could not empower the petitioners to bring this petition out of time on the grounds that they were defending the Constitution against continuing acts under that Article.

We do not see Article 28, which provides for fair and speedy trials of cases by Courts as doing away with limitation of actions. The actions must be properly before the Courts before that Article can be called in aid.

Dated at Kampala this: *19<sup>th</sup>* day of: *December* 1997.

  
S. T. MANYINDO  
DEPUTY CHIEF JUSTICE

  
C. M. KATO  
JUSTICE OF APPEAL

*19/12/97*  
  
A. MPAGI BAHIGEINE  
JUSTICE OF APPEAL

*19/12/97*  
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