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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; G.M. OKELLO,JA; J.P. BERKO,JA; AND A. TWINOMUJUNI,JA.

THE CONSTITUTIONAL CAUSE NO.4/1998

(1) IN THE MATTER OF JIM MUHWEZI KATUGUGU ..... PETITIONER

AND

(2) CONSTITUTIONAL CASE NO.6 OF 1998

BETWEEN

(1) PATRICK KIGGUNDU..... 1ST PETITIONER
(2) JULIUS MUHURIZI..... 2ND PETITIONER

AND

ATTORNEY GENERAL .... RESPONDENT

RULING OF THE COURT

At the commencement of the hearing of these consolidated petitions (Nos.4 of 1998 and 6 of 1998), Counsel for the Attorney General, took a preliminary objection on a point of law, that the petitions were incompetent for contravening section 15 (1) of the National Assembly (Powers and Privileges) Act (Cap.249), in that they were relying on documents which emanated from Parliament, as evidence without prior leave of Parliament or Assembly. Secondly, that they were relying on public documents that were not properly before court as required by section 75 of the Evidence Act. The documents complained of are:-

(1) The Report of the Parliamentary Standing Committee on Rules, Privileges and Discipline dated 20/10/97 (Annexture A).

(2) Petitions for censure dated 5th November 1997 and 11/12/97 to censure the petitioner in petition No.4. (Annextures B & C).

(3) Affidavit of Hon. Patrick Kiggundu dated 16/2/1998 (Annexture E2).

(4) The Hansard Report of Parliamentary proceedings of 17/2/98 and 18/2/98 (Annexture F.)

In respect of petition No.6 there was also included a letter of 15/12/97 by 16 members of Parliament purportedly recalling their signatures to the Motion of censure. In case of petition No.4, the documents were annexed to the affidavit of Tindarwesire Kenzigye Godfrey who is neither a member of Parliament, nor an employee of Parliament but who is a witness in the petition. For petition No.6, the documents were annexed to the affidavit of Julius Muhurizi, the second petitioner. He is also neither a member of Parliament nor an employee thereof. These documents are all public documents.

The two petitions challenged the Parliamentary resolution made on 3rd March 1998 under Article 118 of the Constitution of Uganda 1995, to censure Hon. Brig. Muhwezi, M.P. and Minister of State in-charge of Primary Education.

Counsel for the petitioners responded that section 15(1) of Cap 249 was not applicable to Parliamentary debates as Members of Parliament do not give evidence when they contribute to debates before the House. It also does not apply to other documents emanating from Parliament which have no relation to evidence given by non member of Parliament. It applies only to evidence given by non members of Parliament who are summoned to testify

before Parliament or its Committee or to documents put in by such witnesses in the course of giving such evidence. They argued that because part III of the National Assembly (Powers and Privileges) Act (Cap 249) (from sections 9 to 16), is headed "Evidence", the entire part must be intended to refer to evidence given by non members of Parliament who are summoned to Parliament or Committee thereof. Therefore, section 15(1) must be interpreted ejusdem generis to apply only to evidence given in Parliament by non-members thereof.

In reply, Counsel for the Attorney General submitted that section 15(1) must be construed independently as it is intended to protect the dignity and immunity of Parliament. It is meant to protect the proceedings and evidence given before Parliament from being used as evidence outside it without prior leave of Parliament.

It is now necessary to consider part III of Cap 249 in general, and section 15 thereof in particular. The section reads:

> "15 (1) Save as provided in this Act, no member or officer of the Assembly and no person employed to take minutes of evidence before the Assembly or any Committee shall give evidence elsewhere in respect of the contents of such minutes of evidence or of the contents of any document laid before the Assembly or such Committee, as the case may be, or in respect of any proceedings or examination held before the Assembly or such Committee, as the case may be, without the special leave of the Assembly first had and obtained.
>
> (2) The special leave referred to in sub-section (1) of this section may be given during a recess or adjournment by the Speaker or in his absence or other incapacity or during any dissolution of the Assembly, by the Clerk."

We do not agree that the provisions in part III of the Act in particular section 15 (1) are restricted to evidence of non members of Parliament who are summoned and testify before Parliament or its Committee. In our view, the section covers all proceedings of Parliament, and its Committees. We are fortified in this view by subsequent provision in Rule 171 of the Rules of Procedure of the Parliament of Uganda which came into force on 30th July 1996. This Rule was not alluded to by Counsel in the case. It provides as follows:

> "171. No Member or officer and no person employed to take minutes of evidence before a Committee shall give evidence elsewhere in respect of the contents of the evidence or of any manuscript or documents presented to Parliament or a Committee or <u>in respect of proceedings at the bar of the House</u> <u>or before a Committee</u>, without prior leave of the Committee on Rules, Privileges and Discipline." (emphasis is ours).

There is no evidence that the said Committee granted permission to the two Members of Parliament, Hon. Muhwezi and Hon. Kiggundu to use the proceedings of Parliament in this court.

Counsel for the Attorney General produced a letter dated 3rd April 1998 from the Speaker's Chambers as leave for the Attorney General to use the copy of the record of Parliamentary proceedings of 17/2/98 and 18/2/98 in this court for the defence of the petitions. The letter was received on the court record and was marked Exh.D.1.

Counsel for the petitioners challenged the document that it did not amount to leave within the meaning of section 15(1) of the Act firstly, because it did not respond to a request, and secondly, that there was no evidence that Parliament was in recess when the Speaker issued the letter.

We think that there is no justification for that challenge. The Attorney General having produced Exh.D.1. which on the face of it appears genuine has no duty to prove its genuiness. The burden to prove that it is not genuine shifts to the petitioners who challenged its genuiness. No such proof was availed.

Counsel for the petitioners submitted in the first alternative that even if it was held that section 15(1) applies to Parliamentary debates and other documents emanating from Parliament, the petitioners would still rely on the documents complained of as these documents were produced by persons who are neither Members of Parliament nor employees of the same. They reasoned that the section does not prohibit such reliance.

In reply, Counsel for the Attorney General contended that the documents being public documents within the meaning of section 72 of the Evidence Act, only their certified copies issued by the officer in-charge of their custody, on payment of appropriate fees, could be received in evidence under section 75 of the Evidence Act. He submitted that in the instant petitions, what were annexed were not certified copies of the documents in question. Therefore, they are not admissible in evidence.

Rule 12 (1) of Legal Notice No.4 of 1996 provides for evidence for or against a petition to be by-way of affidavit to be read at the trial in open court. In the instant case, we are satisfied that the documents complained of are public documents within the meaning of section 72 (a) (iii) of the Evidence Act. Only their certified copies are admissible in evidence as proof of their contents in accordance with section 75 of the Evidence Act.

It is plain from the record that what are annexed as evidence in support of the two petitions are not certified copies of the documents in question. The petitioners therefore, can not rely on them as they are inadmissible.

In the second alternative, Counsel for the petitioners submitted that if it was found that section 15 (1) applies to the documents complained of, they could be excluded from the evidence and what remains of the evidence would still sustain the petitions. Therefore, it would not be necessary to strike out the petitions.

Responding to that submission, Counsel for the Attorney General contended that, once those annextures are struck out, what remains of the evidence in both petitions would not sustain them.

We have considered the evidence in both petitions and we are satisfied that if all the annextures in question are excluded, then the two petitions would not have supporting evidence as required by rule 12 (1) of Legal Notice No.4 of 1996.

In the last alternative, Counsel for the petitioners contended that if the court held that section 15 (1) applies to the documents in question, the objection would still fail by virtue of Articles 41 and 273 of the Constitution of this country. They argued that Article 41 gives the citizen the right of access to information in possession of the state. The documents in question are information in possession of the state. And that section 15(1) being a provision of an existing law and as it is too restrictive should be interpreted under Article 273 with such modification so as to bring it in conformity with the Constitution. According to Counsel the interpretation should be that the documents in question are information which is not prejudicial to the security of the state or the privacy of an individual and therefore, not subject to section 15 (1).

In response, Counsel for the Attorney General contended that information in possession of the state should first be applied for in the manner provided for by law to access it. In the instant case, section 15 (1) provided the manner of seeking access to the information in the documents in question. But the petitioners did not comply with that procedure. Therefore, the Articles cited do not apply.

With respect to the learned Counsel for the petitioners, we think that Articles 41 and 273 above were cited out of context. They are irrelevant as the admissibility of the documents complained of is being resisted not because they are prejudicial to the security of the state or the privacy of an individual. Rather, the admissibility of the documents are being challenged because the information therein is restricted under section 15 (1) which provides the manner of accessing them. We find no merits in this argument.

In the result, we hold that the affidavit evidence accompanying the two petitions is inadmissible. That leaves the petitions unsupported by evidence which renders them incompetent. We accordingly uphold the objection and strike out the petitions. The petitioners in the two cases are ordered to pay costs to the Attorney General.

Dated at Kampala this 15th day of May 1998.

S.T. Manyindo
DEPUTY CHIEF JUSTICE

C.M. Kato
JUSTICE OF APPEAL

G.M. Okello
JUSTICE OF APPEAL

J.P. Berko
JUSTICE OF APPEAL

A. Twinomujuni
JUSTICE OF APPEAL