

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

[Coram: Kavuma, DCJ., Mwangusya, Buteera, Tibatemwa, Egonda-Ntende,  
JJA.]

Constitutional Petition No. 31 of 2011

**BETWEEN**

Mwesigye Wilson=====Petitioner

**AND**

Attorney General  
Parliamentary Commission=====Respondents

**JUDGMENT OF THE COURT**

**Introduction**

1. The petitioner in this matter is seeking from the this court multiple declarations and orders, all related to the power of Parliament to determine its emoluments, on the grounds that such powers as enshrined in sections 3 (5); 4(2) and 5 of the Parliamentary (Remuneration of Members) Act, are unconstitutional in so far as they contravene **Articles 93, 99, 113 and 117** of the Constitution. The petitioner contends that on numerous occasions Parliament has increased the emoluments of its members by resolution, in accordance with section 5 of the Parliamentary (Remuneration of Members) Act, contrary to **Article 93** of the Constitution which requires such action to be originated by a bill or motion on behalf of Government. Secondly the petitioner contends that the emoluments of the Members of Parliament are out of step with the remuneration of public servants, in a discriminatory manner, and contrary to natural justice.
2. The respondent no.1 opposes this petition and states that the Parliament (Remuneration of Members) Act is in conformity with the Constitution and in particular **Article 85** of the Constitution. Any attempt by the Executive to veto the determination of emoluments for Members of Parliament would be an undue interference in the Independence of

Parliament, an affront on the notion of separation of power and would stifle the role of Parliament as an oversight body over the Executive and other organs of the state.

3. The respondent no.1 further contended that this petition is misconceived and frivolous.
4. The respondent no.2 opposed the petition. It contended that the Parliamentary (Remuneration of Members) Act, is in conformity with **Article 85** of the Constitution. The Executive cannot within the law veto a determination of the emoluments of the Members of Parliament once so determined. The Act ensures the independence of the Legislature and is in accordance with the doctrine of separation of powers. The respondent no.2 further contended that the petition is frivolous and vexatious.

### **Scheduling**

5. The parties hereto agreed on some facts in this case and the issues for resolution which we shall set out in full.

#### **'Agreed Facts:**

The facts are that the Members of Parliament through the Parliamentary Commission have often increased their monthly emoluments using the provisions of **Article 85(1) and 82(8)** of the Constitution. The Petitioner contends that this is in total disregard of the provisions of **Article 93** of the same Constitution which bars or restricts any increment to be obtained from the consolidated fund without a bill passed by Parliament and made on behalf of Government. The petitioner contends that this is unconstitutional and secondly the said emoluments are not pegged on any other consideration. Neither are they pegged on the scale of other public servants and the Petitioner believes that this is also unconstitutional.

#### **Legal Issues:**

1. Whether Sections 3(5), 4 and 5 of the Parliament (Remuneration of Members) Act Cap 259 are unconstitutional.
2. Whether the current emoluments earned by the Members of Parliament are unconstitutional.
- 3 Whether the Petition is entitled to the reliefs sought.'





## Submissions of Counsel

6. Mr Mukasa Lugalambi, appeared for the petitioner. He submitted that much as **Article 85** of the Constitution empowers Parliament to determine the emoluments for Members of Parliament this had to be read subject to Article 93 which provided a restriction that charges on the consolidated fund must be brought by a bill or motion by Government. In so far as the determination of the members emoluments had been done without a bill or motion by Government such determination by Parliament was unconstitutional. Mr Lugalambi submitted that Public resources are managed by a series of checks and balances between different organs of state and **Article 93** was a check on the powers granted to Parliament under **Article 85**. The Executive arm of Government must participate in the process of allowing for emoluments for members of Parliament.
7. Mr Lugalambi further submitted that all provisions of the Constitution bearing upon a subject must be read together and given effect.
8. Mr Lugalambi further submitted that the emoluments of the Members of Parliament are out of sync with the remuneration of public servants who generally earn much less than Members of Parliament. There is no moral justification for the vast difference in pay and it is illegal. Much as Members of Parliament are not public officers, the fact that they are compensated from the public coffers should ensure that compensation is in tandem with compensation to public officers. He prayed that the declarations and orders sought in the petition be granted.
9. Mr Henry Oluka, Principal State Attorney, appeared for the respondent no.1. He submitted firstly that the petitioner had failed to prove the facts alleged on which this Petition is based. He had not produced a copy of the hansard to prove that the Members of Parliament raised their own emoluments. Secondly Mr Oluka submitted, relying on the **Uganda Law Society v The Attorney General of Uganda C P No. 18 of 2005** that one of the cardinal rules of interpretation was that the constitution must be read as one whole without one provision destroying the other. No one provision of the Constitution must be segregated from the others and read alone. Raising of the emoluments of Members of Parliament was authorised by **Article 85** and in that regard cannot be unconstitutional.
10. Mr Oluka further submitted that Members of Parliament are no public officers and as such it was wrong to allege discrimination and or



comparison with compensation for public officers. He submitted that there has been no contravention of the provisions of the Constitution and this Petition should be dismissed.

11. Ms Sittina appeared for the respondent no.2. She adopted the submissions of counsel for the respondent no.1. She further submitted that even if Parliament did pass a motion raising the emoluments for its members as indicated in the agreed facts that was not the end of the matter. Such emoluments had to be provided under **Articles 154 and 155** of the Constitution in the annual estimates for Parliament and subsequently passed in the Budget. This complies with **Articles 85 and 93** of the Constitution. She further submitted that the Act does not offend **Articles 93, 99, 113 and 117** of the Constitution and that there is no discrimination. She concluded that the current pay scales for Members of Parliament are not unconstitutional.

## Analysis

### Facts of the Case

12. From the pleadings and the agreed facts at scheduling it is not in dispute that Parliament, on its own motion, or on the recommendation of the Parliamentary Commission has, on multiple occasions, passed motions, adjusting upwards, the emoluments of the Members of Parliament. These motions are then implemented by Government. In the pleadings both respondents specifically contended that this was authorised by **Article 85** of the Constitution and any attempts to subject this procedure to an input or veto by the Executive would in themselves be unconstitutional, infringing on the doctrine of the separation of powers and the independence of the legislature. To put this matter in perspective I will set out part of the answers to the Petition of both respondents.

13. The respondent no.1, stated in part,

‘The Parliament (Remuneration of Members) Act is in conformity with the Constitution and in Particular with Article 85 of the Constitution and that any attempt by the Executive to veto the determination of emoluments for Members of Parliament would be an undue interference in the Independence of Parliament, an affront on the notion of separation of powers and would stifle the role of Parliament as an oversight body over the Executive and other organs of the state.’ (sic)

14. The respondent no.2 stated in part,

‘(a) The Parliament (Remuneration of Members) Act, Cap 259, is in conformity with **Article 85** of the Constitution. Executive cannot within the law veto a determination of the emoluments of the Members of Parliament once so determined.’ (sic)

15. It is clear that both on the pleadings, supporting affidavits, and on agreed facts, all the parties hereto accepted that Parliament has in the past acted independently in making provision for the emoluments of Members of Parliament. This fact, having been admitted on the pleadings and agreed facts, need not have been proved afresh by calling in proceedings of Parliament into the evidence before this court. Secondly annexed to the Petition was a resolution passed by Parliament in 2001 which showed how Parliament approached this subject. I would therefore not accept the submission by Mr Oluka that the petitioner had not proved the facts upon which he relied.

16. What was in dispute is whether, when all the provisions of the Constitution that are relevant to the matter are read together, they render the actions of Parliament unconstitutional or not. This is what is captured in issue no.1.

**Whether sections 3(5), 4, and 5 of the Parliament (Remuneration of Members) Act are unconstitutional**

17. I will start by bringing into view all the impugned provisions and the relevant constitutional provisions. Before I do so I must state that section 3(5) is in relation to past Presidents and Vice Presidents which is not the subject of these proceedings. We find them irrelevant to sustain the Petition.

18. I will set out below sections 4 and 5 of the Act.

**‘4. Regulations.**

- (1) The Minister may, by statutory instrument, make regulations, in respect of—
- (a) the allowances and amenities of members of Parliament, except as otherwise provided in this Act;
  - (b) amenities for past Presidents and Vice Presidents;
  - (c) generally for carrying into effect the provisions and purposes of this Act.



*in balance*





(2) The powers of the Minister under sub section (1)(a) shall not derogate from the powers of a committee of Parliament to determine allowances payable to members of Parliament.

(3) For the purposes of this section—

(a) “amenities” includes housing, transport, medical attention, domestic servants, security guards and secretarial services;

(b) “Minister” means the Minister responsible for Public service and Cabinet affairs.

#### **5. Amendment of Schedule.**

Parliament may, from time to time, by resolution, amend the Schedule to this Act.’

19. We shall now set out **Articles 85 and 93** of the Constitution below.  
**Article 85** states,

#### **‘85. Emoluments of members of Parliament.**

(1) A member of Parliament shall be paid such emoluments and such gratuity and shall be provided with such facilities as may be determined by Parliament.

(2) A member of Parliament shall not hold any office of profit or emolument likely to compromise his or her office.’

20. **Article 93** states,

#### **‘93. Restriction on financial matters.**

Parliament shall not, unless the bill or the motion is introduced on behalf of the Government—

(a) proceed upon a bill, including an amendment bill, that makes provision for any of the following—

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction;

**(ii) the imposition of a charge on the Consolidated Fund or other public fund of Uganda or the alteration of any such charge otherwise than by reduction;**

(iii) the payment, issue or withdrawal from the Consolidated Fund or other public fund of Uganda of any monies not charged on that fund or any increase in the amount of that payment, issue or withdrawal; or

(iv) the composition or remission of any debt due to the Government of Uganda; or

(b) proceed upon a motion, including an amendment to a motion, the effect of which would be to make provision for any of the purposes specified in paragraph (a) of this article.

21. All counsel agree that the cardinal rule of constitutional interpretation which requires the court to read all provisions of the Constitution touching upon a subject together with a view to giving effect to the Constitution as a whole is applicable in the present circumstances. In the words of Mukasa Kikonyogo, DCJ, In Uganda Law Society v The Attorney General of Uganda Constitutional Petition No.18 of 2005 [unreported],

‘No one particular provision should destroy another but each support the other. No one provision of the Constitution must be segregated from others and considered alone. All provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the greater purpose of the instrument.’

22. It is important to note too that the Parliament (Remuneration of Members) Act was enacted in 1981, long before the 1995 Constitution was promulgated. In reading the same we must bear in mind **Article 274** with regard to the existing law at the time of the promulgation of the Constitution.

23. **Article 274** stated,

**‘274.Existing law.**

(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 bring it into conformity with this Constitution.

(2) For the purposes of this article, the expression “existing law” means the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this Constitution, including any Act of Parliament or Statute or statutory instrument enacted or made before that date which is to come into force on or after that date.

24. Reading and applying the Parliament (Remuneration of Members) Act, it is important that we recognise that it was existing law which may be necessary to read with such modifications, adaptations, qualifications and



*subaltern*





exceptions as are necessary to bring into conformity with the Constitution.

25. It is not in dispute that Parliament is in control of the purse so to speak and must authorise all expenditure of public funds, especially from the consolidated fund, the principal repository of all funds of the Government of Uganda. The Constitution has provided for an elaborate system of checks and balances between the separate arms of State in the management of public resources without leaving it to only one. Each organ has been given its role to ensure that there is accountability and transparency. No one organ is entirely on its own. However, in order to secure the independence of one organ against the other, checks and balances have been provided.
26. For instance there are detailed provisions in **Articles 152 to 156** about the creation and management of the consolidated fund and how the funds therein are to be appropriated. The consolidated fund is managed by the Executive arm of Government but it has no authority to spend a single cent except with the consent of Parliament. The Executive must have the authority of Parliament to raise and collect taxes and non-tax revenue.
27. Whereas **Article 85** authorises Parliament to determine the emoluments of its members, that is not the only constitutional provision that comes into play on the subject. For as long as that determination was going to be a charge upon the consolidated fund, **Article 93** comes into play, especially in light of its mandatory provisions. It would not take away the authority of Parliament to determine the emoluments of its members but in so doing it must do so in conformity with **Article 93** of the Constitution. The motion or bill the subject of the emoluments of the members of Parliament must be brought, not on behalf of the Parliamentary Commission but on behalf of Government. We know that the head of Government is the President of Uganda under **Article 98 (1)** which would mean that the Government in this case refers to the Executive arm of Government.
28. **Article 93** bars Parliament from proceeding on either a bill or a motion unless that bill or motion is introduced by Government in a specific number of cases which include, '(a) (ii) the imposition of a charge on the Consolidated Fund or other public fund of Uganda or the alteration of any such charge otherwise than by reduction.'
29. The Constitution specifically bars Parliament from considering bills and or motions which would include resolutions that impose a charge upon



the Consolidated Fund or alteration of such existing charge other than by way of reduction. Emoluments of Members of Parliament are a charge upon the Consolidated Fund. It follows that **Article 85** must be read together with **Article 93** in order to achieve a harmonious reading of the Constitution that allows both provisions to take effect and achieve the greater good of an accountable Government. Where in the past Parliament has acted in disregard of **Article 93**, and the Executive has acquiesced to that position, both have done so in breach of the Constitution.

30. Much as Parliament is constitutionally empowered to determine the emoluments of its members, the bill or motion or resolution which is the subject of such emoluments must originate from the Government, and Parliament would then be empowered to consider the same and determine the emoluments of the honourable Members of Parliament. This is the only constitutionally permissible route for Parliament to determine the emoluments of its members. In that regard, much as the Parliament can amend, by resolution, under Section 5 of the Parliament (Remuneration of Members) Act, the Schedule to the Act which contains the emoluments of members, such resolution must be on a motion brought on behalf of Government to Parliament. This is the only way to read section 5 of the Act to bring it into compliance with Constitution. Left on its own Section 5 of the Act is unconstitutional.
31. We do not find that sections 3 and 4 of the Act are unconstitutional. The said provisions do not contravene any provision of the Constitution.
32. Since section 5 of the Parliament (Remuneration of Members) Act has in the past been read, without bringing it in conformity with **Article 93** of the Constitution, We are satisfied that it is null and void to the extent of its inconsistency with Article 93 of the Constitution. We would allow a declaration in those terms.
33. Turning to the question of whether disparity in scales of compensation for Members of Parliament and the members of the Public Service is discriminatory or not, in contravention of **Article 21** of the Constitution We would hold that that is not the case. **Article 21** is called into play where a person or group of persons are discriminated against or treated differently on account of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social and economic standing, political opinion or disability. None of the said categories set out in **Article 21(3)** are implicated in the facts before us.



**Whether the Current Emoluments earned by the Members of Parliament are unconstitutional?**

34. No evidence has been adduced of the current emoluments of the Members of Parliament. We have no details of what they earn currently. Neither has the latest resolution of Parliament in that regard been laid before us. We are not in a position on the evidence before us to answer this issue, given the paucity of information available to this court. All we can reiterate is what we have held on issue one above.

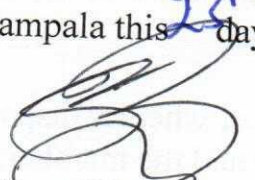
**Whether the Petitioner is entitled to the reliefs sought?**

35. We find that the Petitioner is entitled to the declaration that section 5 of the Parliament (Remuneration of Members) Act is unconstitutional and contravenes Article 93 of the Constitution. Such declaration takes effect from the date of this judgment. Henceforth no emoluments of members of Parliament shall be determined by Parliament in disregard of Article 93 of the Constitution.

36. The Petitioner also claimed damages on his own behalf and all other Ugandans against the respondents. We are not inclined to award damages to the petitioner as the petitioner has not personally been injured but the public purse of the Republic of Uganda and there will be sufficient recompense in understanding that a stop has been put to the unconstitutional goings on in this regard.

37. We award costs of this Petition to the Petitioner.

Signed, dated, and delivered in Kampala this 23<sup>rd</sup> day of Nov. 2015

  
Steven Kavuma

Deputy Chief Justice

  
Eldad Mwangusya

Justice of Appeal



*Richard Buteera*  
Richard Buteera  
Justice of Appeal

*L Tibatemwa-Ekirikubinza*  
L Tibatemwa-Ekirikubinza  
Justice of Appeal

*FMS Egonda-Ntende*  
FMS Egonda-Ntende  
Justice of Appeal

23/11/2015

Mukasa Mugabamba for Petitioner's  
Petitioner present

Respondent & Counsel absent

Amin C/c

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later Shiris Chendo for 2nd respondent  
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