THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

{Coram*: Katureebe CJ, Arach-Amoko, Mwangusya, Opio-Aweri, Tibatemwa-Ekirikubinza , Mugamba, JJSC; Tumwesigye, Ag. JSC}*

CONSTITUTIONAL APPEALS NO. 02, 03 and 04 0F 2018

BETWEEN

1.MALE H MABIRIZI K. KIWANUKA

2.HON.GERALD KARUHANGA & OTHERS } ::::::::::APPELLANTS

3.UGANDA LAW SOCIETY

AND

THE ATTORNEY GENERAL::::::::::::::::::::::::::::::::::RESPONDENT

{ Appeal from the majority decision of the Constitutional Court at Mbale (Owiny-Dhollo, DEPUTY CHIEF JUSTICE, Kasule, Musoke, Barishaki, JJA/ JJCC, (Kakuru JA/JCC dissenting) in Consolidated Constitutional Petitions No. 49 of 2017; and No. 03, 05 , 10 and 13 of 2018, dated 26th July, 2018}

JUDGMENT OF ARACH-AMOKO, JSC

Introduction:

This consolidated Constitutional appeal arises from the decision of the Constitutional Court that sections **1, 3, 4, and 7 of the Constitution (Amendment) Act No. 1 of 2018** which removed the age limit for the President and the Chairmen Local Council V, to contest for election to those offices, and for the implementation of the recommendations of the Supreme Court in **Presidential Election Petition No.1 of 2016: Amama Mbabazi vs. Yoweri Kaguta**

Museveni, were passed in full compliance with the Constitution and are valid provisions of **Constitutional (Amendment)Act No.1 of 2018** (herein referred to as the "Act"). The decision was by majority of 4 to 1. The appeal raises very important Constitutional issues of great public importance Constitutionalism in Uganda particularly in respect of the amending power of Parliament.

Background:

Before considering the merits of the appeal, it is necessary to give a brief background to the appeal.

In September 2017, Hon. Raphael Magyezi, the Member of Parliament for Igara West Constituency, in Bushenyi District moved a motion in Parliament to introduce a private Member's Bill to amend the Constitution. He was granted leave and he introduced a Bill entitled the **(Constitutional Amendment) (No. 2) of 2017.**

The object of the said Bill was to amend the 1995 Constitution of the Republic of Uganda in accordance with **Articles 259 and 262** of the Constitution:

(i) to provide for the time within which to hold Presidential, Parliamentary and Local government council elections under **Article 61,**

(ii) to provide for eligibility requirements for a person to be elected as President or District Chairperson under Articles **102 (b) and 183 (2) (b),**

(iii) to increase the number of days within which to file and determine a Presidential election petition under **Article 104 (2) and (3).**

(iv) to increase the number of days within which the Electoral Commission is required to hold a fresh election where a Presidential election is annulled under **Article 104 (6);** and

(v) For related matters.

During the second reading of the Bill, when the House was sitting as the Committee of the whole House, two separate motions were moved to amend the Bill. The first motion which sought to amend the Constitution by extending the tenure of Parliament and Local Government Councils from five to seven years was moved by Hon. Michael Tusiime, the Member of Parliament for Mbarara Municipality. The second motion which sought to reinstate the Presidential term limits was moved by Hon. Nandala Mafaabi, the Member of Parliament for Budadiri West Constituency. After the third reading, Parliament passed the Bill as amended. The Bill was thereafter sent to the President for his assent, and he assented to it on the 27th December, 2017. The Bill became the **Constitution (Amendment) Act (No.1) of 2018.**

Some factions of Ugandans including the appellants, were aggrieved by the passing of the Act and lodged petitions in the Constitutional

Court pursuant to Article 137(1) and (3) of the Constitution, challenging the validity of the Act on the ground that the process of enactment as well as its provisions had violated the Constitution and prayed for its nullification.

The appellants' petitions were supported by affidavits sworn by several people including Mr. Mabirizi; Hon.Gerald Karuhanga, Hon. Ssemujju Ibrahim, Hon. Winifred Kiza, Hon. Ssewanyana Allan, Hon. Odur Janathan, Hon. Mubarak Munyagwa and Hon. Betty Nambooze Bakireke for the 2nd appellants; Mr. Francis Gimara, Proffessor Fredrick Ssempebwa, Hon. Morris Wodamida ogenga Latigo and Mr. Fred Kakongoro for the 3rd appellant.

The respondent filed an answer to the petitions in which he stated that Act was enacted in accordance with the Constitution and its provisions were valid and constitutional. The answer to the petition was supported by affidavits sworn by General David Muhoozi, Mr. Ahmed Kagoye, Ms Jane Kibirige, Mr. Samuel Tusubira, Mr. Keith Muhakanizi, Mr. Asuman Mugenyi, Mr. Mwesiga Frank,Hon. James Kakooza,Mr. Moses Grace Balyeku, Mr. Twinomugisha Lemmy, Hon. Tumusiime Rosemary Bikaako, Hon. Ongalo Obote Clement Kenneth and Mr. Allan Mukama.

Since they raised similar issues, the petitions were consolidated and heard jointly by the Constitutional Court.

At hearing of the consolidated petition, the following issues were agreed upon for determination by the Constitutional Court:

1. ***Whether sections 2 and 8 of the Act extending or enlarging of the term or life of Parliament from 5 to 7 years is inconsistent with and/ or in contravention of Articles 1, 8A, 7, 77 (3), 77 (4), 79 (1), 96, 233 (2) (b), 260 (1) and 289 of the Constitution.***

2. ***And if so, whether applying it retrospectively is inconsistent with and/ or in contravention of Articles 1, 8A, 7, 77(3), 77(4), 79(1), 96 and 233 (2)(b) of the Constitution.***

3. ***Whether sections 6 and 10 of the Act extending the current life of Local Government Councils from 5 to 7 years is inconsistent with and/ or in contravention of Articles 1, 2, 8A, 176 (3), 181 (4) and 259 (2) (a) of the Constitution.***

4. ***If so, whether applying it retroactively is inconsistent with and/ or in contravention of Articles 1, 2, 8A, 176 (3), 181 (4) and 259 (2) (a) of the Constitution.***

5. ***Whether the alleged violence/ scuffle inside and outside Parliament during the enactment of the Act was inconsistent and in contravention of Articles 1, 2, 3 (2) and 8A of the Constitution.***

6. ***Whether the entire process of conceptualizing, consulting, debating and enacting the Act was inconsistent with and/ or in contravention of Articles of the Constitution as here-under:-***

(a) Whether the introduction of the Private Member's Bill that led to the Act was inconsistent with and/ or in contravention of Article 93 of the Constitution.

(b) Whether the passing of sections 2, 5, 6, 8 and 10 of the Act are inconsistent with and/ or in contravention of Article 93 of the Constitution.

(c) Whether the actions of Uganda Peoples Defence Forces and Uganda Police in entering Parliament, allegedly assaulting Members in the chamber, arresting and allegedly detaining the said Members, is inconsistent with and/or in contravention of Articles 24, 97, 208 (2) and 211 (3) of the Constitution.

(d) Whether the consultations carried out were marred with restrictions and violence which were inconsistent with and/ or in contravention of Articles 29 (1) (a), (d),(e) and 29(2) (a) of the Constitution.

(e) Whether the alleged failure to consult on sections 2, 5, 6, 8 and 10 is inconsistent with and/ or in contravention of Articles 1 and 8A of the Constitution.

(f) Whether the alleged failure to conduct a referendum before assenting to the Bill containing sections 2, 5, 6, 8 and 10 of the Act was inconsistent with, and in contravention of Articles 1, 91 (1) and 259 (2), 260 and 263 (2)(b) of the Constitution.

(g) Whether the Amendment Act was against the spirit and structure of the 1995 Constitution.

7. Whether the alleged failure by Parliament to observe its own Rules of Procedure during the enactment of the Act was inconsistent with and in contravention of Articles 28, 42, 44, 90 (2), 90 (3) (c) and 94 (1) of the Constitution.

(a) Whether the actions of Parliament preventing some Members of the public from accessing Parliamentary chambers during the presentation of the Constitutional Amendment Bill No. 2 of 2017 was inconsistent with and in contravention of the provisions of Articles 1, 8A, 79, 208 (2), 209, 211 (3), 212 of the Constitution.

(b) Whether the act of tabling Constitutional Bill No. 2 of 2017, in the absence of the Leader of Opposition, Chief whip and other opposition Members of Parliament was in contravention of and/ or inconsistent with Articles 1, 8A, 69 (1), 69 (2) (b), 71, 74, 75, 79, 82A, and 108A of the Constitution.

(c) Whether the alleged actions of the Speaker in permitting Ruling Party Members of Parliament to sit on the opposition side of Parliament was inconsistent with Articles 1, 8A, 69 (1), 69 (2)(b), 71, 74, 75, 79, 82A, 83 (1)(g), 83 (3) and 108A of the Constitution.

(d) Whether the alleged act of the Legal and Parliamentary Affairs Committee of Parliament in allowing some Committee Members to sign the Report after the public hearings on Constitutional Amendment Bill No. 2 of 2017, was in contravention of Articles 44 (c), 90 (1) and 90 (2) of the Constitution.

(e) Whether the alleged act of the Speaker of Parliament in allowing the Chairperson of the Legal Affairs Committee, on 18th December 2017, in the absence of the Leader of Opposition, Opposition Chief Whip, and other Opposition Members of Parliament, was in contravention of and inconsistent with Articles 1, 8A, 69 (1), 69 (2) (b), 71, 74, 75, 79, 82A and 108A of the Constitution.

(f) Whether the actions of the Speaker in suspending the 6 (six) Members of Parliament was in contravention of Articles 28, 42, 44, 79, 91, 94 and 259 of the Constitution.

(g) Whether the action of Parliament in:-

(i) waiving the requirement of a minimum of three sittings from the tabling of the Report yet it was not seconded;

(ii) closing the debate on Constitutional Amendment Bill No. 2 of 2017 before every Member of Parliament could debate on the said Bill;

(iii) failing to close all doors during voting;

(iv) failing to separate the second and third reading by at least fourteen sitting days; are inconsistent with and/ or in contravention of Articles 1, 8A, 44 (c), 79, 94 and 263 of the Constitution.

8. ***Whether the passage of the Act without observing the 14 sitting days of Parliament between the 2nd and 3rd reading was inconsistent with and/ or in contravention of Articles 262 and 263 (1) of the Constitution.***

9. ***Whether the Presidential assent to the Bill allegedly in the absence of a valid Certificate of compliance from the Speaker and Certificate of the Electoral Commission that the amendment was approved at a referendum was inconsistent with and in contravention of Article 263 (2) (a) and (b) of the Constitution.***

10. ***Whether section 5 of the Act which reintroduces term limits and entrenches them as subject to referendum is inconsistent with and/ or in contravention of Article 260 (2)(a) of the Constitution.***

11. ***Whether section 9 of the Act, which seeks to harmonise the seven year term of Parliament with Presidential term is inconsistent with and/ or in contravention of Articles 105 (1) and 260 (2) of the Constitution.***

12. ***Whether sections 3 and 7 of the Act, lifting the age limit without consulting the population are inconsistent with***

and/ or in contravention of Articles 21 (3) and 21 (5) of the Constitution.

13. Whether the continuance in Office by the President elected in 2016 and remains in office upon attaining the age of 75 years contravenes Articles 83 (1) (b) and 102 (c) of the Constitution of the Republic of Uganda.

14. What remedies are available to the parties?

After hearing the petition, the Constitutional Court, by a majority of 4 to 1, with one member of the Court, Kakuru JCC, dissenting, granted the petition in respect of the extension of the tenure of Parliament and Local Governments by two years and re-instatement of term limits. The Court however, dismissed the petition in respect of the removal of age limit and implementation of the recommendations of the Supreme Court in **Presidential Election Petition No. 1 of 2016; Amama Mbabazi vs. Yoweri Museveni.** As a result, the Constitutional Court made the following declarations:

1. By unanimous decision, that sections 2, 5, 6, 8, 9 and 10 of the Constitution (Amendment) Act 2018, which provide for the extensions of the tenure of Parliament and Local Government Councils by two years, and for the reinstatement of the Presidential term–limits are unconstitutional for contravening provisions of the Constitution.

2. That accordingly, sections 2, 5, 6, 8, 9 and 10 of the Constitution (Amendment) Act 2018, be struck out of the Act.

3. By majority decision that sections 1, 3, 4, and 7, of the Constitution (Amendment) Act No. 1 of 2018, which remove age limits for the President, and Chairperson Local Council V, to contest for election to the respective offices, and for the implementation of the recommendations of the Supreme Court in Presidential Election Petition No. 1; Amama Mbabazi vs Yoweri Museveni, have, each, been passed in full compliance with the Constitution; and therefore remain the lawful and valid provisions of Constitution (Amendment) Act No. 1 of 2018.

The Constitutional Court awarded professional fees of 20,000,000 shillings (Twenty million only) for each Petition. The Court clarified that this award did not apply to **Petition No. 3 of 2018** since the Petitioner had prayed for disbursements only, and **Petition No. 49 of 2017** by Mr. Mabirizi where the Petitioner had appeared in person.

The Court further awarded two–thirds disbursements to all the Petitioners; to be taxed by the Taxing Master.

As indicated earlier in this judgment, the appellants were aggrieved by the above decision, specifically the one in respect of the removal of term limits for Presidents and Local Council V Chairpersons and filed the instant appeals in this Court.

Grounds of Appeal

The grounds of appeal by Mr.Mabirizi were as follows:

PART A: GROUNDS RELATING TO DEROGATION OF THE RIGHT TO FAIR AND SPEEDY HEARING BEFORE AN IMPARTIAL COURT

1. ***All the learned Justices of the Constitutional Court erred in law and fact when they failed to hear and determine the Constitutional petition expeditiously.***

2. ***All the learned Justices of the Constitutional Court erred in law and fact when they evicted the petitioner from court seats occupied by representatives of other petitioners, putting him in the dock throughout the hearing and decision of the petition.***

3. ***All the learned Justices of the Constitutional Court erred in law and fact when they caused a miscarriage of justice by not giving the petitioner ample time to present his case and extremely and unnecessarily interfered with his submissions.***

4. ***All the learned Justices of the Constitutional Court erred in law and fact when they derogated the petitioner's right to fair hearing by preventing the petitioner from substantially responding to the respondent's submissions by way of rejoinder.***

PART B: GROUNDS RELATING TO OMISSIONS AND FAILING IN THE COURT'S DUTY IN DETERMINATION OF THE DISPUTE.

5. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not give reasons for their decision not to summon the speaker of Parliament.***

6. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not at any one point mention the existence of or even rely on the petitioner's two supplementary affidavits in support of the petition, rejoinder to the answer to the petition and the supporting affidavit thereto as well as affidavits in rejoinder to affidavits of Jane Kibirige, Keith Muhakanizi and Gen. David Muhoozi, which were on court record.***

7. ***The majority Justices of the Constitutional Court erred in law and fact when they did not determine the legality of the substantial contents in the affidavit of Gen. David Muhoozi, the chief of Defence forces, which were put in issue as hearsay.***

8. ***The majority Justices of the Constitutional Court erred in law and fact when they did not determine the legality of the substantial contents in the affidavit of Keith Muhakanizi, The Secretary to The Treasury, which were put in issue as hearsay.***

9. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not make a clear and specific determination of Issue 6(a) and all submissions***

made in that regard relating to restrictions on private members' Bills imposed by Article 93 of the Constitution.

10. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not make a finding on the principle of Constitutional Replacement as ably submitted before them by the Petitioner.***

11. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not determine the point that the Speaker was stopped from presiding over actions and presenting them as lawful which she had earlier found and Ruled to be unlawful.***

12. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not declare unconstitutional Section 1(b) of the impugned Act allowing the Electoral Commission to hold a Presidential election on a day different from that of a Parliamentary election.***

13. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not make a finding on the constitutionality of the presence of armed forces outside Parliament and in the entire country.***

14. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not make a finding on constitutionality of detaining and arresting of Members of Parliament from Parliamentary chambers.***

15. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not make a finding on constitutionality and legality of the action of ejection/eviction of Members of Parliament purportedly on orders of the Speaker when the Speaker was out of her chair.***

16. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not make a finding on the validity of the Certificate of compliance by the Speaker of Parliament which was in issue.***

17. ***All the learned Justices of the Constitutional Court erred in law and fact when they resolved most of the issues without referring to the evidence and submissions of the petitioner.***

18. ***All the learned Justices of the Constitutional Court erred in law and fact when they did not consider the variety of authorities from within and outside the jurisdiction which were referred to them, supplied and summarized to them by the petitioner.***

19. ***The learned majority Justices of the Constitutional Court erred in law and fact when they failed to properly evaluate the pleadings, evidence and submissions hence reaching wrong conclusions.***

PART C: GROUNDS RELATING TO CONTRADICTIONS AND MIS-APPLICATION OF LEGAL PRINCIPLES AND FACTS.

20. ***The majority Justices of the Constitutional Court erred in law and fact when they highly contradicted themselves on legal principles and facts of the case and hence reached wrong conclusions not connected to the stated principles and facts on record.***

21. ***The majority Justices of the Constitutional Court erred in law and fact when they applied statutory substantial effect/quantitative principles applicable to election petitions which do not apply to principles of determination of validity of a Constitution Amendment Act of Parliament.***

22. ***The majority Justices of the Constitutional Court erred in law and fact when they held that the location of an entrenchment provision in the constitution does not matter.***

23. ***The majority Justices of the Constitutional Court erred in law and fact when they upheld part of the Act in total defiance of the binding Supreme Court decision(s) that a law is null and void upon a finding that the procedure of enacting and assenting to it was incurably defective and flouted.***

24. ***The majority Justices of the Constitutional Court erred in law and fact when they upheld part of the Act in total***

departure from Constitutional Court decision(s) to the effect that the enactment of the law is a process, and if any of the stages therein is flawed, that vitiates the entire process and the law that is enacted as a result of it.

PART D: GROUNDS RELATING TO VIOLATION AND MISAPPLICATION OF EVIDENCE AND ITS PRINCIPLES.

25. ***All the learned Justices of the Constitutional Court erred in law and fact when they suggested answers to Gen. David Muhoozi, The Chief of Defence Forces, a witness who was under cross-examination on oath, prevented him from answering questions and with threats, ordered the petitioner not to ask any further questions.***

26. ***All the learned Justices of the Constitutional Court erred in law and fact when they over-protected Mr. Keith Muhakanizi, The Secretary to The Treasury, a witness under cross-examination and prevented him from answering questions put to him as wells as preventing the petitioner from asking pertinent questions.***

27. ***The majority Justices of the Constitutional Court erred in fact when they held there was no other evidence to prove that the petitioner was denied access to Parliament's gallery.***

28. ***The majority Justices of the Constitutional Court erred in law when they held that there was need for corroboration***

of the petitioner's evidence of being denied access to the gallery of Parliament.

29. ***The majority Justices of the Constitutional Court erred in fact in holding that there was no evidence that the speaker allowed members to cross from one side of the floor to another, in absence of a video.***

30. ***The majority Justices of the Constitutional Court erred in fact in holding that the motion by Hon. Mwesigwa Rukutana, to suspend the Rules of Procedure requiring skipping of at least 3 sitting days after tabling of the Committee Report was at Parliament Committee stage and not in a normal plenary sitting.***

31. ***The majority Justices of the Constitutional Court erred in fact in holding that members of Parliament obtained a report of the Committee three days prior to 18th December 2017.***

32. ***The majority Justices of the Constitutional Court erred in fact in holding that enough members and all those who wanted to debate had debated the Bill before voting on the second reading.***

PART E: GROUNDS RELATING TO THE CONCEPTUALIZATION AND PROCESSING OF THE ACT BY WAY OF A PRIVATE MEMBER'S BILL.

33. ***Without prejudice to the above, all the learned Justices of the Constitutional Court erred in law and fact in holding***

that the Motion to introduce the private members Bill, the Bill itself and the entire process did not contravene Article 93 of The Constitution.

34. ***The majority Justices of the Constitutional Court erred in law and fact in holding that the initial motion and Bill by Hon. Rapheal Magyezi did not make provision for and/or had effect of a charge on the consolidated fund.***

35. ***The majority Justices of the Constitutional Court erred in law and fact in holding that there was a requirement for a Certificate of Financial implications instead of government presenting the impugned Bill itself.***

36. ***The majority Justices of the Constitutional Court erred in law in relying on the provisions of Section 76 of The Public Finance Management Act, 2015, to deviate from the clear provisions of Article 93 of the Constitution.***

PART F: GROUNDS RELATING TO FAILURE OF PUBLIC PARTICIPATION IN PROCESSING OF THE ACT.

37. ***The majority Justices of the Constitutional Court erred in law and fact in upholding prevention of the petitioner from attending Parliamentary gallery during the proceedings to amend the Constitution.***

38. ***The majority Justices of the Constitutional Court erred in law and fact in holding that preventing members of***

Parliament from debating on the Bill was not fatal in the constitutional amendment process.

39. ***The majority Justices of the Constitutional Court erred in law and fact in making a finding that in absence of regulations for public participation, Parliament was not bound to carry out public participation and/or that what it did was sufficient.***

40. ***The majority Justices of the Constitutional Court erred in law and fact when they, after finding that the constitution prohibits governing people against their will, did not nullify the entire Act to which people were not consulted and which was processed in a tense, chaotic and military manner.***

PART G: GROUNDS RELATING TO PARTICIPATION OF ARMED FORCES, VIOLENCE AND RESTRICTIONS ON FUNDAMENTAL HUMAN RIGHTS IN PROCESSING THE ACT.

41. ***All the learned Justices of the Constitutional Court erred in law and fact when they condoned violation of non derogable rights against torture, inhuman and degrading treatment and validated the resultant outcome which was tainted.***

42. ***All the learned Justices of the Constitutional Court erred in law and fact in holding that since the members of Parliament called violence for themselves, the torture, inhuman degrading treatment against them cannot be***

held to be unconstitutional and that the resultant Act cannot be invalidated on ground of violence.

43. ***The majority Justices of the Constitutional Court erred in law and fact in failing to invalidate the entire impugned Act on the basis of its being processed amidst violence inside and outside of Parliament.***

44. ***The majority Justices of the Constitutional Court erred in law and fact in refusing to invalidate the entire law on the basis of a police circular addressed to and complied with by Uganda Police Force commanders in Uganda.***

45. ***The majority Justices of the Constitutional Court erred in law and fact when they failed to declare the entire impugned Act unconstitutional after making a finding that the restrictions on fundamental rights during the process were not demonstrably justifiable in a free and democratic society.***

46. ***The majority Justices of the Constitutional Court erred in law and fact when they failed to nullify the entire Act after making a finding that the presence of Uganda Peoples Defence Forces in Parliament was not called for.***

47. ***The majority Justices of the Constitutional Court erred in law and fact in failing to nullify the entire Act after making a finding that the police circular which curtailed public participation was unconstitutional.***

48. ***The majority Justices of the Constitutional Court erred in law and fact when they held that the police circular, which was enforced countrywide, had no effect on the amendment of the Constitution.***

49. ***The majority Justices of the Constitutional Court erred in law and fact in holding that the actions of the Uganda Peoples Defence Forces were demonstrably justifiable in a free and democratic society.***

50. ***The majority Justices of the Constitutional Court erred in law and fact when they held that the violence in Parliament, which they found to be uncalled for and unconstitutional, did not vitiate the entire law.***

PART H: GROUNDS RELATING TO NON-COMPLIANCE WITH THE RULES OF PROCEDURE OF PARLIAMENT AND/OR ALIGNING THEM WITH CONSTITUTIONAL PROVISIONS.

51. ***All the learned Justices of the Constitutional Court erred in law and fact when they held that the Speaker has sweeping powers to prevent the petitioner from accessing Parliament without a resolution of Parliament or any Rules gazetted for that purpose.***

52. ***The majority Justices of the Constitutional Court erred in law and fact when they held that the Speaker, solely, has powers to determine the business of Parliament and Order Paper.***

53. ***All the learned Justices of the Constitutional Court erred in law and fact when they justified and upheld suspension and eviction of members of Parliament on the same day of reading out there names.***

54. ***The majority Justices of the Constitutional Court erred in law and fact in holding that non-secondment of the motion to suspend the Rules of Parliament requiring separation of at least three sittings after presentation of the Committee Report was not fatal to the Constitutional Amendment process.***

55. ***The majority Justices of the Constitutional Court erred in law and fact in holding that the Speaker was justified in entertaining Hon. Raphael Magyezi's motion to present a private members' Bill earlier than the earlier motion of Hon. Nsamba for a resolution for establishment of a constitutional review commission.***

56. ***The majority Justices of the Constitutional Court erred in law and fact when they upheld the Committee report which was signed by members of Parliament who did not participate in the hearing of the public and other Committee processes.***

57. ***The majority Justices of the Constitutional Court erred in law in justifying and upholding the Speaker's refusal to***

close the doors of Parliament chambers during the roll call voting on the 2nd and 3rd reading of the Bill.

58. ***The majority Justices of the Constitutional Court erred in law when they held that the Speaker of Parliament has unfettered powers in Parliament.***

59. ***The majority Justices of the Constitutional Court erred in law and fact in upholding the suspension of Rules of Parliament during the constitutional amendment process.***

60. ***The majority Justices of the Constitutional Court erred in law and fact when they failed to apply estoppels against the Speaker in respect of an un-seconded motion and crossing and sitting of members of Parliament to the opposite side.***

PART I: GROUNDS RELATING TO MULTI-PARTY DEMOCRACY.

61. ***All the learned Justices of the Constitutional Court erred in law and fact when they held that in a multi-party dispensation, absence of opposition members of Parliament does not render Parliament not fully constituted.***

62. ***All the learned Justices of the Constitutional Court erred in law and fact when they validated the Speaker's arbitrary decision to allow ruling party members of Parliament to cross and sit on the opposition side.***

63. ***The majority Justices of the Constitutional Court erred in law and fact when they, after finding that under normal circumstances, opposition members of Parliament had to be in attendance, went ahead to validate part of the Constitutional amendment Act.***

PART J: GROUNDS RELATING TO REMOVAL OF AGE LIMIT QUALIFICATIONS FOR PRESIDENT OF THE REPUBLIC.

64. ***The majority Justices of the Constitutional Court erred in law and fact when they did not find that amendment of Article 102(b) of the Constitution amounted to colourable legislation/amendment of Articles 1, 2 and 3(2) of the Constitution in a manner prohibited by the Constitution.***

65. ***All the learned Justices of the Constitutional Court erred in law and fact in not finding that amendment of qualifications and disqualifications of a President under our 1995 constitution amounted to a constitutional replacement which Parliament had no power to do.***

66. ***The majority Justices of the Constitutional Court erred in law and fact when they held that qualifications and disqualifications of a President under our 1995 constitution is not one of the core structures embedded in the Constitution.***

67. ***The majority Justices of the Constitutional Court erred in law and fact in upholding lifting of the age limit on ground that even members of Parliament have no age limit.***

68. ***The majority Justices of the Constitutional Court erred in law and fact when they failed to make a finding that the justifications for the removal of age-limits were flimsy, selfish, irrational and not demonstrably justifiable in a free and democratic society and not allowed by the constitution rendering the amendment null and void.***

PART K: GROUNDS RELATING TO GENERAL MISAPPLICATION OF PRINCIPLES OF CONSTITUTIONAL INTERPRETATION

69. ***The majority Justices of the Constitutional Court erred in law and fact in not invalidating the Act after making a finding that the process was marred with tension and chaos.***

70. ***The majority Justices of the Constitutional Court erred in law in holding that members of Parliaments' right to represent the people is not absolute.***

71. ***The majority Justices of the Constitutional Court erred in law when they applied the substantial/quantitative effect test in determining the validity of the Constitutional Amendment Act.***

PART L: GROUNDS RELATING TO SEPARATION OF 14 SITTING DAYS BETWEEN THE 2ND AND 3RD READING AND PRESIDENTIAL ASSENT TO THE IMPUGNED BILL.

72. ***The majority Justices of the Constitutional Court erred in law and fact in holding that separation of 14 sitting days of Parliament was not mandatory for the entire Bill to pass.***

73. ***The majority Justices of the Constitutional Court erred in law and fact when they held that the Certificate of electoral commission that a referendum was held in respect of the entire Bill was not required in respect of the entire Bill.***

74. ***The majority Justices of the Constitutional Court erred in law and fact in failing to declare the false and legally insufficient Certificate of compliance invalid.***

75. ***The majority Justices of the Constitutional Court erred in law and fact in failing to declare the entire Act invalid after making a finding that the pre-conditions of a Presidential assent were not followed.***

PART M: GROUNDS RELATING TO CONTINUANCE IN OFFICE OF A PRESIDENT ELECTED IN 2016 ON ATTAINING 75YEARS.

76. ***The majority Justices of the Constitutional Court erred in law when they held that a President elected in 2016 is not liable to vacate office on attaining the age of 75years.***

77. ***The majority Justices of the Constitutional Court erred in law and fact when they held that the qualifications of a President should not be maintained through his/her stay in office.***

PART N: GROUNDS RELATING TO PRAYERS & PLEADINGS.

78. ***The majority Justices of the Constitutional Court erred in law and fact when they held that the petitioner did not contest particular provisions relating to age-limit, extension of time for Supreme Court to determine a Presidential election petition.***

79. ***The learned majority Justices of the Constitutional Court erred in law and fact when they proposed and granted a remedy of severance which was not pleaded by the respondent both in his answer to the petition and all affidavits in support thereto.***

PART O: GROUNDS RELATING TO REMEDIES.

80. ***The majority Justices of the Constitutional Court erred in law in applying the principle of severance of some sections in a single Act in a situation where the constitutional amendment procedure was fatally unconstitutional and defective.***

81. ***All the learned Justices of the Constitutional Court erred in law when they denied the petitioner general damages on ground that he did not prove them.***

PART P: GROUNDS RELATING TO UN-JUDICIOUS EXERCISE OF DISCRETION.

82. ***All the learned Justices of the Constitutional Court erred in law and fact when they unjudiciously exercised their discretion in contravention of basic legal principles by not summoning the speaker of Parliament for questioning on her role in the process leading to the impugned Act.***

83. ***All the learned Justices of the Constitutional Court erred in law and fact when they in exercise of their discretion unjudiciously without any sound reason held that the petitioner is not entitled to professional indemnification.***

84. ***All the learned Justices of the Constitutional Court erred in law and fact when they unjudiciously, without any reasoning held that each petition should receive professional fees of Ugx. 20,000,000(Uganda Shillings Twenty Million only.)***

WHEREFORE, the appellant prays for orders that:

a. ***The Appeal be allowed.***

b. ***All the proceedings of the Constitutional court were null and void for derogating the right to fair hearing.***

c. ***The Constitutional petition be remitted back to the constitutional court for expeditious hearing, in compliance with fair hearing principles, before a different panel.***

d. The appellant be granted general damages for inconveniences.

e. The costs of this appeal and in the court below be paid by the respondent to the appellant.

f. An interest of 25% per annum be paid by the respondent on the above damages and costs.

IN THE ALTERNATIVE but without prejudice to the above, the appellant prays for orders that;

g. The Private Members Bill, Constitution (Amendment) Bill No. 2 of 2017 was barred by Article 93 of the Constitution.

h. Failure to comply with mandatory constitutional provisions and the Rules of Parliament, the violence, failure of public participation among other lapses rendered the entire process leading to enactment and assent to the Constitution (Amendment) Act, 2018, null and void and of no effect.

i. The appellant be granted general damages for inconveniences.

j. The costs of this appeal and in the court below be paid by the respondent to the appellant.

k. An interest of 25% per annum be paid by the respondent on the above damages and costs.

The Grounds of Appeal by the 2nd appellants were as follows:

1. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that sections 1, 3, 4 and 7of the constitutional (Amendment) Act No. 1 of 2018 which remove age limits for the President and Chairperson Local Council V to contest for election to the respective offices were passed in full compliance with the Constitution of the Republic of Uganda.***

2. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that sections 1, 3, 4 and 7of the constitutional (Amendment) Act No. 1 of 2018 which remove age limits for the President and Chairperson Local Council V to contest for election to the respective offices did not abrogate, emasculate or destroy the basic structure of the 1995 Constitution of Uganda.***

3. ***The learned majority Justices of the Constitutional Court misdirected themselves on the construction and application of the basic structure doctrine thereby coming to a wrong decision.***

4. ***The learned majority Justices of the Constitutional Court erred in law and fact in failing to pronounce***

themselves on the implied amendment of Article 21 of the Constitution by the impugned Act.

5. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that the validity of the entire impugned Act was not fatally affected by the discrepancies and variances between the Speaker's Certificate of compliance and the Bill at the time of Presidential assent to the Bill.***

6. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that the President of Uganda validly and lawfully assented to the Constitutional (Amendment) Act, 2018 in the circumstances.***

7. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that the deployment and/or intervention of Uganda Police and UPDF in the chambers and within the precincts of the Parliament by causing eviction of some members of Parliament was justified to enable Parliament to proceed with its Constitutional mandate.***

8. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that the violence that ensued following the invasion of Parliament by Police and members of the UPDF and***

other security agencies did not vitiate the process leading to the enactment of the Constitutional (Amendment) Act.

9. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that the impugned Bill and the process leading to the enactment of the Constitutional (Amendment) Act did not contravene the provisions of Article 93 of the Constitution.***

10. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that the Ug. Shs. 29,000,000/= (Twenty Million Shillings) doled out to each Honourable Member of Parliament created no additional charge on the consolidated fund.***

11. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that there was no evidence to demonstrate that the unconstitutional Directive issued by the Assistant Inspector General of Police, a one Asuman Mugenyi to District Police Commanders on 16th October 2017, curtailing public participation was never implemented and that it had adversely affected the entire consultative process and the passing of the impugned Act.***

12. The learned majority Justices of the Constitutional Court erred in law and fact in holding that the public consultation by Honourable Members of Parliament took place fairly well and that the instances of interruption of public consultation and participation of the people in the enactment process of the impugned Act by Police throughout the country did not render the entire Act a nullity.

13. The learned majority Justices of the Constitutional Court erred in law and fact in finding that the Speaker of Parliament did not violate the Rules of Procedure.

14. The learned majority Justices of the Constitutional Court erred in law and fact in holding that the Speaker did not breach the Rules of procedure allowing Hon. Raphael Magyezi's motion for leave to introduce a private Member's Bill onto the Order Paper of 26th September 2017.

15. The learned majority Justices of the Constitutional Court erred in law by applying the substantiality test in evaluating and assessing the extent upon which the Speaker and Parliament failed to comply with and/or violated the Rules of procedure of Parliament.

16. The learned majority Justices of the Constitutional Court erred in law and fact in holding that the extent upon which the Speaker and Parliament failed to comply with and/or violated the Rules of procedure of Parliament did not adversely affect the whole process of enacting the impugned Act as to render it null and void in toto.

17. The learned majority Justices of the Constitutional Court erred in law and fact in holding that the Speaker validly and lawfully exercised her discretion by suspending Members of Parliament from participating in the proceedings in the House.

18. The learned Justices of the Constitutional Court misdirected themselves in ordering counsel for both parties to proceed with submissions before cross examination of their respective witnesses.

19. The learned Justices of the Constitutional Court erred in law in denying the Petitioners a right to rejoin after closure of the Respondent's case.

20. The learned Justices of the Constitutional Court in their conduct throughout the proceedings in the consolidated Petitions and all applications arising therefrom acted with material procedural irregularities.

21. The learned Justices of the Constitutional Court erred in law in failing to exercise their discretion to call for the evidence of the Speaker of Parliament, Deputy Speaker, Minister of Justice and Constitutional Affairs, the Chairperson and the Vice Chairperson of the Committee of Legal and Parliamentary Affairs and Hon. Raphael Magyezi.

22. The learned majority Justices of the Constitutional Court misdirected themselves in law and fact by failing to take into consideration the Respondent's failure to adduce evidence of the Speaker of Parliament, Deputy Speaker, Minister of Justice and Constitutional Affairs, Minister of Finance, Attorney General, the Chairperson and Vice Chairperson of the Committee of Legal and Parliamentary Affairs and Hon. Raphael Magyezi.

23. The learned majority Justices of the Constitutional Court erred in law by failing to pronounce themselves on a number of the Appellants' prayers and misapplying the doctrine of severance in determining the validity of the Constitutional (amendment) Act, No. 1 of 2018.

24. The learned majority Justices of the Constitutional Court erred in law and fact in awarding UGX. 20,000,000/= (Twenty Million Shillings) as

professional fees for each petition including Constitutional Petition No. 05 of 2018 and two-thirds of the taxed disbursements to all the Petitioners.

WHEREFORE it is proposed to ask court for the following orders;

1. ***That this appeal be allowed.***
2. ***That the majority judgment and orders entered for the Respondent against the Appellants by the learned Justices of the Constitutional Court in the Constitutional Court of Uganda at Mbale be set aside and be substituted with the following;***

I. That the Constitution (Amendment) Act, 2018 be annulled.

II. In the alternative, but without prejudice to paragraph (I), the following sections of the Constitution (Amendment) Act, 2018 hereunder listed be annulled;

a) That section 3 of the Constitution (Amendment) Act, 2018 in as far as it purports to lift the minimum and maximum age qualification of a person seeking to be elected as President of Uganda.

b) That section 7 of the Constitution (Amendment) Act, 2018 in as far as it purports to lift the minimum and maximum age qualification of a

person seeking to be elected as District Chairperson.

III. That the invasion and/or heavy deployment at the Parliament by the combined armed forces of the Uganda People's Defence Forces and the Uganda Police and other militia in using violence, arresting, beating up, torturing and subjecting the Appellants and other Members of Parliament to inhuman and degrading treatment on the day the impugned Bill was tabled before the Parliament amounted to amending the Constitution using violent and unlawful means, undermined Parliamentary independence and democracy and as such was inconsistent with and in contravention of Articles 1, 3, 8A, 20, 24, 29, 79, 208(2), 209, 211(3) and 259 of the Constitution.

IV. That the arbitrary actions of the armed forces of the Uganda People's Forces, Uganda Police Force and other militia in frustrating, restraining, preventing and stopping some members of Parliament from attending and/or participating in the debate and/or proceedings of the House on the Constitutional (Amendment) Bill was inconsistent with and in contravention of Articles 1, 8A, 20, 24, 28(1), 79, 208(2), 211(3) and 259 of the Constitution of Uganda.

V. That the actions of the armed forces of the Uganda People's Defence Forces, Uganda Police and other militia to invade the Parliament while in plenary thereby inflicting violence, beating, torturing several Members of Parliament at the time when the motion seeking leave of Parliament to introduce the Private Members' Bill, Constitution (Amendment) Bill No. 2 of 2017 was being tabled was inconsistent with and in contravention of Articles 1, 3, 8A, 20, 24, 29, 79, 208(2), 209, 211(3), and 259 of the Constitution.

VI. The actions of the armed forces of the Uganda Police force in beating, torturing, arresting, and subjecting several Members of Parliament while in their various constituencies to consult the people on the Constitution (Amendment) Bill, 2017 was inconsistent with and in contravention of Articles 1, 3, 8A, 20, 24, 29, 79, 208(2), 209, 211(3), 259 and260 of the Constitution.

VII. That the arbitrary decision of the Inspector General of the Uganda Police Force of restricting several Members of Parliament to their respective constituencies in their bid to consult their electorates on the constitution (Amendment) Bill No. 2 of 2017 was inconsistent with and in contravention of Articles

1, 3, 8A, 20, 24, 29, 79, 208(2), 209, 211(3) and 259 of the Constitution.

VIII. That the process leading to the enactment of the Constitution (Amendment) Act, 2018 was against the spirit and structure of the 1995 Constitution enshrined in the preamble of the Constitution, the National Objectives and Directive Principles of state policy and other constitutional provisions and as a result was inconsistent with and in contravention of Articles 1, 2, 3, 8A, 79, 91 and 259 of the Constitution of Uganda.

IX. That the actions of Parliament to prevent members of the public, with proper identification documents to access the Parliament's gallery during the seeking of leave and presentation of the Constitutional (Amendment) Bill No. 2 of 2017 was inconsistent with and in contravention of Articles 1, 8A, and 79 of the Constitution of Uganda.

X. That the procedure and manner of passing the Constitution (Amendment) Act, 2018 was flawed with illegality, procedural impropriety and the same was a violation of the Rules of Procedure of Parliament and therefore inconsistent with and in contravention of Articles 79, 91, 94, and 259 of the Constitution of Uganda.

XI. That the actions of the Speaker in entertaining and presiding over the debate on the impugned Bill when the matter on the same was before Court was a violation of Rule 72 of the Rule of Procedure of Parliament of Uganda therefore inconsistent with and in contravention of Articles 79, 91, 94 and 259 of the Constitution of Uganda.

XII. That the arbitrary actions of the Speaker of Parliament to suspend the 1st, 2nd,3rd,4th and 5th Appellants who were in attendance in the Parliamentary Proceedings on the 18th day of December, 2017, a sitting of Parliament where the two reports on the Constitution (Amendment) (No. 2) Bill, 2017 were to be debated was a violation of Rules 87 and 88 of the Rules of Procedure of Parliament of Uganda therefore in contravention of Articles 28, 42, 44, 79, 91, 94 and 259 of the Constitution of Uganda.

XIII. That the actions of the Speaker of Parliament to close the debate on the Constitution (Amendment) Bill No. 2 of 2017 before each and every Member of Parliament could debate and present the views of their constituents concerning the Constitutional (Amendment) Bill was a violation of Rule 133(3) (a) of the Rules of Procedure of Parliament therefore in

contravention of Articles 79, 91, 94 and 259 of the Constitution of Uganda.

XIV. That the actions of Parliament in waiving Rule 201(2) requiring a minimum of three sittings from the tabling of the Committee Report on the Constitution (Amendment) Bill No. 2 of 2017 was in contravention of Articles 79, 91, 94 and 259 of the Constitution of Uganda.

XV. That the purported decision of the Government of Uganda to make an illegal charge on the consolidated fund to facilitate the Constitution (Amendment) Bill No. 2 of 2017 which was tabled as, a private member's Bill was inconsistent with and in contravention of Article 93 and 94 of the Constitution of Uganda.

XVI. That the purported decision of the Government of Uganda to issue a Certificate of compliance in regard to the Constitution (Amendment) Bill No. 2 of 2017 was inconsistent with and in contravention of Article 93 and 94 of the Constitution of Uganda.

XVII. That the actions of the President of Uganda to assent to the Constitution (Amendment) Act, 2018 was inconsistent with and in contravention of Articles 1, 2, 8A, 44(c), 79, 91, 94 and 259 of the Constitution.

3. ***That the Respondent pays costs of this Appeal and in the Court below.***

The Grounds of appeal by the 3rd Appellant were as follows:

1. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that passing of the Constitution (Amendment) (No.2) Bill 2017 into law without Parliament first observing 14 days of Parliament sitting between the 2nd and 3rd reading is not inconsistent with the 1995 Constitution of the Republic of Uganda.***

2. ***The learned majority Justices of the Constitutional Court erred in law and fact in holding that the entire process of conceptualizing, consulting, debating and enactment of the Constitution (Amendment) Act 2018 did not in any respect contravene nor was it inconsistent with the 1995 Constitution of the Republic of Uganda.***

3. ***The learned majority Justices of Constitutional Court misdirected themselves when they held that the Constitution (Amendment) Act 2018 is not invalid for the reasons that some of the sections therein are inconsistent with provisions of the 1995 Constitution of the Republic of Uganda.***

4. ***The learned majority Justices of Constitutional Court erred in law when they found that there were breaches of***

the Constitution and failed to make orders on the Appellant's prayers.

Wherefore it is proposed to ask the Court for the following orders;

1. That the appeal be allowed

2.That the majority judgment and orders entered for the Respondent against the Appellants by the learned Justices of the Constitutional Court in the Constitutional Court of Uganda at Mbale be set aside and be substituted with the following;

i. That the Constitution (Amendment) Act, 2018 be annulled and declared unconstitutional

ii. In the alternative but without prejudice to paragraph (i) section 3 of the Constitution (Amendment) Act, 2018 be annulled and declared unconstitutional in as far as it purports to lift the minimum and maximum age qualification of a person seeking to be elected as President of Uganda undermines the sovereignty and civic participation of the people of Uganda and is inconsistent with Articles 1, 8A, 38, 105(1) and 260(1).

iii. that the actions of the security forces in entering Parliament, assaulting and detaining members of Parliament is inconsistent with or in contravention of Articles 23,24 and 29 of the 1995 Constitution of the republic of Uganda.

iv. That the entire process of conceptualizing, tabling, consultation, debating and passing of the Constitution (Amendment) Act, 2018 was inconsistent and in contravention of Articles 1, 8A,29,38,69(1),72(1),73 and 79 of the 1995 Constitution of the Republic of Uganda.

v. That the passing of the Constitution (Amendment) (No.2) Bill 2017 at the second and third reading without the separation of at least fourteen sitting days is unconstitutional and inconsistent with Articles 1,105(1), 260(2)(b) & (f) and 263(1) of the Constitution.

vi. That the actions of Parliament waiving Rule 201 (2) requiring a minimum of three sittings from the tabling of the Committee report on the Constitution (Amendment) (No.2) Bill 2017 was in contravention of Articles 79,91,94 and 259 of the 1995 Constitution of the Republic of Uganda.

3. That the Appellant prays for costs of this Appeal and in the Court below.

Agreed Issues for determination:

The three appeals were consolidated by consent and heard together in this Court as well and the issues agreed upon for determination are the following:

1. ***Whether the learned Justices of the Constitutional Court misdirected themselves on the application of the basic structure doctrine.***

2. ***Whether the learned majority Justices of the Constitutional Court erred in law and fact in holding that the entire process of conceptualizing, consulting, debating and enactment of Constitutional (Amendment) Act No. 1 of 2018 did not in any respect contravene nor was it inconsistent with the 1995 Constitution of the Republic of Uganda and the Rules of Procedure of Parliament?***

3. ***Whether the learned Justices of the Constitutional Court erred in law and fact when they held that the violence/scuffle inside and outside Parliament during the enactment of the Constitution (Amendment) Act No. 1 of 2018 did not in any respect contravene nor was it inconsistent with the 1995 Constitution of the Republic of Uganda?***

4. ***Whether the learned Justices of the Constitutional Court erred in law when they applied the substantiality test in determining the petition?***

5. ***Whether the learned majority Justices of the Constitutional Court misdirected themselves when they held that the Constitution (Amendment) Act No. 1 of 2018 on the removal of the age limit for the President and Local Council V offices was not inconsistent with the provisions of the 1995 Constitution?***

6. ***Whether the Constitutional Court erred in law and in fact in holding that the President elected in 2016 is not liable to vacate office on attaining the age of 75 years?***

7 (a) Whether the learned Justices of the Constitutional Court derogated the appellants' right to fair hearing, un-judiciously exercised their discretion and committed the alleged procedural irregularities.

7 (b) If so, what is the effect of the decision of the Court?

8. What remedies are available to the parties?

Representation

The 1st appellant Mr. Mabirizi himself, the 2nd appellants were represented by Mr. Lukwago Elias and Mr. Rwakafuzi assisted by Mr. Mpenge Nathan and Mr. Nalukora Elias and the 3rd appellant was represented by Mr. Wandera Ogalo assisted by Mr. Moses Kiyemba.

The learned Attorney General Mr. William Byaruhanga appeared in person together with Hon. Mwesigwa Rukutana the Hon. Deputy Attorney General, Mr. Francis Atoke the Solicitor General, Ms. Christine Kahwa the Ag. Director Civil Litigation, Mr. Martin Mwambutsya Commissioner Civil Litigation, Mr. Phillip Mwaka, Principal State Attorney Mr. George Karemera, Principle Senior State Attorney, Mr. Richard Adrole, Senior State Attorney Mr. Geoffrey Madete State Attorney, Ms. Imelda Adongo, State Attorney, Mr. Jonson Natuhwera, State Attorney, Ms. Jacky Amusugat, State Attorney, Mr. Sam Tusubira, State Attorney and Mr. Allan Mukama, State Attorney.

In their written submissions filed in Court, Mr. Mabirizi argued issues 7, 2, 3, 4, 5, 6 and 8 separately. Mr. Lukwago and Mr.

Rwakafuuzi argued issues 1, 2, 3, and issues 4 together, then issues 6, 7 and 8 separately. Mr. Ogalo argued issues 3, 5, 4, 2 and 8. The Attorney General responded to all the arguments on all the issues. Mr. Mabirizi and the Attorney General raised preliminary objections as well. They made oral highlights of their written submissions in Court on the 15th and 16th January, 2019. We reserved our judgment to be delivered on notice.

The Principles of Constitutional Interpretation

In determining this appeal, I shall be guided by the following established and well tested principles of Constitutional interpretation that have guided our courts:

1. The Constitution is the Supreme law of the land and forms the standard upon which all laws are judged. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of the inconsistency.

2. The entire Constitution has to be read together as an integrated whole with no particular provision destroying the other but rather each sustaining the other. No one provision of the Constitution is to be considered alone but that all the provisions bearing upon a particular subject are brought into view and to be interpreted so as effectuate the greater purpose of the instrument.

3. Where words and phrases are clear and unambiguous, they must be given their primary, plain and natural meaning. The

language used must be construed in its natural and ordinary sense. Where the language of a statue sought to be interpreted is imprecise or ambiguous, a liberal, generous and purposeful interpretation should be given. The interpretation should not be narrow and legalistic, but should be broad and purposeful so as to give effect to the spirit of the Constitution.

4. In determining the constitutionality of legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining constitutionality, either of the unconstitutional purpose, or unconstitutional effect animated by the object the legislation intends to achieve.

5. A constitutional provision containing a fundamental human right is a permanent provision intended to cater for all times to come and therefore should be given dynamic, progressive, liberal and flexible interpretation, keeping in view the ideals of the people, their socio-economic and political cultural values so as to extend the benefit of the right to those it is intended for.

6. The history of the country and the legislative history of the Constitution is relevant and a useful guide in constitutional interpretation.

7. Judicial power is derived from the people and shall be exercised by the courts established under the Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people and the courts shall

administer substantive justice without undue regard to technicalities.

[See**: P.K Ssemwogere vs. AG Constitutional Appeal No. 1 of 2002 (SC); Attorney General vs. David Tinyefunza, Constitutional Appeal No.1 of 1997(SC); Attorney vs. Salvatori Abuki, Constitutional Appeal No.1 of 1998, Attorney General vs Uganda Law Society, Constitutional Appeal No.1 of 2006 (SC); Livingstone Okello Okello vs. Attorney General; Constitutional Petition No. 4 of 2005 (CC) and Article 126 (1) and (2) (e) of the 1995 Constitution.**

Preliminary Objections

Before proceeding with the determination of the issues raised in the grounds of appeal, it is important to resolve the preliminary objections raised by Mr. Mabirizi and the Attorney General respectively to each other's appeal. I prefer to consider them first before going into the merits of the appeal just in case they dispose of the appeal without going into its merits.

Mr. Mabirizi raised an objection to the written submissions of the respondent on the ground that they had been filed outside the schedule that the Court had given the parties at the pre-hearing conference. That Court should strike them out on that account. We considered the objection and found that, although it was genuine, this Court had power to validate such a document under Rule 2(2) of the Supreme Court Rules in the interest of justice, and we did so.

The respondent on his part, objected to the entire Memorandum of Appeal filed by Mr. Mabirizi contending that it offended Rule 82 of the Supreme Court Rules in that grounds of appeal set out therein are speculative, argumentative, narrative, and insolent and an abuse of Court process.

The respondent submitted that the appeal was therefore incompetent and should be struck out with costs. He relied on the case of **Beatrice Kobusingye And Anor vs Nyakaana, Civil Appeal No. 5 of 2004(SC);** and **Hwang Sung Ltd vs M & D Timber Merchants and Transporters Ltd , Civil Appeal No. 2 of 2018(SC),** in support of this objection.

The second objection by the respondent to Mr Mabirizi's appeal is that the petition presented by Mr. Mabirizi in the Constitutional Court did not conform to Article 137 of the Constitution in that it was filed in December 2017, before the Bill had been passed into an Act. Mr. Mabirizi did not amend his petition after the enactment of the Bill. This failure renders his petition null and void. **Miria Matembe & 2Ors v Attorney General, Constitutional Petition No.02 of 2005(CC)** and **Cardinal Nsubuga vs Makula International Ltd(1982)** were relied on in support of this objection.

Mr. Mabirizi opposed the objection. He contended that the essence of the respondent's objections is that no appeal lies to this Court, since all the grounds of appeal offend Rule 82(1) and the petition was also not properly before the Constitutional Court. This cannot be done informally because Court may end up by striking out the appeal

without any evidence brought before it. This would defeat the ends of justice. If the respondent was serious, he would have moved such objections through an application under **Rule 78 & 42(1)** of the Supreme Court Rules. He contended that, the situation would have been different if the respondent was challenging one or two grounds of appeal, but he was challenging the entire memorandum and the entire appeal. According to Mr. Mabirizi, therefore, the objections are incompetent and should be rejected by Court on that account.

Mr. Mabirizi submitted that, without prejudice to the above, the claim by the respondent that the grounds of appeal are speculative, argumentative narrative, insolent an abuse of the court process was unfounded since **Rule 82(1)** is clear; it only prohibits grounds that are **"argument"**, or **"narrative"** not "**speculative, insolent and abuse of the court process",** as argued by counsel for the respondent. According to him, what the Rule requires is that at the end of stating the grounds of appeal, the appellant must state the nature and order which it is proposed to ask the court to make, as he had done in his grounds of appeal. He argued that as long as a ground of appeal points out a specific complaint which is clear to the extent that the respondent is aware of a specific complaint so as to be able to contemplate what will be argued, such ground is compliant with the Rule. He then went through the grounds of appeal and contended that he was cautious with the requirements of the law and ensured that all the grounds were concise and fitted squarely within the ambit of Rule 82(1). Counsel for the respondent had thus misinterpreted **Rule 82 (1)** and Court should reject this limb of his

objection as well. He relied on the ruling by Mugamba JSC in **Rachobhau Shivabhai Patel & Anor vs. Henry Wambuga and Anor, Civil Appeal No. 06 of 2017(SC)** in support of this submission on this point.

Mr. Mabirizi submitted that in the alternative and in the unlikely event that this Court is convinced by the respondent's objection, the Court should find that the respondent has suffered no prejudice, since he was able to understand the complaints in the appeal and adequately respond to them.

Regarding the claim that the petition did not conform to Article 137, Mr. Mabirizi contended that this claim is not only unfounded, but it is belated and illegally presented as well, since the objection was neither raised nor argued before the lower court, hence it cannot be raised and determined at this level: [See: **Bitamisi v Rwabuganda, SCCA No. 16 of 2014.**]

He further contended, the objection is barred by **Rule 98(a)** of the Rules of this Court which prohibits a party to an appeal from arguing against the decision of the Court of Appeal without the leave of court, except on grounds that are specified in the memorandum of appeal or a cross-appeal or specified in a notice under Rule 88 of the Rules of this Court. He submitted that when the respondent was served with the memorandum of appeal, he had the option to file a cross-appeal or a notice of grounds for affirmation of the decision of the Constitutional Court under Rule 88 of the Supreme Court Rules wherein he would have raised this objection, so he cannot raise it

now. See: **Hamid vs. Roko Construction, Civil Appeal No. 01 of 2013.**

He argued that even if the objection was competent, it lacks merit and should be rejected since his *locus* arose the moment Parliament prevented him from accessing Parliament because in that, there was an act done by the authority of Parliament under the Parliament Rules of Procedure and all the actions throughout up to the purported voting were, in his opinion, inconsistent with or in contravention of the Constitution. That his petition clearly challenged the actions of the persons stated in the petition and hence passed the test under Article 137(3). He said that the consequent processes of assent and gazette had built on already challenged actions, but even then, he argued the pleadings had captured them. He emphasised that he had actually filed **Constitutional Applications No. 45 and 46** to halt the assent and gazette but they were overtaken by events.

Ruling on the Preliminary Objection

I have considered the arguments of both parties on the preliminary point of law and also considered the relevant laws and authorities referred to by both sides.

Regarding the first limb, **Rule 82** provides that:

> **"A memorandum of appeal shall set forth concisely and under distinct heads without argument or narrative, the grounds of objection to the decision appealed against,**

specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the court to make."

This Court has had occasion to comment on this Rule in similar situations in a good number of cases including the ones cited above. The Court stated in the case of **Rachhobhau Shivabhai Patel Led & anor vs. Henry Wambuga & Anor(supra)** that:

"The purpose of this Rule is to ensure that the court adjudicates on specific issues complained of in the appeal and to prevent the abuse of the court process."

In **HwanSung Ltd v M&D Timber Merchants and Transporters Ltd (supra) this Court** observed that:

"It is not enough for counsel to simply complain and state that the Justices erred in law. He has to specify the error committed."

In **Beatrice Kobusingye & Anor vs Nyakana (supra)** this court observed that:

"The grounds of appeal may ordinarily be rejected if all or any of them offend the Rules of the contents of a memorandum of appeal and an objection to any grounds of appeal can be based on these provisions".

It is therefore clear from the above Rule that a ground of appeal must be precise in challenging a holding or reasoning of the court and specify the points wrongly decided. Failure to comply with the Rules renders the ground incompetent and may be struck out.

I have examined the grounds of appeal by Mr. Mabirizi and I find them outside the ambit of Rule 82. They are argumentative and inconcise.

A perusal of the memorandum of appeal shows that Mr. Mabirizi raised 84 grounds of appeal some of which were too general, repetitive and argumentative which offended Rule 82 and ordinarily were liable to be struck out.

Mr. Mabirizi rightly argued that the objection by the respondent was irregularly raised contrary to Rule 98(b) and 78.

Rule 98 reads:

> **"At the hearing of an appeal—**
> **(a) no party shall, without the leave of the court, argue that the decision of the Court of Appeal should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the Court of Appeal on any ground not relied on by that court or specified in a notice given under Rule 88 of these Rules;**

(b) a respondent shall not, without the leave of the court, raise any objection to the competence of the appeal which might have been raised by application under Rule 78 of these Rules;

Rule 78 provides that:

"A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time."

In my opinion, the respondent should have brought an application under Rule 78 to strike out the entire appeal on grounds that it is incompetent and therefore no appeal lies but he did not do so and neither did he give any sufficient reason nor did he seek leave of this court as per Rule 98(b) of the Rules of this court.

Further, the respondent was not prejudiced in any way since all the petitions were consolidated and the same issues were raised by all the parties to which he clearly responded.

Regarding the issue whether the petition conformed to Article 137, Article 137(3) reads as follows:

"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

(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 where appropriate."

This Article has been interpreted by this court in the case of **Ismail Serugo vs. Kampala City Council & Anor, SCCA No.2 of 1998** where Justice Mulenga JSC (RIP) held that**:**

" ***A petition brought under this provision in my opinion, sufficiently discloses a cause of action, if it describes the act or omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent or which is alleged to have been contravened by the act or omission and prays for a declaration to that effect."***

In Baku Raphael and Anor v Attorney General, SCCA No.1 of 2003 following the above decision, Odoki, CJ (as he then was) further held that:

" A liberal and broader interpretation should be given to a Constitutional petition when determining whether a cause of action has been established."

A perusal of Mr. Mabirizi's petition in the Constitutional Court shows that it describes the acts or omissions complained of and shows the provision of the Constitution alleged to have been contravened. It also prays for a declaration that the acts in Parliament were inconsistent with the Constitution.

It is clear that he was challenging the actions during the passing of the Constitutional (amendment) Bill No.02 of 2017 into an Act as being inconsistent with the Constitution and prayed for a declaration to that effect. The petition therefore conformed to Article 137. That notwithstanding, he also filed supplementary affidavits in support of his petition as and when the Bill was passed and later assented to. This in my view did not render the petition null and void. The Constitutional Court interpreted some of these actions as contravening the Constitution, he therefore had a right to appeal against the decision.

The case of **Miria Matembe vs Attorney General** (supra) is distinguishable in the circumstances. Whereas that case challenged the proposed amendments of the (Amendment) Bill No.2 of 2005 and this clearly falls under Article 137 (a), in Mr. Mabirizi's petition, he challenged the actions/omissions of Parliament in passing of Constitutional (Amendment) Bill No.2 of 2017. This falls under Article 137(b).

In Miria Matembe's case the petitioners challenged the Constitutionality of the Constitutional (Amendment) Bill No.2 of 2005 which was tabled before Parliament by the Attorney General/Minister of Justice and Constitutional Affairs.

They mainly alleged that:

The act of the Minister in tabling before Parliament and of Parliament debating the Constitutional (Amendment) Bill No. 2 of 2005 which combines proposed amendments to articles specified in articles 259 (2), 260 (2) and 261 is inconsistent with and contravenes articles 91 258, 259, 260, 261 and 262 of the Constitution in as much as:

a) ***The proposed amendments to some of the articles referred to in article 260 and 261 will unduly be subjected to the procedure in article 259 of the Constitution.***

b) ***The proposed amendments to some of the articles referred to in article 259 (2) of the Constitution will be unduly subjected to article 260 of the Constitution.***

c) ***The proposed amendments to some of the articles referred to in article 261 of the Constitution will***

be unduly subjected to article 262 of the Constitution.

That the said Bill in as far as it proposes to amend in an omnibus manner several articles of the Constitution without a specific two thirds vote in Parliament and where necessary in district councils and/or referenda on each specific article and by subjecting the entire Bill to an omnibus district council vote and national referenda contravenes and is inconsistent with article 1 of the Constitution."

They prayed for a declaration that the said Bill is inconsistent with the Constitution and is null and void, an order that Parliament and all its Committees should be restrained from further consideration of the Bill and costs for the petition.

This is why the Court held inter alia that:-

"*It is clear to us that in the first limb of Article 137 (3) (a), the Constitution provides for the challenging by any person who satisfies the relevant parts of the rest of Article 137, the Constitutionality of an Act of Parliament and not a mere draft proposal for an Act of Parliament. If the framers of the Constitution intended that the Constitutionality of a Bill for an Act of Parliament can be challenged, they would have clearly stated so."*

It should be noted that at the time of hearing and completion of Hon. Matembe's petition, the Committee had also not yet submitted its report for consideration and debate by Parliament. The Bill was therefore still premature. Court then held that the petition was therefore speculative, premature and misconceived. Court also found that it did not raise any matters for Constitutional interpretation.

In the instant case, the record shows that Parliament passed the **Constitutional (Amendment) Bill No.02 of 2017** on the 20th December, 2017 and the President assented to it on the 27th December, 2017. On the 22nd December, 2017, Mr. Mabirizi filed his petition in the Constitutional Court challenging the Constitutionality of the actions of Parliament in relation to the Bill as well as the Constitutionality of the term of the office of the President. In his petition in para 1, he alleged that **:**

> **"*the action of the respondent that the term of office of the current President expires in 2021, after the expiration of 5 years is inconsistent with Articles 102(b) and 102(c) of the Constitution.***
>
> *In para 2* he alleged that: ***the actions of Parliament to prevent Members of the public to access Parliament's gallery during the presentation of the Bill was inconsistent with Articles 1, 8A and 79 of the Constitution."***

He then prayed for:

> ***"a declaration that the actions of Parliament were inconsistent with the Constitution and for orders that Presidential elections are carried out once the President attained 75 years of age. He also prayed for an award of general damages and costs with interest of 25%."***

On 27th December, 2017 when the Bill was assented to, he filed a supplementary affidavit updating and supplementing his averments in the affidavits in support of the petition and on 4th January, 2018 he filed another supplementary affidavit in further support of his petition. In paragraph 12 of his 2nd supplementary affidavit at page 95 of his Record of Appeal A, he averred that:

> ***"12.That the assent which is null and void, coupled with the unconstitutional actions complained against in my petition, the affidavit in support thereof, my 1st supplementary affidavit and this affidavit render the ACT a mere nullity only awaiting to be declared so by Court."***

At the time of the hearing of the Petition, the Bill had already become law. In my view therefore, Mr. Mabirizi's petition was not premature since it challenged the Constitutionality of the actions of Parliament in passing the Bill (and was further supplemented in challenging the Constitutionality of the Constitutional (amendment) Act. No.1 of 2018) which was not the case in the case of **Miria Matembe v Attorney General** (supra). The petition therefore conformed to Article 137 and raised matters of Constitutional interpretation.

Further, and without prejudice to the foregoing, I agree with Mr Mabirizi that this issue was not raised in the lower court even when the matter was being consolidated and issues framed, neither did the respondent cross appeal in this Court as per Rule 87 and 98(a) of the Rules of this Court. The respondent cannot therefore ambush the appellant at this stage without being given an opportunity to be heard. See: **Hamid v Roko Construction, SCCA No.1 of 2013.**

Similarly, I would also re-echo the case of **Bitamisi v Rwabuganda**, (supra) where a new issue was raised. The court held that those were new matters that were not part of the parties' pleadings and could not, therefore, be considered at that stage. In **Tororo Cement Co. Ltd v Frokina International Ltd, SCCA No.2 of 2001**, it was elaborated that it is proper and good practice to aver in the opposite party's pleadings that the pleadings of the other side are defective and that at the trial, a preliminary objection will be raised. This puts the opposite party on notice and may save Court a lot of time. Otherwise the best practice is to raise a preliminary objection at the earliest opportunity as the determination of the same might dispose of the matter.

In the premises, I do not find any merit in the preliminary objection raised by counsel for the respondent and it is accordingly overruled.

Let me now revert to the issues framed:

Issue 7 (a): ***Whether the learned Justices of the Constitutional Court derogated the appellants' right to fair hearing, un-***

judiciously exercised their discretion and committed the alleged procedural irregularities.

This complaint was raised by Mr. Mabirizi in grounds 1,2,3,4,5,6,7,8,11,17,18,19,25,26,78,80,81,82,83 and 84 of his appeal. The 2nd appellant raised it in grounds 18, 19, 20,21,22,23 and 24 of their appeal. The third appellant did not raise this complaint.

Mr. Mabirizi complained in ground 1 that the Constitutional Court failed to hear and determine his petition expeditiously and to render judgment within 60 days from the 19th April, 2018. This allegedly derogated from his right to fair hearing and invalidated the decision.

The respondent contended that the Constitutional Court duly expeditiously heard and determined the consolidated petitions as required by the standard established by Article 137 (7) of the Constitution. Mr. Mabirizi suffered no prejudice or derogation of the right to a fair hearing on account of the manner in which the hearing and determination of the petitions was conducted.

He complained in ground 2 that he was evicted from the court's seats occupied by representatives of the other petitioners and put in the dock throughout the hearing and that was a derogation to his right to a fair hearing and the Rules of natural justice.

The respondent denies this allegation and contends that the appellant was courteously treated like other litigants and the record clearly shows that he was accorded every opportunity to present his

case including: conferencing, making applications, cross-examination of witnesses, submissions and receiving the judgment, and no prejudice was occasioned to him.

In grounds 3 and 4, Mr. Mabirizi complains that a miscarriage of justice was allegedly caused to him by the Constitutional Court when the court did not give him ample time to present his case. He further alleged extreme and unnecessary interference with his submissions by court and this allegedly derogated his right to a fair hearing and allegedly prevented him from substantially responding to the Respondent's submissions by way of a rejoinder.

He generally accused the Justices of the Constitutional Court of proposing answers to witnesses and for turning into defence counsel through excessive interruptions, citing remarks by the DEPUTY CHIEF JUSTICE and Kakuru JCC.

He alleged that he did not have ample time to present his case. He also complained that he was denied the right to make a rejoinder, and throughout the proceedings, the Justices of the Constitutional Court were in a hurry, derogating his right to a fair hearing and contravened international Conventions.

The respondent denied this allegation and contended that they were in stark contradiction and undermined his complaint that the court did not hear and determine the petitions expeditiously.

The respondent reiterated its earlier submissions that the learned Justices of the Constitutional Court duly heard and determined the

petitions according all parties an equal chance to present their respective cases and the record of appeal fully demonstrated that all parties to the petitions fully participated in the proceedings and had ample time to present their cases.

The respondent further contended that the record of appeal demonstrated that the Justices of the Constitutional Court were deliberate and methodical as required in accordance with the Rules cited.

With regard to the right to make a rejoinder, the respondent contended that the appellants could only submit in rejoinder in regard to new matters raised during the course of the respondent's submissions. That contrary to Mr. Mabirizi's submissions, his right to a rejoinder is not *"outright and absolute"*

The respondent refered to the record of proceedings at pages 2226 - 2231 and contended that the learned Justices of the Constitutional Court actually gave the appellants an opportunity to make rejoinders before closing their cases. That Mr. Mabirizi was accorded an opportunity to rejoin at pages 2230 – 2231. I shall reproduce the excerpts later in this judgment during the determination of this specific complaint.

The respondent denied the allegation that the Constitutional Court contravened international Conventions. He further contended that the court is entitled and duty bound to inquire into submissions and by seeking clarification where necessary. That the court has the discretionary power to grant leave to allow cross-examination of

deponents of affidavits under **Rule 12 of the Constitutional Court (Petitions and Reference) Rules.** The respondent relied on the decision of this Court **in Hon. Ssekikubo & others vs. Attorney General, Constitutional Appeal No. 1 of 2015 (SC), and Mbogo & Others vs. Shah, [1968] EA 93** in support of his submissions on this point.

In grounds 17, 18, 19 and 20 Mr. Mabirizi complained that the learned Justices of the Constitutional Court did not refer to his evidence and submissions, did not consider the authorities he had presented in his submissions; that the majority of the Justices failed to properly evaluate the evidence, pleadings and submissions and authorities hence reaching a wrong conclusion. Mr. Mabirizi contended that this was contrary to Order 21 of the Civil Procedure Rules.

The respondent denied this allegation and contended that each and every Justice of the Constitutional Court acknowledged the pleadings, submissions and authorities in their respective judgments. The respondent referred this Court to the judgments on record.

Mr. Mabirizi's other contention was that the Constitutional Court was bound to determine all the matters in controversy between the parties, but failed to do so.

The respondent submitted that the Justices of the Constitutional Court duly determined and resolved all the issues in controversy as presented in the pleadings, framed issues and submitted by the

respective litigants. The respondent further submitted that the core subject matter referred to the Constitutional Court were issues for Constitutional Interpretation regarding **Constitutional Amendment Act No. 1 of 2018**, under **Article 137 (1)** of the Constitution, and the respective Justices of the Constitutional Court faithfully interpreted the provisions of the **Constitutional Amendment Act No. 1 of 2018**, *vis a vis* the Constitution and granted redress. The respondent submitted that it is a question of style and one can only determine this by reading the judgment. The respondent relied on the decision of this Court in **British American Tobacco (U) Ltd vs Shadrach Mwijiikubi & 4 others , Civil Appeal No. 1 of 2012 (SC),** in support of his submission on this point.

In grounds 6 , 7 and 8, Mr Mabirizi complains that the Justices of the Constitutional Court did not mention or even rely on his two supplementary affidavits , affidavit in rejoinder to the Answer to the Petition and supporting affidavits as well as the affidavits in rejoinder to the affidavits of Mrs Jane Kibirige, Mr Keith Muhakanizi, and General Muhoozi.

Mr Mabirizi further complained that the majority of the Justices of the Constitutional Court did not determine the legality of the substantial contents of the affidavits of Mr Keith Muhakanizi, the Secretary to the Treasury that of General Muhoozi, the Chief of Defence Forces, which were allegedly put in issue as hearsay. He contended that the Constitutional Court was bound to make a

decision on his application to strike out the said affidavits, but did not do so.

The respondent opposed this allegation, and contended that during cross-examination, General Muhoozi testified that as the Chief of Defence Forces, he was the best person to swear the affidavit in question since the operation was under his command and he passed the instructions down the chain of command.

The respondent further contended that Mr Muhakanizi was cross-examined and re-examined and testified that the Certificate of Financial Implications was prepared under his authority as the Permanent Secretary/Secretary to the Treasury and duly explained the circumstances under which the Certificate was prepared. Sources of information were duly disclosed. No hearsay therefore arose in the circumstances.

In grounds 25 and 26, Mr Mabirizi accused the Justices of the Constitutional Court of proposing answers to witnesses and preventing him from cross-examining witnesses. He alleged that the Court over protected Mr Muhakanizi and prevented him from answering questions put to him.

The respondent submitted that the Court has discretion to regulate cross-examination and guide litigants to cross-examine witnesses on pertinent matters related to the litigation and surrounding circumstances. The Court has the authority to limit cross-examination including on matters that are speculative, irrelevant and otherwise inconsistent with the **Evidence Act.** The court may further

make an inquiry of the witness even beyond the inquiry made by the lawyer cross examining the witnesses for the purpose of clarification and obtaining wholesome testimony depending on the circumstance of the case.

The respondent prayed that this court finds the Justices of the Constitutional Court were fully justified in making their inquiry. They set the ground Rules for cross examination to guide all the parties and counsel, and cautioned them to keep within the Rules or lose the opportunity to cross-examine. The respondent pointed out that the DEPUTY CHIEF JUSTICE actually guided Mr Mabirizi on his cross examination since he was deviating from the ground Rules established and required him to abide by the set Rules.

Another allegation by Mr Mabirizi is that the DEPUTY CHIEF JUSTICE's interference was to cover up the truth that General Muhoozi's affidavit was never sworn. Mr Mabirizi also alleges the omission to Rule on the admissibility of substantial paragraphs of General Muhoozi and Mr Muhakanizi's affidavits could have been a deliberate effort to leave hearsay evidence on record.

The respondent objected to these allegations on the basis that it was not only speculative and offended Rule 82 of the Supreme Court Rules but it is without merit, and should be struck out.

In grounds 79 and 80, Mr Mabirizi complained that the majority of the Justices of the Constitutional Court erred when they allegedly originated the prayer and pleading of the appellant and granted the remedy of severance which was not pleaded by the respondent. He

further submitted that the majority of the Justices erred in applying the principle of severance of some sections in a single Act, allegedly in a situation where the Constitutional Amendment procedure was fatally Constitutionally defective. Mr Mabirizi contended that the Court had no power to frame sub-issues of whether severance can be applied and whether non-compliance affected the Act in a substantial manner which did not arise from the pleadings and that it was contrary to his right to a fair hearing.

The respondent submitted that the core role of the Constitutional Court under **Article 137 (1)** of the Constitution is to interpret its provisions, while **Article 137(3) (b) and 137(4)** provide for the grant of redress within the discretion of the Court based on the circumstances pertaining. Accordingly, while declarations are the primary duty, the Court may grant redress including the remedy of severance either at the pleading or prayer of counsel or a litigant or by exercising its own discretion.

The respondent further submitted that the Court has discretion to require counsel or litigants to address it even on non-pleaded issues and remedies and to accordingly frame issues for counsel and litigants to address. The respondent contended that severance is a well-established legal remedy and there is no bar to the Justices of the Constitutional Court exercising their discretion to grant the remedy of severance. The respondent contended that he addressed Court on the remedy of severance at the hearing. Mr Mabirizi had

every opportunity to address the Justices on the issue of severance, and did not suffer any prejudice.

Mr Mabirizi also accused the Court of making a decision on its own and inventing points, which is contrary to the principles of fair hearing, Rules of procedure and decided cases.

The respondent submitted that in the course of conducting its inquiry, the court has a wide discretion to draw on existing Constitutional and legal principles both pleaded and unpleaded depending on the circumstances of the case, and it is the duty of the court to apply the relevant principles for the ends of justice. The Justices of the Constitutional Court in applying the remedy of severance relied on **Article 2(2)** of the Constitution as well as the established authorities. Mr Mabirizi had opportunity to address court on the said principles and authorities. No prejudice was occasioned to him. Additionally, the authorities cited by Mr Mabirizi are related to litigants being bound by facts and matters pleaded. They do not preclude a litigant from relying on the abundant legal principles to advance their cases.

Mr Mabirizi also alleged that the Court initiated and granted the unpleaded defence that once there is no quorum, absence of opposition is immaterial. He submitted that it was erroneous for the court to raise the point of quorum which was not in issue.

The respondent submited and reiterated that in any adjudication, especially Constitutional interpretation, the Court is at liberty and had the duty to inquire into the entire factual and evidentiary

circumstances of the case and review the entire breadth and depth of statutes, authorities and literature in coming to its determination. The respondent contended that in the Constitutional Court specifically, the Court is not fettered in its consideration of the case by limitations of litigants. That notwithstanding, the respondent submited that the parties had equal opportunity to address court on the issue and thus no party suffered any prejudice as they were duly and fairly heard.

In grounds 5 and 82, Mr Mabirizi complained that the Justices of the Constitutional Court erred and *"unjudiciusly"* exercised their discretion when they did not give reasons for their decision in dismissing his application to summon the Speaker of Parliament for questioning on her role in the process leading to the enactment of the impugned Act. This was allegedly an abuse of discretion and in contravention of basic legal principles, and the effect caught up with the Justices and the respondent at the hearing. Without summoning her, the Court erred in commenting and deciding in favour or against her in their judgment.

In grounds 21 and 22, Mr Mabirizi alleged that the Justices of the Constitutional Court erred in allegedly failing to exercise their discretion to call for the evidence of the Speaker, the Deputy Speaker, the Minister of Justice and Constitutional Affairs , the Deputy Chairperson of the Parliamentary Committee of Legal and Parliamentary Affairs and Hon. Raphael Magyezi and the majority

misdirected themselves for allegedly failing to take into consideration the respondent's failure to adduce this evidence.

The respondent referred to the ruling of the Court on record and contended that the Court duly considered the arguments of the respective counsel and pronounced itself on the matter of examination of the Rt. Hon. Speaker before declining to grant the order sought. The respondent contended that the Court ruling contained the abridged reasons for declining to grant the application and as such, Mr Mabirizi had due notice of the reasons for refusal.

The respondent further submitted that the decision to summon the Speaker for examination was overtaken by events after Mr Mabirizi's application **No. 7 of 2018** seeking to cross examine the Speaker was dismissed by the Supreme Court on the 14th December 2018. Grounds 5 and 82 were accordingly rendered moot.

The respondent submited that notwithstanding the foregoing, this Court should uphold the decision of the Constitutional Court not to summon the Speaker who had not sworn any affidavit for examination since the Clerk to Parliament who is the designated custodian of the records of Parliament had availed to court the verbatim record of the Hansard and the Certificate of Compliance and the counsel including Mr Mabirizi had the opportunity to cross-examine her at length. The Hansard and the Certificate of Compliance are recognised as public documents under **Section 73 and 75 of the Evidence Act, Cap. 8.** Section **76 of the Evidence Act** provides that certified copies may be produced as proof of the

contents of public documents. Therefore, the admittance of the said documents in evidence was sufficient to enable the parties to litigate the petitions and the court to determine matters in issue. The Speaker cannot add or vary the contents of the Hansard since it speaks for itself as a true, faithful, accurate, complete and impartial account of the deliberations and decisions of Parliament.

The respondent further submited that neither Mr Mabirizi, nor counsel for the 2nd appellants, sought to cross examine the Deputy Speaker, the Minister of Justice and Constitutional Affairs , the Deputy Chairperson of the Parliamentary Committee of Legal and Parliamentary Affairs and Hon. Raphael Magyezi. The grounds of appeal and submissions on this allegation are afterthoughts which this Court should ignore.

In grounds 81, 83 and 84, Mr Mabirizi complained that the Justices of the Constitutional Court erred when they denied him general damages on the ground that he did not prove them; that the learned Justices allegedly exercised their discretion "*unjudiciusly*" and without any sound reason, held that he was not entitled to professional indemnification and further held that each petition should receive professional fees of 20 million Uganda shillings. He contended that the 20 million shillings awarded as professional fees was without basis, inadequate and below the standard set by Court and that there was no need to prove general damages.

Mr Mabirizi further alleged that he was denied professional compensation on account of appearing in person whereas he is

allegedly a professional. He contends that the alleged denial of professional compensation contravenes Articles **21, 28(1), 44(c), 126(1) and (2) of the Constitution,** Common law jurisprudence against denying self-represented litigants costs and compensation for time and resources spent on litigation.

The respondent contended that the awards by the Justices of the Constitutional Court were purely discretionary under **Article 137(3) of the Constitution** and pays that the Court finds that in the circumstances, the redress ordered by the Constitutional Court was appropriate

Complaints by the 2nd Appellants

The specific complaints by the 2nd appellants on issue 7 are set out grounds 18, 19, 20,21,22,23 and 24 of their appeal.

In grounds 18, 19 and 20, the 2nd appellants complained that the Justices of the Constitutional Court misdirected themselves in ordering Counsel to proceed with submissions before cross examination of the respective witnesses; that the Justices erred in denying the petitioners the right to rejoin after the respondent's case and that the Justices acted throughout the proceedings with material procedural irregularities.

The 2nd appellants complained in grounds 21 and 22 that the Justices of the Constitutional Court erred in failing to exercise their discretion to call evidence of key government officials and individuals who played a key role in the process leading to the enactment of the

impugned Act including: the Speaker, the Deputy Speaker, the Minister of Finance, Hon. Raphael Magyezi, H.E the President and the Chairperson and Deputy Chairperson of the Legal and Parliamentary Affairs Committee and that the Justices misdirected themselves by failing to take into consideration the respondent's failure to adduce their evidence.

The 2nd appellants cited **Rule 12(3) of the Constitutional Court (Petitions and References) Rules** and contended that the Justices of the Constructional Court acted ***"injudiously"*** when they declined to summon the Speaker, moreover without assigning any reason.

The 2nd appellants complained about alleged procedural irregularities and submited that the Justices of the Constitutional Court erred:

i. When they restricted their cross examination of the witnesses to the averments in the affidavits of the respective witnesses, allegedly in contravention of **Section 137(2) of the Evidence Act;**

ii. In directing the appellants to submit before cross examination of the witnesses; and

iii. In denying the appellants the right to make a rejoinder after the respondent's reply.

Counsel for the 2nd appellants further submitted that the Constitutional Court erred in law and fact and injudiciously exercised their discretion in awarding 20 million shillings as professional fees plus 2/3rds disbursement. This sum is, according

to counsel, manifestly meagre, considering the nature and significance of the subject matter.

The respondent submitted that the 2nd appellants' submissions were preposterous and without any basis whatsoever. The respondent submitted that the 2nd appellants neither applied to Court for leave to examine the Speaker nor did they apply or urge the Court to exercise its discretion to summon the listed witnesses under **Rule 12(2) of the of the Constitutional Court (Petitions and References) Rules**. The Respondent therefore reiterated its earlier submissions in reply similar to complaints raised by Mr Mabirizi and prayed that the Court rejects the 2nd appellants' complaints in these grounds as well.

ISSUE 7(b): If so, what is the effect on the decision of the Court?

Mr. Mabirizi submitted that the alleged failure of fair hearing and procedural irregularities rendered all the proceedings and judgment void.

Counsel for the 2nd appellants submitted that the said irregularities limited the scope of the investigation by the Constitutional Court, and it thereby failed in its duty under **Article 137(1) of the Constitution** and came to a wrong decision.

The respondent reiterated his submissions in issue 7(a) above that the appellants participated at each and every stage of the proceedings in the Constitutional Court and duly received a fair hearing in accordance with **Article 28 of the Constitution.** The respondent

further submitted that the procedure adopted by the Constitutional Court were entirely within their discretion and did not in any way prejudice the appellant or occasion derogation of such right.

In conclusion, the respondent submits that the appellants have not proved any of their respective grounds of appeal and prays that the consolidated appeals be dismissed with costs.

Consideration of issue 7:

The complaint in issue 7 concerns (i) alleged derogation of petitioners' right to a fair hearing under **Article 28 and 44 (c) of the Constitution;** (ii) Alleged "injudicious" exercise of discretion , and (iii) alleged procedural irregularities by the Constitutional Court in hearing and determining consolidated petitions. I have perused the transcript of the entire record of proceedings before the Constitutional Court, I have also considered the grounds of appeal as well as the submissions and authorities cited by counsel and Mr Mabirizi.

Regarding the allegation of failure to determine the petitions expeditiously, Mr Mabirizi submitted that he filed his petition in December, 2017 and the Constitutional Court only heard it in April, 2018 and "in a relaxed manner where it could break for weekends starting from Friday up to Tuesday. Then the Court adjourned from 12th to 17th April for four days which was illegal.

My view is that this allegation is not only unfair to the Constitutional Court, but it cannot be determined fairly without establishing from

the Constitutional Court itself the reason why they scheduled the hearing of petitions that way. Besides, as the respondent rightly pointed out, court is guided by Article 137 (7) of the Constitution which provides that:

"(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."

In my view, ***"as soon as possible***" depends on the Court's workload and schedule and I take judicial notice of the fact that the Constitutional Court is among the courts in this country with a huge case backlog due to inadequate resource allocation by government. The backlog comprises Constitutional petitions as well. In such a situation, Mr Mabirizi would be expecting too much from the courts to determine his petition immediately it was filed regardless of other Constitutional petitions that would be pending before the court. That is why the framers of the Constitution used the expression ***"as soon as possible".*** It is noteworthy that Mr Mabirizi equates his petition to Presidential election petitions which are given specific timelines under the Presidential Elections Act. The authorities cited are for this reason inapplicable to his petition.

Most importantly I take note of the fact that the Court was faced with a very complex matter involving at least eight petitions with voluminous documents and pleadings that required the court to peruse in order to prepare for the hearing. This included authorities

cited by the petitioners specifically Mr. Mabirizi who stated in this court that he filed a total of 60 authorities before the constitutional court. This would inevitably necessitate a lot of reading and research by the learned Justices of the court which could not be accomplished within a short time.

The same reason applies to the failure to deliver the judgment within 60 days. Most importantly, it should be noted that the 60 days requirement is not mandatory. The Uganda Code of Judicial Conduct is simply a set of principles and Rules that were adopted by judicial officers to provide guidance in judicial conduct. Failure to comply with it is not fatal to the judgement. It says:

"…***Where judgment is reserved, it should be delivered within 60 days, unless for good reason, it is not possible to do so."***

Mr Mabirizi never inquired from the Constitutional Court whether it had no good reason why the judgment was delivered outside the 60 days. There is no law cited by Mr. Mabirizi that had been violated by the court. The period must be in context. In most jurisdictions cases take more than six months. For this reason, I find that his complaint has no basis.

Mr Mabirizi's complaint that he was evicted from the seat of the court also lacks merit. It is a notorious fact that Mr Mabirizi is a law graduate who has not yet been called to the bar since he has not yet acquired the Post Graduate Diploma in Legal Practice that is required for his enrolment. He cannot therefore practice law from the bar alongside other counsel with the requisite qualifications. That is why

the Constitutional Court rightly advised him to sit where the rest of the petitioners were seated. It should be noted that Mr Mabirizi was given a separate desk and seat away from the bar even in the Supreme Court. What is most important is that he was able to present his petition without suffering any prejudice as a result the seating arrangement.

The allegation that he was not given ample time to present his case is unsubstantiated. He did not elaborate on how much time he needed to present his case, and how much of his case, if any, was left out. It also not on record that he asked for more time and the Court refused to grant his request.

The allegations that the court turned into defence counsel and even suggested answers were not substantiated by Mr Mabirizi. Regarding the denial to make a rejoinder, I find that all parties were given equal opportunity to present their respective cases. This was after the court had from the outset, set out the ground Rules on how the consolidated petitions would be heard. This is the accepted practice in modern case management. I also find that all appellants were given an opportunity to make rejoinders before closing their cases and Mr Mabirizi actually did so at page 2230 to 31 of the record of proceedings. The Deputy Chief Justice used the wrong term he called it “closing remarks” but they were in essence rejoinders.

The Constitutional Court did not contravene any of the international conventions as alleged. The court had the discretion to deal with the

petitions in accordance with the Rules of procedure, and it did precisely that.

I have perused the judgments of the five Justices of the Constitutional Court, and it is crystal clear that the judgments were based on the pleadings, the affidavit evidence as well as the submissions including the authorities relied on by the parties. The fact that the Justices did not specifically mention all of them does not mean that they never took them into account in arriving at their decision. It is a question of style.

I also find that the Justices determined all the issues that had been framed and agreed upon by the parties for determination by court. The legality of the affidavits of Mr Muhakanizi and General Muhoozi were not in issue. Even so, both officials had sworn the said affidavits in their capacities as the highest technical officers in the UPDF and the Ministry of Finance respectively. The allegations were against the UPDF and Ministry of Finance. Musoke JCC rightly found that the affidavits in question did not contain any hearsay and declined to strike them out.

I also find that the allegation that the Deputy Chief Justice was covering up the affidavit by General Muhoozi is baseless. I have checked the record and I find that the affidavit was sworn on 29th March, 2018 before one Annet Okwera as commissioner for oaths.

Regarding the issue of cross examination, I note that the witnesses were cross examined with the leave of court. I note that the Court gave leave on condition that counsel should confine the cross

examination to areas that were covered in the affidavits of the respective witnesses. I am aware of the requirement of section 137 Evidence Act but it does not apply in such circumstances. Section 137 applies where the evidence is given orally in court.

As for the remedy of severance, I agree with counsel for the respondent that it need not have been pleaded. Article 137(4) empowers the Constitutional Court to **"(a) grant an order of redress."**

Regarding the failure to give reasons for dismissing his application to summon the Speaker for examination, I find from the record that Kakuru JCC who delivered the ruling on that said application actually gave a reason for dismissal to the effect that the Court had not found any reason to do so. He however added that the Court would give a detailed reason later on in the judgment. Unfortunately, the court, most likely through an oversight, did not do so. This was an error on the part of the court. The issue is however moot now since the Supreme Court dismissed application **No. 7 of 2018** for a similar request on the 14th December, 2018.

The request for the other officials were not made by both Mabirizi and counsel for the 2nd appellants. The Constitutional Court cannot be blamed for failure to summon them. Perhaps, as argued by the respondent, the Court was satisfied that the evidence availed particularly, the Hansard together with the Certificate of Financial Implication as well as the Certificate of Compliance by the Speaker would suffice in the circumstances.

Regarding the alleged injudicious exercise of discretion particularly with regard to the professional fees, and denial of professional compensation to Mr. Mabirizi, it is well settled that an appellate Court can only interfere with the exercise of discretion by a court of original jurisdiction where:

i. ***where the judge misdirects himself with regard to the principles governing the exercise of his discretion;***

ii. ***Where the judge takes into account matters that he ought not to consider; or fails to take into account matters that he ought to consider;***

iii. ***Where the exercise of discretion is plainly wrong.***

(See: **American Express International Banking Ltd vs Atul [1990-94] EA 10 (SCU)**

These awards were purely discretionary and the appellants have not proved that the Justices misdirected themselves on the principles regarding the award. This Court will not interfere with it. The same reasons apply to the complaints by the 2nd appellants.

In conclusion I agree with the respondent that the procedure adopted by the Constitutional Court was entirely within its discretion and did not in any way prejudice the appellant or occasion any derogation of his rights to a fair hearing.

All the appellants participated at each and every stage of the proceedings and received a fair hearing in accordance to **Article 28 of the Constitution.**

The appellants have not proved their respective grounds set out herein, and they accordingly fail.

7(b) if so, what is the effect on the decision of the Court?

In light of my findings on issue 7 (a), this issue does not arise.

Issue 1: ***Whether the learned Justices of the Constitutional Court misdirected themselves on the application of the basic structure doctrine.***

Issue 5: ***Whether the learned majority Justices misdirected themselves when they held that the Constitution (Amendment) Act No. 1 of 2018 on the removal of the age limit for the President and Local Council V Offices was not inconsistent with the 1995 Constitution.***

The issues before the Constitutional Court were:

"6(g). Whether the Act was against the Spirit and structure of the Constitution.

12. Whether sections 3 and 7 of the Act, lifting the Age limit were inconsistent with and/or in contravention of Articles 21 (3) and (5) of the Constitution."

Issue 6(g) was answered in the affirmative in respect to sections 2,5,6,8,10 of the Act and in the negative in respect of sections 1, 3, 4 and 7.

Issue 12 was unanimously answered in the negative.

Submissions by counsel:

Counsel for the 2nd appellants argued these two grounds together

It is the contention of the appellants that the constitutional court misconstrued the application of the basic structure doctrine when they limited it to the extension of the term of Parliament and not to the age limit.

Counsel for the appellants argued that the framers of the 1995 constitution deemed it necessary to enshrine within the text of the constitution such provision of Presidential term limit and age limit as would be necessary to give effect and operationalize the ideals encapsulated in the preamble as well as the National objectives and Directive principles of state policy. These provisions were intended to guarantee orderly succession to power and political stability. Therefore by amending Article 102 (b) after scrapping term limits, Parliament not only emasculated the preamble to the constitution but also destroyed the basic features of the constitution there by rendering it hollow and a mere paper.

Counsel also argued that the Article was also intended to place the destiny of the country in the hands of a mature and not very old

President given the risks and dangers of political upheavals, coup detats and rigged or sham elections.

Counsel for the respondent on the other hand argued that the constitutional court rightly unanimously identified the features that form the basic structure of the constitution and that the framers carefully entrenched such provisions by various safe guards for protection against the risk of abuse of the constitution by irresponsible amendment of those provisions. Only people can amend these provisions pursuant to Article 1(4). The Constituent Assembly was alive to the fact that our society is not static but dynamic and over the years there would arise a need to amend the constitution to reflect the changing times. It was within the general power of Parliament under Article 79 and 259 to amend the Article 102(b) and it did not in any way contravene the basic structure of the Constitution.

Consideration

The learned Justices of the Constitutional Court gave a detailed history of the Basic structure doctrine in their judgment. I do not intend to repeat them. Let me briefly summarise the essence of the basic structure doctrine in this Judgment.

The basic structure doctrine is a judicial principle that the Constitution has certain basic features that cannot be altered or destroyed through amendments by the Parliament in exercise of its

legislative powers. These features are considered to be fundamental principles that give identity to the constitution. They are intended to subsist forever to enable the continued existence and legitimacy of a country and therefore cannot be amended in a way which would destroy the indestructible character of a constitution.

This doctrine was introduced by the Supreme Court of India as a limitation on the power of Parliament and as a measure against arbitrary exercise of Parliament so that it would not be able to freely amend the Constitution.

This doctrine became more pronounced in India following the case of **Kesavananda Bharati v State of Kerala, AIR 1973 SC** which imposed limitations upon the amendment power of Parliament in amending the constitution in as far as certain features of the constitution were concerned. The court held that:

> ***"According to the doctrine, the amendment power of Parliament is not unlimited; rather it does not include the power to abrogate or change the identity of the constitution or its basic features."***

This doctrine was affirmed by Professor Conrad Dietrich a German jurist. It has since influenced the Constitutional jurisprudence in several other jurisdictions across the world including, Taiwan; India in the case of **Minerva Mills v Union of India, AIR 1980 SC 1789;** Bangladesh in the case of **Anwar Hossain Chowdhury v Bangladesh**

10 41 DLR 1989, App Div 169; South Africa in the case of **Executive Council of Western Cape Legislature v the President of South Africa & Ors (CCT27/95) [1995] ZACC 8;** and Kenya in **Njoya v Attorney General & Ors (2004) LLR 4788 HCK.** In all these cases, it is generally established that there are certain features of the constitutional order that are so fundamental and form the foundation of the constitution and therefore cannot be changed by Parliament even if it followed the necessary amendment process.

In other countries however such as Tanzania, this doctrine was not accepted because the Tanzanian Constitution does not contain any provisions that cannot be amended. See: ***Attorney General vs Rev. Christopher Mtikila, Civil Appeal No.45 of 2009 in 2010 (EA) 13***.

There is no hard and fast rule for determining the basic structure of a given Constitution. This is determined by Court on a case-by-case basis. However, according to the cases referred to above, the Courts have taken into account the historical background, the preamble and the entire scheme of the Constitution in determining the basic structure of a given Constitution.

Various courts have identified certain constitutional core or set of basic constitutional principles that form the constitutional identity which cannot be abrogated through the constitutional amendment process. It is widely believed that the supremacy of the constitution, democracy, federalism, independence of the judiciary, secularism, human dignity, sovereignty of the people, separation of powers and

the Rule of law among others are part of the basic features of a constitution.

In the Constitutional Court, the learned Justices rightly recognized the fact that this doctrine is embedded in our Constitution and while determining the basic structure of this country, the learned Justices were guided by our constitutional history, constitutional structure, political changes, preamble and national vision of the country.

The learned Deputy Chief Justice observed as follows:

> ***"Admittedly, the Constitution is liable to amendment or alteration; but, owing to its special character as the sovereign legal instrument, for any amendment or alteration thereto to be justified, there has to be compelling reason for doing so; and the amendment must be done in strict compliance with the manner expressly provided for in Chapter Eighteen of the Constitution itself..... The principal character of the 1995 Constitution, which constitute its structural pillars, includes such constitutional principles as the sovereignty of the people, the Constitution as the supreme legal instrument, democratic governance and practices, a unitary state, separation of powers between the Executive, Parliament, and the Judiciary, Bill of Rights ensuring respect for and observance of fundamental rights, and judicial independence. In the fullness of their wisdom, the framers***

of the 1995 Constitution went a step further in clearly identifying provisions of the Constitution, which it considers are fundamental features of the Constitution. They carefully entrenched these provisions by various safeguards and protection against the risk of abuse of the Constitution by irresponsible amendment of those provisions. The safeguards contained in the provisions entrenched in the Constitution either put the respective provisions completely and safely beyond the reach of Parliament to amend them, or fetter Parliament's powers to do so and thereby deny it the freedom to treat the Constitution with reckless abandon."

Kasule, JCC observed that:

"....The Odoki Constitutional Commission in a way addressed this issue of basic structure of the Constitution.... The Constituent Assembly too accepted these recommendations and reflected them in the 1995 Constitution. Therefore, the doctrine of basic structure is embedded in the 1995 Constitution. Our history of tyranny, violence and Constitutional instability is different from that of Tanzania that has had Constitutional stability since her becoming an Independent State, and it is fitting that Uganda adopted the doctrine of basic structure. Accordingly by application of the doctrine of basic structure, the Parliament of

Uganda can only amend the Constitution to do away or to reduce those basic structures such as sovereignty of the people (Article 1), the supremacy of the Constitution (Article 2) defence of the Constitution (Article 3), non-derogation of particular basic rights and freedoms (Article 44), democracy including the right to vote (Article 59), participating and changing leadership periodically (Article 61), non-establishment of a one-party State (Article 75), separation of powers amongst the legislature (Article 77): The Executive (Article 98): The Judiciary (Article 126) and Independence of the Judiciary (Article 128), with the approval of the people through a referendum as provided for under Article 260 of the Constitution".

Cheborion, JCC observed that:

"...faithful interpretation of our Constitution given its historical background as earlier detailed and in light of its preamble favour the position that the basic structure doctrine, to a restricted extent, be upheld as applicable in our legal system to govern amendments to the Constitution. We must also take into account our shared values as a country which are alluded to in the Directive Principles of State Policy. I am not convinced that Parliament, in exercise of its powers under Article 79(1) is free to effect amendments that would in effect replace the Constitution resulting from the consensus of the

Constituent Assembly with a new one. Consequently, I hold that the Ugandan Constitution is designed to recognise, to a certain extent, the basic structure doctrine in its preamble, national objectives and Directive Principles of State Policy read together with Article 8(A). In my view, in the Ugandan context the basic structure doctrine operates to preserve the people's sovereignty under Article 1 of the Constitution. Amendments to the Constitution should not be introduced or passed in a manner that defeats our country's national objectives and Directive Principles of State Policy without the input of the people in a referendum."

Musoke, JCC observed that:

"...Whether or not a provision is part of the basic structure varies from country to country, depending on each country's peculiar circumstances, including its history, political challenges and national vision. Importantly, in answering this important question, Courts will consider factors such as the Preamble to the Constitution, National Objectives and Directive Principles of State Policy (in countries which have them in their constitutions, such as Uganda), the Bill of rights, the history of the Constitution that led to the given provision, and the likely consequences of the amendment. I find that in Uganda the Preamble to the Constitution captures the spirit behind the

Constitution. The Constitution was made to address a history characterized by political and constitutional instability. The new Constitution is for ourselves and our posterity, and the Preamble is meant to emphasize the popularity and durability of the Constitution. Further still, a critical aspect of the basic structure of our Constitution is the empowerment and encouragement of active participation of all citizens at all levels of governance. This is the hallmark of the Democratic Principle No. II (i) of the National Objectives and Directive Principles of State Policy. All the people of Uganda are assured of access to leadership positions at all levels. [See Directive Principle II (i)].The goal of ensuring stability is echoed in Directive Principle No. III. And pursuant to Article 8A, the Objective Principles are now justiciable. Another of the basic pillars of our Constitution is Article 1(1), which guarantees the sovereignty of the people by providing that all power belongs to the people who shall exercise their sovereignty in accordance with the Constitution. The Bill of Rights to be found in Chapter Four of the Constitution contains fundamental human rights which are inherent and not granted by the State. The ones in Article 44 are non-derogable and are part of the basic structure which if removed or amended would be replacing the Constitution altogether."

In summary, the learned Justices in the majority judgment observed the basic features of our Constitution to include the following:

The national objectives and directive principles of state policy, sovereignty of the people, the Constitution as the supreme legal instrument, democratic governance and practices, a unitary state, separation of powers between the Executive, Parliament, and the Judiciary, Bill of Rights ensuring respect for and observance of fundamental rights, judicial independence and the preamble.

Kakuru, JCC in his dissent also highlighted the basic structure of the 1995 Constitution as follows:

1) The sovereignty of the people of Uganda and their inalienable right to determine the form of governance for the Country.

2) The Supremacy of the Constitution as an embodiment of the sovereign will of the people, through regular free and fair elections at all levels of political leadership.

3) Political order through adherence to a popular and durable Constitution.

4) Political and constitutional stability based on principles of unity, peace, equality, democracy, freedom, social justice and public participation.

5) Arising from 4 above, Rule of law, observance of human rights, regular free and fair elections, public participation in decision making at all levels, separation of powers and accountability of the government to the people.

6) Non-derogable rights and freedoms and other rights set out in the extended and expanded Bill of Rights and the recognition of the fact that fundamental Rights and Freedoms are inherent and not granted by the State.

7) Land belongs to the people and not to the government and as such government cannot deprive people of their land without their consent.

8) Natural Resources are held by government in trust for the people and do not belong to government.

9) Duty of every citizen to defend the Constitution from being suspended, overthrown, abrogated or amended contrary to its provisions.

10) Parliament cannot make a law legalizing a one-party state or reversing a decision of a Court of law as to deprive a party."

He concluded that:

"Parliament, in my view, has no power to amend alter or in any way abridge or remove any of the above pillars or

structures of the Constitution, as doing so would amount to its abrogation as stipulated under Article 3 (4). This is so, even if Parliament was to follow all the set procedures for amendment of the Constitution as provided.

In this regard therefore, I find that the basic structure doctrine applies to Uganda's Constitutional order having been deliberately enshrined in the Constitution by the people themselves. My view expressed above is fortified by the following provisions of the Constitution. Articles 1 and 2 : These Articles establish the foundation of the Constitution upon which all other Articles are archived therefore in my view cannot be amended, not even by a referendum. Doing so would offend Article 3(4). Article 3. This article is really unique, and I have not seen or known of any other Constitution with a similar Article, which effectively renders inapplicable to Uganda the Kelsen Theory of pure law. Under Article 3(4) an amendment by Parliament may have the effect of abrogating the Constitution even if such an amendment has been enacted through a flawless procedure. I say so, because an Act of Parliament amending the Constitution is still subject to Article 2 thereof. It must pass the constitutionality test."

I have quoted extensively from the judgments of the Justices of the Constitutional Court to demonstrate how each of them resolved the issue of the basic structure. I find that they have brought out clearly

what constitutes the basic structure of the 1995 Constitution of Uganda.

In my view, the owners of a Constitution are the people under Article 1 (1) of the Constitution. It states that:

> **"all power belongs to the people who shall exercise their sovereignty in accordance with this Constitution."**

While Constitutions are intended to be both foundational and enduring, they are not intended to be immutable. If they are to endure, they must respond to the changing needs and circumstances of a country. To evolve and change with all changes in the society and environment is a necessity for every Constitution.

The 1995 Constitution was as a result of an elaborate and highly detailed constitution making process that involved all citizens. The framers of the Constitution did not in my view perceive the constitution as an eternal document that could not be amended in any way. They were alive to the fact that the law was dynamic and could change with the changing society. It is for this reason that they provided for a methodology which is either rigid or flexible for amending the constitution in two folds:

a. Amending the Constitution through the participation of the people of Uganda (referendum).

b. Amending the Constitution through the people's representative (Parliament).

The rationale for the foregoing was to put checks and balances and ensure that the will of the people is not interfered with at will by their elected leaders. It is for this reason that the Constitution to an extent has a basic structure to act as a check on Parliamentary power so that the Constitution does not become a play thing in the hands of Parliament which is a delegate of the real sovereign, namely the people.

Parliament cannot treat on its sweet will and pleasure the constitution as a play thing as its power to amend itself is limited in nature. Its power to amend can be exercised only without disturbing the balance between the rights conferred on the people and the legislative power of the state. ***See. Minerva Mills (Supra)***

Although the basic structure doctrine envisages that certain basic features cannot be changed, our Constitution is unique. It expressly provides under Article 255 and 260 for how our basic features can be amended/ altered. This is amended through the participation of the citizens by way of a referendum and the support by not less than two thirds of members of Parliament. Parliament on its own does not possess the mandate to make any amendments to such provisions without the will of the people through a referendum.

This is in line with the recommendations by the Odoki Commission in its report in respect of amendments of the core features which were adopted in the 1995 Constitution that:

> ***"28.104. We accept in principle that the procedure for amending the new Constitution should be rigid in order to promote a culture of constitutionalism, to protect the supremacy of the Constitution, and to safeguard the sovereignty of the people and the stability of the country.***
>
> ***28.105. Amendment by referendum would satisfy the above objectives and it would provide one of the highest forms of rigidity or entrenchment. It would ensure that amendments receive the popular approval of the population. However, we think that submitting every proposed amendment to a referendum may be too cumbersome and expensive and it may even be too difficult to obtain popular approval of desired constitutional changes. This procedure, therefore, should be restricted to a few most fundamental or controversial provisions of which the people should have the final say. These include provisions on the supremacy of the Constitution and the political system. <u>The provisions declaring the supremacy of the Constitution are the foundation of constitutionalism and the entire constitutional order. They are basic to the character and status of the Constitution and should not be altered without the consent of the people."</u>***

I would therefore adopt the above observations by the learned Justices as to what constitutes the basic structure of our Constitution including the ones in the judgment of Kakuru JCC as these all stem from Articles 1 and 2 of the Constitution. The basic structure having been enshrined by the people themselves, then it is the people themselves to alter the identity of the Constitution and this is by way of a referendum.

The issue therefore is whether Article 102(b) forms the basic structure and Parliament did not have the mandate to amend it in the manner they did.

All the learned Justices held that Article 102(b) does not form part of the basic structure and therefore Parliament can amend it using its powers and the procedure set out in chapter eighteen of the Constitution.

The Deputy Chief Justice held that:

> ***"It is noteworthy that this provision of the Constitution was not secured by any provision therein requiring holding of a referendum, or subject to any of the safeguards that characterize the other provisions of the Constitution, which we have recognised as basic or fundamental features of the 1995 Constitution. Thus, the framers of the 1995 Constitution never treated the provisions of Articles 102 on age limit for President, and Article 183 on age limit***

for LCV Chairperson, as a fundamental feature of the Constitution; which would have necessitated its entrenchment. This contrasts with the institution of the Presidency, which is enshrined as a fundamental feature of the Constitution; by the requirement that the President be elected directly by universal adult suffrage; and further that before the five–year Presidential tenure provision can be altered by Parliament, it must first be approved by the people in a referendum. It follows therefore that for the amendment of Articles 102 and 183, which provided for age limit for qualifications of the President and LCV Chairperson respectively, Parliament was obliged to comply with the provision of Article 262 of the Constitution; under the general power of legislation conferred on it by the people"

Kasule JCC observed that;

"The framers of the 1995 Constitution that is the Constituent Assembly, in their wisdom saw it fit to have the age limits of one who is to stand for election as President of Uganda, under the category of the qualifications of the President. They provided for these qualifications under Article 102 of the Constitution. They did not put this Article 102 amongst those Articles that have to be amended after first getting the approval of Ugandans through a referendum. They left it as one of

those Articles that Parliament, on its own, can amend from time to time under Article 259 by passing an Act of Parliament, the sole purpose of which is to amend the Constitution and the amendment is supported in Parliament at the second and third readings by not less than two thirds of all Members of Parliament. The Odoki Constitutional Commission itself did not consider age limits on the President and other local government leaders as one of the structural pillars to be entrenched in the Constitution. The Constituent Assembly also adopted the same attitude, which has been shown above. I therefore come to the conclusion that age limits on the President and on the District local government leaders as enacted in Articles 102(b) and 183(2)(b) do not constitute a fundamental structure of the Constitution. Accordingly the amendment of Articles 102(b) and 183(2)(b) does not by implication and/or infection amend Article 1 of the Constitution so as to require a referendum by the people to approve such an amendment. Parliament thus proceeded within its powers to amend Articles 102(b) and 183(2)(b) by removing the age limits as qualifications for the office of the President or District Chairperson."

Cheborion, JCC held that:

"The provisions on amendment of the Constitution were enacted by the people's representatives in the Constituent

Assembly. Chapter 18 of the Constitution exists for that sole purpose. The argument by the Petitioners that the original Constituent Assembly did not make a mistake in enacting the age restrictions is misleading and not tenable as it would logically be applied to prohibit all possible amendments to the Constitution. I am therefore unable to agree with the contention that Sections 3 and 7 of the Act indirectly infect Article 1 of the Constitution. Further, I am not convinced that minimum and maximum age restrictions on eligibility for the offices of President and district Chairperson in the Constitution amount to such fundamental pillars of the Constitution that doing away with them leaves us with a different instrument altogether. That would be a gross misunderstanding of the basic structure doctrine. Age restrictions cannot be described as part of the values which are enshrined in our Constitution alongside a sacrosanct principle such as democratic governance if it were, then they would have been entrenched just like other core values were entrenched in Articles 260 and 74(1) of the Constitution.

Musoke, JCC held that*;*

"The removal of age limits for the President and local government councils does not, in my view, derogate from the basic structure. Article 102 is not an entrenched provision. The amendment does not infect Article 1 or any

of the mentioned Articles that form the basic structure. True the removal of age limit may encourage an incumbent President to wish to keep himself in office perpetually, but the citizens still remain with the power to either return the same President or elect a different one. Citizens are even more encouraged to aspire to elect a leader of their choice; and for those who have hitherto been dormant, to actively participate in politics and elections.

The people's power to elect a President or district Chairperson of their choice is not taken away, by lifting the respective age limits. I have not found Sections 3 and 7 among the ones that have offended or contravened the Constitution. Articles 102 and 181 are not among the entrenched Articles and their amendment did not infect any other provisions of the Constitution."

Kakuru, JCC held that*;*

"I have found nothing to suggest, let alone prove that Parliament cannot, through the established constitutional process, vary the qualifications of the President or that of the District Chairperson. The qualifications of the President and those of Chairpersons District local governments do not in my view form part of the basic structure of the Constitution which I set out earlier in this Judgment. I, therefore, accept the submissions of the Hon.

Learned Deputy Attorney General that Sections 3 and 7 of the impugned Act are not inconsistent with or in contravention of Articles 1, 3, 8A, 79, 90 and 94 of the Constitution. The people of Uganda, through their Constitution, should be able to freely, whenever it is absolutely necessary to do so, vary the qualification of their leaders. These qualifications include but are not limited to citizenship, age, and academic qualifications. The same ought to apply to the disqualifications of the same leaders. It may be, for example, found necessary in future to require every Presidential candidate to be computer literate, fluent in both English and Swahili and at least two local languages the list is endless. The framers of the Constitution did not and for good reason, find it necessary to entrench the provisions that relate to qualifications and disqualifications of the President and /or members of Parliament. I have read the Odoki report excerpts. Nowhere in the report did the people of Uganda, suggest, propose or debate, the age limit of the President. This issue appears for strange reasons to have sprung up during the Constituent Assembly debate. Be that as it may, it eventually found its way into the Constitution. For that reason alone I would not regard it one of the basic structures of our Constitution."

I am in agreement with their Lordships that the qualifications of the President do not form part of the basic structure that amending them

would change the identity or destroy the basic features of the Constitution and therefore cannot be amended by Parliament following the constitutional process. In my opinion, in interpreting the Constitution, I find that Article 102(b) is not among the entrenched provisions that amending it would be contrary to the provisions of the Constitution or that the identity of the Constitution would be destroyed.

The Presidency flows from the people. As provided under Article 1 of the Constitution, power belongs to the people who may freely vote the President of their choice to govern them. If there are sham elections, the Constitution has still provided mechanisms to redress such issues. The removal of the age limit does not in any way take away the sovereignty of the people entrenched in Article 1 of the Constitution.

It is not the age that matters in governance but the state of mind and the conduct of the person. In any case, there are other safe guards in the Constitution such as Article 105(1) which gives a 5 years tenure to the President and Article 107 which provides for the removal of the President from office for abuse of office, misconduct or physical or mental incapacity, among others.

Age therefore is no guarantee for good judgment neither does it guard against undemocratic governance to safeguard the ideals of the Preamble and the Constitution in general as alleged by counsel. Orderly succession to power and political stability in my opinion is

not guaranteed by age but by term limits which help to legitimize democratically elected leadership.

Transfer of power after the term of the Presidency gives citizens hope for new policies and approaches in the new leadership. A person may be 30 or 76 but productive with greater political ideologies than a person who is 70 or 35. The report of the Committee on Legal and Parliamentary affairs indicated countries such as Kenya, South Africa, India, Rwanda, Ghana, Germany, UK, USA and Australia which do not have the upper restriction on age limit in their Constitutions. The international practice appears to shun the upper age limit restrictions in modern Constitutions. Most of them have term limits instead.

In conclusion, I share the opinion of the learned Justices of the Constitutional Court that amending Article 102(b) does not emasculate the preamble or destroy the basic features of the Constitution since the people still retain the sovereignty to democratic governance and freely choose who they want to lead them for a specified period in this case one term limit or more if they still want the incumbent to rule them.

Accordingly, Issue 1 and 5 fail.

Issue 2: ***Whether the learned majority Justices of the Constitutional Court erred in law and fact in holding that the entire process of conceptualizing, consulting, debating and***

enactment of Constitutional (Amendment) Act No. 1 of 2018 did not in any respect contravene nor was it inconsistent with the 1995 Constitution of the Republic of Uganda and the Rules of Procedure of Parliament.

Submissions of Counsel

It is contended by the appellants that the entire process of conceptualizing, consulting, debating and enactment of the **Constitutional Amendment Act No. 1 of 2018** contravened and was inconsistent with a number of articles of the 1995 Constitution.

Mr. Mabirizi listed several reasons including:

1. Violation of Article 93 of the Constitution;

2. Non-compliance with Parliamentary Rules of Procedures which included:

i. Denying him access to Parliament;
ii. Absence of the Leader of Opposition, Opposition Chief Whip and other opposition Members of Parliament;
iii. Allowing Members of Parliament from the ruling party to cross and sit on the side of the opposition Members of Parliament;
iv. Violence, torture, inhuman and degrading treatment of the opposition Members of Parliament
v. High level of intolerance and partiality which necessitated the opposition Members of Parliament to move out of Parliament;
vi. The Hon. Speaker condemned the standing up on top of chairs by Members of Parliament from the ruling party;

vii. Suspension of opposition Members of Parliament for several sittings by the Speaker even after stating that the Bill was dealing with the sovereignty of the people;

viii. Evicting Members of Parliament from the same sitting

ix. Insufficient public participation;

x. Crossing the floor;

xi. Power of the Speaker;

xii. Signing the report of the Legal and Parliamentary Affairs Committee by Hon. Members of Parliament who never participated in the debate;

xiii. Signing of the report of the Legal and Parliamentary Affairs Committee by strangers after expiry of 45 days;

xiv. The finding by the Constitutional Court that the motion to suspend Rule 201(2) by Hon. Rukutana was at the stage of the Committee of the whole House;

xv. Failure to second the motion by Hon. Rukutana;

xvi. Lack of evidentiary basis for the finding by the Constitutional Court that the Members of Parliament had got the report of the Legal and Parliamentary Affairs Committee 3 to 4 days prior to the 18/9/17;

xvii. Preventing Members of Parliament from debating the Bill;

xviii. Failure to close the door during roll call and tally voting;

xix. Failure to separate the 14 sitting days;

xx. Defect in Presidential assent;

xxi. Invalid Speaker's Certificate of Compliance;

xxii. Lack of a Certificate from the Election Commission;

The 2nd appellants' list included the following:

i. Violation of Article 93;
ii. Inadequate consultation/public participation;
iii. Smuggling the motion on the Order Paper by the Speaker;
iv. Denying Members of Parliament adequate time to debate and consider the Bill;
v. Closing the debate before each and every Member of Parliament had debated;
vi. Giving each Member of Parliament only 3 minutes to debate;
vii. Suspension of some Members of Parliament and other illegalities committed by the Speaker during the sitting of 18/12/17;
viii. Suspension of Rule 201(2) requiring a minimum of 3 sittings from the date of tabling the Committee Report;
ix. Failure to close doors of the chambers during voting;
x. Discrepancies in the Speakers Certificate of Compliance and;
xi. Illegal assent to the Bill by the President;

The 3rd appellant's list by included the following:

i. Violation of Article 93;
ii. Violation of article 97 by deployment of the UPDF;
iii. Violation of Articles 1, 8A, 29(a) and (d), and 38;
iv. Violation of the sovereignty of the people under articles 1 and 38 due to inadequate consultation and public participation;
v. Violation of article 38 on the orderly and peaceful transfer of power and;

vi. Violation of articles 260, 262 and 263 by failure to give 14 days between the 2nd and 3rd reading before passing the Bill.

The respondent supported the decision of the majority of the Justices of the Constitutional Court arguing that the appellants had not proved their alleged unconstitutionality in the process of enactment of the Act.

Consideration of issue 2:

Since the impugned Act was initiated by a Private Members Bill, I find it instructive to briefly explain the legislative process that a Private Members Bill must go through before it is enacted into law, in order to appreciate the complaints raised under this issue.

1. Article 94(4) of the Constitution provides that a Bill may be initiated by private Members of Parliament. It reads as follows:

> **" (4)The Rules of procedure of Parliament shall include the following provisions:-**
> **(a)...**
> **(b) a Member of Parliament has the right to move a private Member's Bill.**
> **(c) the Member moving a private Member's Bill shall be afforded reasonable assistance by the department of Government whose area of operation is affected by the Bill; and**
> **(d) the office of the Attorney General shall afford the Member moving the private Member's Bill ..."**

Pursuant to the above article, Parliament made Rules of Procedure of the Parliament replicating the same words in Rule 12O thereof. The have been amended from time to time. The 2012 Rules were amended in November 2017, which are the Rules obtaining now. Rule 121 of the Rules provides the following procedure in respect of a Private Member's Bill:

> "**(1) A Private Member's Bill shall be introduced first by way of motion to which shall be attached the proposed draft of the Bill.**
>
> **(2) If the motion is carried, the printing and publication of the Bill in the Gazette shall be the responsibility of the Clerk.**
>
> **(3) Following the publication of the Bill in the Gazette, the process of the Bill shall be the same as that followed in respect of a Government Bill."**

2. A Private Member's Bill also requires a Certificate of Financial Implication signed by the Minister of Finance, Planning and Economic Development in accordance with section 10 of the Budget Act and **Rule 107 now 123** of the Rules of Procedure of Parliament, stating in respect of the Bill in question, the financial implications if any, on revenue and expenditure over the period of not less than two years after its coming into force.

3. After publication in the Gazette, the Bill then goes through the processes necessary for Parliament for passing a Bill. Rule 124

provides that every Bill shall be read three times prior to its being passed. The processes are described by Rules from Parts XIX to XX11 as follows:

(a) **First reading:** this is a formality which marks the formal introduction of the Bill in Parliament and the Bill is then committed to the relevant Sessional Committee of Parliament for consideration. At this stage, the Committee will formally invite the private Member initiating the Bill to introduce the Bill and may invite other stakeholders to state their views on the provisions of the Bill. The Committee may even sometimes hold hearings for that purpose.

(b) **Submissions of Report of the Sessional Committee and the Second Reading:** The Committee must submit a report on the Bill to the plenary of Parliament and at the same time, Parliament will consider the Bill on the Second Reading which is a debate on the **principles** and **policies** of the Bill, not its details.

According to **Rule 129,** the Second Reading of the Bill shall not be taken earlier than the **fourteenth day** after the publication of the Bill in the Gazette, unless the sub Rule is formally suspended for that purpose.

(c) **The Committee of the Whole House Stage:** The Committee stage is regulated by Rules 130-124 of PART XX1 of the Rules.

This is the stage of the Bill at which Parliament deals with the provisions of the Bill clause by clause and all proposed amendments to the Bill.

At the Committee stage, the Speaker sits in the well of the House as the Chairperson of the Committee of the Whole House. **(Rule 132).**

According to Rule **133(4),** the Committee of the Whole House shall consider proposed amendments by the Committee to which the Bill was referred and may consider proposed amendments, **on notice,** where the amendments were presented but rejected by the relevant Committee or where, for **reasonable cause,** the amendments were not presented before the relevant Committee.

(d) **Report of the Committee after Committee Stage:** This is the stage where the Committee of the Whole House reports to the Plenary on the Bill which has been committed and amendments are considered. **(Rule 135).**

(e) **Re-committal:** This is a stage which comes at the end of the Committee stage, where it is felt that there are still certain amendments which have to be considered or reconsidered **(See PART XX11 Rule 137)**

(f) **Third Reading and Passing of the Bill:** At this stage, the Bill is not debated and it is passed as a formality upon a motion *"that the Bill be now read a Third Time and do pass."* **(See Rule 136).**

In the case of any Bill for an Act of Parliament seeking to amend the provisions of the Constitution, such as the instant one, such amendments are governed by the procedure laid down in chapter 18 of the Constitution.

I shall now proceed to determine the complaints raised by the appellants under issue 2.

1. **Non –compliance with Article 93 of the Constitution.**

The issues before the Constitutional Court was framed as follows:

6(a). *Whether the introduction of a Private Members Bill was inconsistent with and or in contravention of Article 93 of the Constitution;*

6(b). Whether the passing of sections 2,5,6,8 and 10 of the Act was inconsistent with and or in contravention of Article 93 of the Constitution;

In addressing both issues the learned Justices held as follows:

Musoke JCC Ruled thus:

> ***" I have perused the Bill as introduces by Magyezi. The proposed Private Members Bill in its original form with its four amendments was not likely to impose a charge on the Consolidated Fund and was budget neutral as certified by the Certificate of Financial Implications that accompanied the Bill. However, I would not say the same of the Constitution Amendment Bill (No 2) which reintroduced term limits and re-entrenchment of the same as well as increasing the life of Parliament and local government councils, which would in my view, impose a charge on the Consolidated Fund.***

On whether the payment of Uganda shillings twenty nine million only (29,000,000) to every Member of Parliament as facilitation for consultation contravened Article 93 (a) (i) and (ii) of the Constitution, I agree with the respondent that since the money paid to the Members of Parliament for consultation had been appropriated for use by the Parliamentary Commission, it is not a fresh charge on the Consolidated Fund.

Accordingly, I find that the introduction of a private Members Bill that led to the Constitution Amendment Bill was not inconsistent with the and/or in contravention of Article 93 of the Constitution, except for the introduction of sections 2,5,6,8 and 10."

Kasule JCC Ruled in respect of the 29 million shilling as follows:

"(ii) Facilitation of 29,000,000/=

I find, on the basis of the evidence adduced before Court, that the petitioners adduced no evidence to rebut the assertion of the respondent that the facilitation of UGX 29 (million) to each Member of Parliament was not an additional charge on the Consolidated Fund and that the same was within what had already been appropriated to Parliament within the approved budget.

This Court therefore finds that the said facilitation to Members of Parliament did not make the enactment of the

Constitution (Amendment Act no. 1 of 2018 to be contrary to Article 93 of the Constitution".

Cheborion JJC held as follows:

"ii. Facilitating

Use of Private Members Bill to amend the Constitution and facilitation of Members of Parliament to consult on the same

I have carefully considered Article 93 which deals with restrictions on financial matters and Article 94 which provides for private Members Bills as well as section 76 of the Public Finance Management Act, 2005 which deals with Cost estimates for Bills.

The petitioners seem to have misconstrued the import of Article 93. I do not accept that a Private Member's Bill should not receive any form of support or facilitation from Government or Parliament. Article 93 does not prohibit that support or facilitation.

Article 93 is specifically concerned with Bills which contain clauses that have the effect of causing a charge on the Consolidated Fund or increasing taxation. It is concerned with the content of the Bill and not the manner in which it is processed in Parliament.

Evidently, a Private Member's Bill is not barred by Article 94(4)(b) of the Constitution. Clauses (c) and (b) envisage help towards the mover of the private member's Bill by the affected Government department and the Attorney General's Chambers. It is silent on financial help though it mentions "reasonable assistance". The wording of Article 94(4) made it mandatory for the above provisions to be included in the Rules of procedure of Parliament when they were eventually enacted.

There is no dispute that the Bill did not make any express provisions contrary to Article 93(a).

Regarding the source of the money for consultation, Ms. Kibirige testified during cross examination that it was appropriated from the Parliamentary Commission, not the Consolidated Fund. The said position was corroborated by Mr. Muhakanizi during cross-examination. I am therefore satisfied that the UGX 29,000,000 for consultation did not occasion any charge on the Consolidated Fund.

I therefore find that the Private Members Bill did not contravene Article 93 of the Constitution since it did not impose an illegal charge on the consolidated fund. However, the additional amendments of Article 77, 105 and 260 of the Constitution clearly offended Article 93 because they required a referendum which has a charge on the Consolidated Fund.

I therefore answer issue 6(a) in the negative and 6(b) in the negative."

Submissions of Counsel

The appellants contended that that although the Constitutional Court made a finding that the impugned Act violated the provisions of Article 93, it declined to nullify the entire Act on the basis that non-compliance only affected sections 2, 6, 8 and 10 of the impugned Act. They contended that the whole Act ought to have been struck out since the Article prohibits Parliament from proceeding on a Bill or a motion including amendments which have an effect of creating a charge. Parliament therefore violated the impugned Act entirely. It was therefore erroneous to apply the doctrine of severance in a Bill passed as an integral legislation.

Furthermore, the appellants submitted that the 29 million given to the Members of Parliament as facilitation to carry out consultations created a charge on the Consolidated Fund and therefore violated Article 93 as well.

Counsel for the respondent on the other hand contended that Article 93 and 94 had to be construed harmoniously. That Parliament only proceeded to determine the Bill presented by Hon. Magyezi upon satisfaction that it did not have financial implications. That the Justices of the Constitutional Court were therefore justified to strike out the provisions of the impugned Act that did not comply with

Article 93 by applying the principle of severance. He invited this Court to hold the same.

Regarding the 29,000,000/= counsel submitted that this money was appropriated for use by the Parliamentary Commission and not drawn from the Consolidated Fund. He argued that Article 93 only prohibited Parliament from proceeding with a Bill that made provisions which had financial implications unless introduced on behalf of Government. That the Article did not concern itself with the money used in processing the Bill such as allowances or facilitations that was paid to the Members of Parliament to process the Bills. He prayed that we uphold the decision of the learned Justices on this issue.

Consideration

Article 93 reads: **"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).

It is clear that Article 93 of the Constitution bars Parliament from proceeding on either a Bill or a motion unless that Bill or motion is introduced on behalf of Government in specific cases which include (a) (ii) the imposition of a charge on the Consolidated Fund or any other public fund of Uganda or the alteration of such fund other than by reduction.

This means that although a Member of Parliament has the right to move a Private Member's Bill under Article 94(4)(b), Parliament is barred from proceeding on a Private Member's Bill under Article 93 if the Bill has a provision or provisions that would lead to the imposition of a charge on the Consolidated Fund or any other public fund of Uganda or the alteration of such fund other than by reduction. For instance, a Bill for the construction of a University or a hospital. My opinion is that in determining whether or not the

provisions of a Bill would lead to an imposition of a charge on the consolidated fund, one should consider the content and not the process of a Bill.

How does Parliament determine that a Bill complies with Article 93? Although Rule 123 of the Rules of Parliament provide that it is the Speaker who should give an opinion regarding financial matters in respect of private member's Bills, in practice, this is the responsibility of the Minister of Finance who is expected to be the expert in this area. It is determined by looking at the provisions of the Bill right from the inception.

Rule 107 of the Parliamentary Rules of Procedure (2012) under which the impugned Bill was introduced by Hon. Magyezi in Parliament provided that:

> **" (1) All Bills shall be accompanied by a Certificate of financial implications setting out-**
>
> **(a) The specific outputs and outcomes of the Bill;**
> **(b) How those outputs and outcomes fit within the overall policies and programmes of government;**
> **(c) The costs involved and their impact on the budget;**
> **(d) The proposed or existing method of financing the costs related to the Bill and its feasibility;**
>
> **(2) The Certificate of financial implications shall be signed by the Minister Responsible for Finance."**

In the case before Court, the record shows that on the 27th of September, 2017, Hon. Magyezi sought leave to introduce a Private Members Bill and Parliament gave him permission to do so. The record further shows that the Bill that Hon. Magyezi introduced was accompanied by a Certificate of Financial Implication dated 28th September, 2017. It certified that the Bill entitled **"THE CONSTITUTION (AMENDMENT) BILL, 2017,"** has been examined as required under section 76 of the Public Finance Management Act of 2015(as amended).It is reported in the relevant part that:

> ***"(e) Funding and budgetary implications:***
>
> ***There are no additional financial obligations beyond what is in the Medium Term expenditure Framework and thus the Bill is budget neutral."***

The Certificate was signed by Hon. Mattia Kasaijja, Minister of Finance, Planning and Economic Development.

On the 3rd October, 2017, the Bill was tabled for the First Reading after which it was sent to the Legal and Parliamentary Affairs Committee for scrutiny. The Committee scrutinized the Bill in detail and interacted with and received memoranda from a number of stakeholders. On the 18th December, 2017, the Committee submitted its Report to Parliament and the Constitutional (Amendment) (No.2), 2017 Bill was given the Second Reading where its merits and principles were debated. During the presentation of the Report the

Chairperson of the Legal and Parliamentary Committee pointed out in the Report that some members expressed the wish to introduce some amendments to re-introduce term limits and to extend the term of the President to 7 years. The Committee reflected it in in its report. Notably, the Report indicated that:

> ***"The Committee is agreeable to the proposed amendment but note that it is a requirement in the Constitution for such decision expanding the term of office of the President beyond five years to be subjected to a referendum of the people. The Committee, therefore recommends that the term of office of the President be extended to seven years but the legal processes prescribed by the Constitution pursuant to which such amendment can be legally made may be complied with."***

A vote was taken on the Second Reading. There were two abstentions; 97 against and 317 in favour.

The Bill was then committed to the Committee of the whole House for consideration clause by clause. It was during this stage that Hon Tusiime and Hon Nandala Mafabi introduced the two amendments extending the term of Parliament to 7 years and reinstating the term limits for the President. These amendments were in Articles 77, 181, 29, 291,105 and 260 of the Constitution. They were later contained in sections 2,5,6,8,9, and 10 of the Act. These amendments called for a referendum and therefore posed a charge on the Consolidated Fund.

In the premises, I share the opinion of the learned Justices of the Constitutional Court that the introduction of the new clauses, given that they required a referendum which in essence would increase and strain the government expenditure, had an effect of creating a charge on the Consolidated Fund and therefore Parliament ought not to have proceeded on these amendments. In my opinion, the amendments were null and void *ab inito* and had no consequence. As the majority Justices of the Constitutional Court rightly found, in my view, these amendments contravened Article 93 of the Constitution and rightly applied Article 2 (2) of the Constitution and severed them from the Magyezi Bill.

Regarding the issue of the 29,000,000/= given as facilitation to the Members of Parliament, in my opinion this did not create a charge on the Consolidated Fund since the evidence showed that this money had been appropriated by the Parliamentary Commission.

For this reason, I find that Issue 6(a) was rightly answered in the negative by the learned Justices of the Constitutional Court.

Likewise, with respect to issue 6(b), I find that the passing of sections 2,5,6,8 and 10 of the Act was inconsistent and in contravention of Article 93.This issue was also rightly answered in the affirmative.

In the circumstances I find that the learned Justices were right to apply the doctrine of severance to expunge the invalid sections from the Act.

Article 2(2) governs the principle of severance and once the new clauses are severed as was done by the Constitutional Court, The original Magyezi Bill stands alone.

Article 2(2) reads:

> **"If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void."**

In the case of **Attorney General v Salvatori. SCCA No.1 of 1998.** This court in declaring S.7 of the witchcraft Act unconstitutional on the basis of an exclusion order which had an effect of denying a person means of livelihood stated that:

> ***"since under Article 2(1) of the Constitution, the Constitution is the supreme law of Uganda, then pursuant to clause 2 of Article 2, that other law which is inconsistent shall to the extent of the inconsistency, be void."***

I am also fortified by the principles of severance stated in **Halsbury's Laws of England volume 1(4th edition) para. 26** now in **volume 1(1) (2001 reissue) para. 25** that:

> **"25. Severance of partly invalid instruments or actions.**
>
> ***An order or other instrument or an action may be partly valid and partly invalid. Unless the invalid part is***

inextricably interconnected with the valid, such that to sever it would be to alter the substance of the valid part, a court is entitled to set aside or disregard the invalid part, leaving the rest intact. The courts' approach to severance is that it is generally appropriate to sever what is invalid if what remains after severance is essentially unchanged in purpose, operation and effect."

This was re-affirmed in the case of **Thames Water Authority v Elmbridge Borough Council [1983]1 ALLER 836 at 847 per Stephenson LJ.**

"...this exercise can be carried out only where the good and bad parts are clearly identifiable and the bad part can be separated from the good and rejected without affecting the validity of the remaining part..."

In South Africa the Courts recognize that severability in the context of Constitutional law often requires special treatment**.** In the case of **Coetzee v Government of the Republic of South Africa, Matiso and Others v Commanding Officer Port Elizabeth Prison and Others (CCT19/94 , CCT22/94) [1995] ZACC 7; 1995 (10) BCLR 1382; 1995 (4) SA 631,** the Constitutional Court stated that:

"Although severability in the context of Constitutional law may often require special treatment, in the present case the trite test can properly be applied: if the good is not dependent on the bad and can be separated from it, one

gives effect to the good that remains after the separation if it still gives effect to the main objective of the statute. The test has two parts: first, is it possible to sever the invalid provisions and second, if so, is what remains giving effect to the purpose of the legislative scheme?"

The conventional test for severance has been laid down in **Johannesburg City Council v Chesterfield House (Pty) Ltd, 1952 (3) SA 809 (AD), 822** and followed in other cases. In that case, it was stated that:

"Where it is possible to separate the good from the bad in a statute and the good is not dependent on the bad, then that part of the statute which is good must be given effect to, provided that what remains carries out the main object of the statute. Where however, the task of separating the bad from the good is of such complication that it is impracticable to do so, the whole statute must be declared ultra vires."

In my view, since the process of enacting Hon.Magyezi's Bill into law was passed in accordance with the law, left to stand alone, it is not substantially altered. It still reflects the intention of the maker in its purpose, operation and effect. The principle of severance in my opinion therefore applies in the circumstances. Since the new clauses introduced in the Bill during the Committee stage were not passed in accordance with the Constitution they are invalid and the Justices were right to apply the principle to sever the clauses from the Bill.

2. Non-compliance with Parliamentary Rules of Procedure

These include:

i. Smuggling the Magyezi Motion on the Order Paper.

The appellants' contention is that the motion to introduce the Magyezi Bill was smuggled onto the Order Paper and was presented in contravention of Article 94 and Rules 8,17,25,27,29 and 174 of the Rules of procedure. That Members were taken by surprise when the Speaker on 26th September, 2017 amended the Order Paper to include Hon. Magyezi's motion yet there were other motions before his. The appellants further contended that the Speaker was enjoined to give the Members of Parliament the Order Paper at least two days or three hours before the sitting.

The respondent on the other hand argued that the motion was not smuggled. That according to Article 94(4) the Speaker has powers to determine the order of business in Parliament and that a Member of Parliament has a right to move a Private Member's Bill. That Rule 24 and 7 of the 2012 Rules which was applicable then give the Speaker discretion to amend the Order Paper and set the order of business. That the Magyezi had Bill met the test in Rule 121. It was a motion with a Bill attached yet the motions brought by Hon. Nsamba and Hon. Lyomoki had nothing attached and one was a mere resolution. He also submitted that the Speaker had given 3 days prior notice of this motion.

Consideration

According to the Hansard, on 26th September, 2017 the Speaker decided to amend Order Paper and include motions on amendment of the Constitution due to failure by the government to present to the House comprehensive amendments. She highlighted notices of motions for leave to introduce private Members Bills that had met the criteria in Rule 47 for inclusion on the day's Order Paper. These included the motion brought by Hon. Magyezi with a Bill attached another by Dr.Sam Lyomoki with a Bill attached and the other by Hon. Nsamba with nothing attached. The Speaker informed the House that the reason why she had considered Magyezi's motion first was that under the Rules Bills take priority over motions.

In my view, Article 94(4) together with Rule 24 and 165 of the 2012 Rules (25 and 174 respectively of the 2017 Rules) are clear that the Speaker shall determine the order of business in the House. Further Rule 7 (2) and 7(3) give the Speaker general authority to decide questions of order and practice stating reasons for her decision. Rule 8 is to the effect that in case of any doubt and for any questions of procedure not provided in the Rules, the Speaker shall decide.

In my opinion, in the above laws the Speaker has discretion to amend the Order Paper and determine the order of business of Parliament. Further the Speaker's reasoning for allowing the Magyezi motion before the Nsamba's motion was not unconstitutional. First she had the authority to determine the order of business. Secondly, Nsamba's motion was not a Bill but a resolution of Parliament urging government to constitute a Constitutional Review Commission.

Magyezi's motion had a Bill attached and according to the order of business of Parliament although they both met the criteria in Rule 47 of the 2012 Rules, Bills take priority which is reflected in Rule 24(now 25) and Rule 111(now 121). The Hansard further shows that at the time of moving the motions for leave, neither Hon. Nsamba nor his seconder was available.

However, having amended the Order Paper the Speaker should have sent the same to the Members at least three hours before the sitting as required under Rule 26(1)(b).

Rule 26 reads:

"**Order Paper to be sent in advance to Members.**

(1) The Clerk shall send to each Member a copy of the Order Paper for each sitting.

(a) In the case of the first sitting of a meeting, at least two days before the sitting.

(b) In the case of any other sitting, at least three hours before the sitting without fail."

Failure to comply with this Rule was an irregularity in my view but not a violation of the Constitution that would lead to the nullification of the Act.

In conclusion, I find that the Speaker had the power to amend the Order Paper. The constitution provides that the Speaker is in charge of Parliament. The Rules were made by Parliament, and the Business

Committee is a creature of the Rules. In my view therefore, it would be unduly interfering with the internal workings of Parliament which would also be unconstitutional in view of the doctrine of separation of powers.

This issue fails.

ii. Denial of Access to Parliament to Members of the Public

Mr. Mabirizi alleged that he was denied access to the gallery and this evidence was not rebutted. Therefore the learned Justices' holding was erroneous. He relied on S.57 of the evidence Act, Order 8 Rule 3 of the Civil Procedure Rules and the case of **Amama Mbabazi v Museveni & 2 Ors,** to support his submission on this point.

The respondent on his part refuted the appellant's contention that the proceedings were not public and that the Justices of the Constitutional Court had misapplied Rule 230 of the Rules of Procedure of Parliament. Counsel submitted that Rule 230 empowers the Speaker to control the admission of the public to Parliament premises in order to have order at Parliament. The Constitutional Court therefore properly found that the Speaker acted within the Constitution in making the orders as regarding admission of the public to the gallery.

Consideration

Rule 22(1) now 23(1) provides that:

"22: sittings of the House to be public

"(1) Subject to these Rules, the sittings of the House or its Committees shall be public."

However, under **Rule 219 now 230 of the Rules of Parliament**, the authority to admit the public vests in the Speaker.

Rule 219 now 230 reads as follows:

"(1) Members of the Public and the press may be admitted to debates in the House under Rules that the Speaker may make from time to time.

(2) the Clerk and the Sergeant-at-arms shall ensure that all Rules made under this Rule are complied with.

(3) Subject to such Rules made under sub-Rule (2), the authority to admit strangers shall be with the Clerk acting on behalf of the Speaker."

It is common ground that there was a lot of tension in Parliament during that period. This necessitated extra precaution on the part of the Speaker and the Parliamentary staff. Therefore, the Speaker acted within the Constitution and the Rules in directing that the members of the public were screened to ensure security of Parliament during the enactment of the controversial Bill. It is of course not entirely true that Members of the public were denied access to Parliament on the day Magyezi moved the motion to introduce the Bill. The Hansard indicates that on the 26th September, 2017, the Speaker acknowledged the presence of Members of the public including a delegation from the Parliament of Sierra Leone.

On the 27 the September, 2017, the Hansard reports the presence of a number of people in the VIP gallery including former Members of Parliament Alaso, Fred Ebil, Ibi Ekwau, Paul Mwiru, and EALA Members of Parliament Ovonji Irene and Denis Namara, among others.

In my judgment therefore, I find that although Mr. Mabirizi has proved that he was denied access to the gallery on the day Magyezi applied for leave to introduce the motion for his Private Members Bill, I was within the Speaker's powers under Rule 230. I also find no proof of the allegation that members of the public were denied access to the gallery of Parliament during the enactment of the Act and thereby contravened Articles **1, 8A, 79,208(2), 209, 211(3) and 212** of the Constitution.

This issue fails.

iii)Tabling Constitutional Bill No.2 of 2017 in Parliament in the absence of the LOP, the Opposition Chief Whip and Other Opposition Members of Parliament.

Mr. Mabirizi contended that in the absence of the Leader of Opposition, Opposition Chief Whip and other opposition Members, Parliament was not properly constituted and the reasons given by the Constitutional Court has no basis.

On this issue, the respondent submitted that Rule 24 made pursuant to Article 88 of the Constitution provides that the quorum for the business of Parliament shall be one third of all Members entitled to

vote. Therefore the business of Parliament can continue in the absence of the Leader of Opposition as long as there is requisite quorum in Parliament and this is permitted under Article 94 of the Constitution.

Consideration

The learned Justices were unanimous on this issue.

The learned Deputy Chief Justice had this to say:

> ***"The evidence regarding the absence of the Leader of Opposition when certain proceedings took place is quite interesting. When the Speaker Ruled that she should sit down, the Hon. Leader of Opposition took offence, and on her own volition, walked out of the Chamber of Parliament. I do not understand why anyone should blame the Speaker for the Leader of Opposition's free willed choice to evacuate herself from the Chambers of Parliament. If every time a Member walks out in protest, the Speaker must suspend proceedings, I can envisage a situation where Parliament would always be held at ransom; thus paralyzing the work of Parliament."***

Kasule JCC held that:

> **"*It follows therefore, that the business of Parliament can go on in the absence of the leader of the opposition, opposition chief whip and opposition Members of Parliament as long as there is the requisite quorum in Parliament. Indeed under***

Article 94 of the Constitution, Parliament may act notwithstanding a vacancy in its Membership. There was no evidence received by Court as to why the Leader of the Opposition, Opposition Chief Whip and other opposition Members were not in Parliament, when the Constitution Bill No. 2 of 2017 was tabled for debate. It is not also asserted by the petitioners that there was no requisite quorum of Members of Parliament entitled to vote at that material time. There is therefore no basis for holding that any Constitutional provision was contravened. At any rate in the course of debating the Bill, the Leader of Opposition and the other Honourable Members returned to Parliament and participated in the debate of the Bill."

As pointed out by Kasule, JCC, Article 94(2) is clear. It provides that:

"Parliament may act notwithstanding a vacancy in its Membership."

Further, **Rule 24(1)** provides that the quorum of Parliament shall be one third of all Members of Parliament who are entitled to vote. Sub Rule 2 provides that the quorum is required only when Parliament is voting on any question.

Not only does the Constitution allow business of Parliament to continue in the absence of some Members but still the appellant did not adduce evidence that Parliament lacked quorum in voting on a question. No reason was given for the absence of the Leader of

Opposition, the Opposition Chief Whip and Other Opposition Members of Parliament from Parliament on day when the Bill was tabled. They actually walked out of Parliament voluntarily. There is also no complaint that there was no quorum on that day. According to the Hansard, they later on returned to the House and participated in the debate of the Bill. The allegation of violation of the Constitution is accordingly not made out. I therefore agree with the learned Justices of the Constitutional Court that the act of tabling the said Bill in their absence was not unconstitutional and did not breach the Rules of procedure.

In the premises, I find no merit on this issue.

iv) The Speaker permitting Members of Parliament from the Ruling Party to sit on the opposition side

Mr. Mabirizi submitted that the Speaker breached the Rules of Procedure of Parliament by allowing Members to cross the floor. He submitted that Rule 9 provides for the sitting arrangements and Rule 82 provides that a Member shall not cross the floor of the House or move around unnecessarily. The learned Justices therefore erred to find that there was no evidence adduced that crossing prejudiced any Members and affected the process of enactment of the Bill.

He further contended that the learned Justices Musoke, JCC and Cheborion, JCC had erred when they assumed that crossing the floor was actual switching of political sides yet it was not the case.

The respondent on the other hand contended that Rule 9(1) obligates the Speaker to as far as possible, reserve seats for each Member and Rule 9(4) further obligates her to ensure that each Member has a comfortable seat in the House. Therefore, since the Members of the opposition had walked out leaving empty seats, the Speaker was justified in permitting other Members to take up the available sits. This did not amount to them changing parties neither did it contravene the Rules of Procedure.

Consideration

Rule 9 of the Rules of Parliament sets out the sitting arrangement in Parliament. Rule 9 (3) provides that:

> **"(3) The seats to the left hand of the Speaker shall be reserved to the Leader of Opposition and Members of the Opposition party or parties in the House."**

Rule 7 and 9 of the Rules of Procedure give power to the Speaker depending on the circumstances to allow Members of Parliament to sit in particular seats reserved for them in Parliament. There was no evidence that the Hon. Members of Parliament were prejudiced in any way when she permitted them to sit. There is evidence that the order was temporary and thereafter, when the opposition Members of Parliament returned to the House, they were able to occupy their seats. There is no evidence on record that this order of the Speaker had any impact on the process of enacting the Act.

I find that the allegation that the act of the Speaker complained about violated the Constitution was not proved by the appellant. This issue fails.

v) Signing of the Committee Report by non-Members of the Committee

Mr. Mabirizi's general contention on this issue is that some Members who did not participate in the Committee proceedings signed the report and therefore it was not valid.

The respondent on the other hand relied on Rule 183(1), 184(1), 201(1) and Articles 90 and 94(3) and contended that the Members who constituted the Committee were 26 and therefore it was valid as per the law.

Consideration

It was established that some Members who joined the Committee at a later stage signed the Report although they did not participate in the proceedings before the Committee. This was irregular but not unconstitutional because **Article 94(3)** of the Constitution provides that:

> **"(3) The presence and participation of a person not entitled to be present or to participate in the proceedings of Parliament, shall not, by itself invalidate those proceedings."**

The signature of the Members in question could not invalidate the report of the Committee.

Parliament operates through Committees which are established as per Article 90 and Rules 153 of the Rules of Procedure for efficient discharge of its functions. Articles 94(1) empowers Parliament to make Rules to regulate the procedure of its Committees. Article 94(3) is to the effect that the presence of persons not entitled to be present or to participate in Parliamentary proceedings shall not in itself invalidate those proceedings. Rule 184(1) provides for the quorum of Members on the Legal and Parliamentary Affairs Committee to be not less than 15 Members or more than 30 Members. Similarly, under the general provisions for the operation of Committees, Rule 201 provides that a report of the Committee shall be signed by at least one third of all the Members of the Committee.

The report of the Legal and Parliamentary Affairs Committee, indicates that 17 Members signed, two of whom were the newly appointed Members on the Committee by virtue of the decision made on 29.11.17 by the House. It is not clear though from the evidence on record whether they did or did not participate in the meetings of the Committee. If they did not participate but merely signed after the conclusion of the proceedings, in my view this act would be irregular as it was found by the Constitutional Court. However, the report would still have enough quorum to validate it as per Rule 184. In any case, the signatures of the two Members per se would not invalidate the proceedings since Article 94(3) covers this situation as rightly

pointed out by the learned Deputy Chief Justice in his Judgment. In my opinion therefore this irregularity if any, did not affect the enactment process.

This issue fails.

vi) Speaker's action of suspending six Members of Parliament

Counsel for the 2nd appellants contended that on 18th December, 2017, the Speaker arbitrarily suspended the 2nd appellants and other Members of Parliament without giving any reason or stating the offence committed, neither did she give them a fair hearing before the suspension. That at the time of suspension, she was also functus officio. She therefore grossly violated the Rules of procedure and due to this action, the appellants were denied the right to effectively represent their constituencies in the law making process. The Speaker's action of suspending the Members was therefore contrary to Article 1, 28(1), 42, 44(c) and 94 of the Constitution and this vitiated the entire process.

Similarly Mr. Mabirizi submitted that the act of the Speaker was unconstitutional and in a way disenfranchised not only the Members but also the voters. He submitted that the justification of the suspension by learned Justices' was based on morals, emotions and not on Constitutional principles. Therefore, they erred when they relied on Rules 77 & 80(6) of 2012 Rules (Rules 85 & 88(6) of the 2017-Rules of 10th Parliament in isolation of Rule 80(4) of 2012 Rules 88(4) of 2017 Rules yet legislation must be interpreted as a

whole. He contended that suspension of Members is not an event but a process. They were therefore robbed of their right to request for a reversal. He relied on the case of **Uganda Law Society & Anor v Attorney General, CCCPs No.2 and 8 of 2002** in support of his submissions.

The respondent on the other hand submitted that the Speaker has general powers under Rule 7. She had an obligation to preserve order and decorum of the House. Under Rule 77, 79, 80 and 82, she had the power to suspend the said Members therefore the Constitutional court cannot be faulted on their findings in this issue.

He contended that a person suspended had to immediately withdraw from the House until the end of the suspension period as per Rule 87. He also argued that Rule 88(4) requires that a Member is suspended for 3 sittings. This Rule was therefore misconstrued by Mr. Mabirizi.

In relation to fair hearing, Counsel for the respondent relied on Rule 86(2) and argued that the Speaker's decision is not open to appeal and cannot be reviewed by the House except on a substantive motion and in this case there was non made by the suspended Members.

He further contended that at the time of suspension of the Members, the Speaker was not functus officio. In suspending the proceedings up to 2 o'clock, she also suspended the Members. As per Rule 20 the Speaker can at any time suspend a sitting or adjourn a House. She

therefore suspended the sitting to 2 o'clock and did not adjourn the House.

Consideration

The Constitutional Court found that the suspended Members had defied the Speaker and disrupted the proceedings in the House. Her action to suspend them was therefore justified. There was no evidence that she acted ultra vires the Rules permitting her to take disciplinary action to maintain the Honour of the House. There was further no evidence of a substantive motion to question her decision. There was necessary coram for debate in the second and third reading and therefore the suspension did not make the enactment of the Act unconstitutional.

I note that the Speaker suspended the Members of Parliament twice during the process of enactment of the Act. The first suspension was on the 27.9.17 where she suspended 25 Members. After addressing the unruly conduct of the Members the Speaker invoked her powers under Rule 7(2), 77, 79 (2) and 80 of the 2012 Parliamentary Rules of Procedure and suspended them.

The Speaker exercised her powers under **PART XIII** of the Rules

Rule 77 provides that:

"77. The Speaker shall be heard in silence

When the Speaker addresses the House, any Member standing shall immediately resume his or her seat and the Speaker shall be heard in silence."

Rule 78(2) provides that:

"**The Speaker or Chairperson, shall order any person whose conduct is grossly disorderly to withdraw immediately from the House or Committee for the remainder of that day's sitting; and the Clerk or Sergeant at Arms shall act on such orders as he or she may receive from the Speaker or Chairperson to ensure compliance with this Rule."**

Rule 80 is entitled **"Naming and suspension of Members".**

It reads:

"(1) <u>If the Speaker or Chairperson of any Committee considers that the conduct of a Member cannot be adequately dealt with, under sub Rule (2) of Rule 79, he or she may name the Member.</u>

<u>(20) Where a Member has been named, then-</u>

<u>(a) in case of the House, the Speaker shall suspend the Member named from the House;"</u>

It is clear that in line with these Rules, the Speaker is mandated to ensure that there is order and decorum in the House, and is to decide on the questions of order and practice to ensure orderly proceedings in the House. In preserving order, she is therefore permitted to

suspend the Members who disrupt the proceedings. I cannot fault the learned Justices on this issue. They considered the Rules on suspension non in isolation of the other and I agree with them on this point.

Suspension in my opinion did not disenfranchise the Members or the voters in any way since it was justified. **Part XII of the 2012 Rules** similar to **Part XIII of the 2017 Rules** clearly lays down the behaviour of Members during debate. In addition the **code of conduct for Members of Parliament in appendix F particularly Rule 5** requires that **"Members shall at all times conduct themselves in a manner which will maintain and strengthen the public's trust and confidence in the integrity of Parliament. Unruly behaviour does not strengthen public trust."**

I am further fortified by the case of **Twinobusingye Severino v Attorney General. Constnl Petition No.47 of 2011** Court observed that**:**

> ***"although Members of Parliament are independent and have the freedom to say anything on the floor of the House, they are however, obliged to exercise and enjoy their Powers and Privileges with restraint and decorum and in a manner that gives Honour and admiration not only to the institution of Parliament but also to those who, inter-alia elected them, those who listen, to and watch them debating in the public gallery and on television and read about them in the print media. As the National legislature,***

Parliament is the fountain of Constitutionalism and therefore the Honourable Members of Parliament are enjoined by virtue of their office to observe and adhere to the basic tenets of the Constitution in their deliberations and actions."

The 2nd appellant's contention seems to be mainly on the second suspension of Members which was done on the 18th December, 2017 during the second reading and presentation of the Committee report. A perusal of the Hansard for that day shows that the Speaker reminded the Members who were suspended that if they do misconducted themselves again, they would be suspended again for seven sittings that time beyond Christmas and therefore they should not endanger their right to speak and vote. She urged them to tolerate and listen to one another. However during the presentation, she kept on asking the Hon. Members to take their seats and maintain order in the House as is the practice of Parliament. She further reminded them of Rule 88 of the Rules that regulates their conduct in the House. Even after having done so, there was still no order in the House. She therefore suspended the six Members and the proceedings up to 2 o'clock. She ordered them not to come back to the house in the afternoon. I find that some of the suspended Members were earlier suspended during the first suspension and they were warned in during this sitting. Therefore it is not true that the Speaker merely suspended the six Members for no reason. It all stemmed from the first suspension and after several warnings. The Speaker therefore rightly suspended them as per Rules 87(2) and 88.

That notwithstanding, even if there was no reason given as alleged by the appellants, Rule 86(1) states that:

> **"(1)The Speaker shall be responsible for the observance of the Rules or order in the House."**
>
> **(2) The decision of the Speaker shall not be open to appeal and shall not be reviewed by the House, except upon a substantive motion made after notice."**

In the present case there was no substantive motion to question her decision as rightly held by the learned Justices.

In addition the evidence is clear that at the time of suspension she was not functus officio as alleged by the appellants. She just suspended the proceedings up to 2 o'clock and in the process of suspending the proceedings, she suspended the Members. At 2.16pm the House resumed and was adjourned at 6.30pm.

In my view therefore, from the forgoing, the Speaker's action of suspending the six Members was therefore not contrary to Article 1, 28(1), 42, 44(c) and 94 of the Constitution neither did it vitiate the enactment of the Act.

This issue fails.

vii) Non -compliance with the Requirement of 3 sittings days

The appellants submitted that the report of the Legal and Parliamentary Committee was never tabled as per the Rule 201 and neither was the three days Rule observed as required under Rule

201(2). Counsel submitted that a resolution was hastily passed suspending the Rules so that the debate could proceed immediately.

Mr. Mabirizi also faulted the learned Justices for finding that the motion to suspend Rule 201(2) by the Deputy Attorney General was at the Committee stage yet it was at the plenary. He also submitted that the motion was not seconded therefore making the subsequent proceedings invalid. He relied on the case of **Makula International Ltd v Cadinal Nsubuga & Anor (1982)** in support of his submissions.

The respondent on the other hand refuted the appellants' assertions and submitted that the Speaker had directed the Clerk to upload the report on the ipads four days prior therefore Rule 201 did not apply. Counsel submitted that even if it did, a motion to suspend the said Rules was moved and supported by Hon. Janepher Egunyu and other Members. He refered to the decision of the Hon. Deputy Chief Justice and Cheborion, JCC and submitted that the Members had adequate notice as to the contents of the report and therefore the purpose of Rule 201(2) was achieved. There was no prejudice to the Members.

He argued further that regarding secondment, counsel submitted that the motion did not require secondment since it was raised at the Committee of the whole House as found by the learned Justices. Counsel however submitted that without prejudice to that holding, the motion still satisfied Rule 59 since it was supported by Members. Counsel submitted that since the Rules do not clearly define

secondment, Rule 8 should be adopted to find that the motion was seconded.

Consideration

Rule 201 provides that:

> **" Debate on a report of a Committee on a Bill, shall take place at least three days after it has been laid on the table by the Chairperson or the Deputy Chairperson or a Member nominated by the Committee or by the Speaker."**

Rule 2(1) defines "***table"***

> **"to mean the Clerk's table and tabling means laying of an official document on the Table and laying before Parliament shall be construed accordingly."**

The Hansard shows that on the 18th December 2017 during the second reading, the Chairperson of the Legal and Parliamentary Affairs tabled the report of the Committee before Parliament. He informed the Speaker that the report had been uploaded on the ipads of the MPs by the Clerk four days earlier. A point of procedure was raised that Rule 201 requires that the debate shall take place three days after tabling the report. The Speaker Ruled that the Rule did not apply because the 9th Parliament had agreed to use less paper and she had directed the Clerk to upload the report onto the Members Ipads four days prior to that date. The point was raised again that tabling means tabling on the Clerk's table not the Ipad. The Attorney General moved under Rule 16 to suspend Rule 201 arguing that the

Rule was no longer useful with the establishment of the e-communication. The motion was supported by Hon. Janepher Eguyu and Mr. Gaster Mugoya and the Rule was suspended.

It is therefore not true as found by the learned Justices that this Rule was suspended at the stage of the Committee of the whole House. It therefore required secondment under Rule 59 read together with Rule 16.

> **"<u>Suspension of the Rules</u>**
>
> **(1)Any Member may, with the consent of the Speaker, move that any Rule be suspended in its application to a particular motion before the House and if the motion is carried, the Rule in question shall be suspended.**
>
> **(2)This Rule shall not apply in respect to Rule 5, 6, 11, 12, 13(1), 16 and 97."**

Rule 59 provides that,

> "**<u>Seconding of motions</u>**
>
> **"(1)In the House, the question upon a motion or amendment shall not be proposed by the Speaker nor shall the debate on the same commence unless the motion or amendment has been seconded.**
>
> **(2)In Committee of the Whole House or before a Committee, a seconder of a motion shall not be required."**

Although the Rules do not define secondment, According to the Oxford Advanced learner's dictionary, 7th edition, seconding means ***" to state officially at a meeting that you support another person's idea, suggestion, etc. so that it can be discussed and/or voted on."***

As stated above, the evidence shows that it was supported by Ms. Janepher Eguyu and Mr. Gaster Mugoya. So it was validly suspended.

The requirement of the three days after tabling did not apply in the circumstances. This issue fails as well.

viii) Violation of the Requirement of 14 sitting days between the 2nd and 3rd readings

The appellants' main contention was that although the learned Justices found that non observance of 14 days between the second and third reading contravened the Constitution, they did not find this fatal to the process of enactment of the Act. The appellants contended that the new clauses became part of the Bill and therefore required 14days separation and Article 260(1) states that such a Bill shall not be passed. That the Presidential assent was therefore in vain. In support of this submission they relied on the case of **Sekikubo v Attorney General, Chowdhary v UEB, No.27/10 and Kasirye v Bazigattirawo, No.03/16.**

The respondent submitted that the learned Justices rightly found that the non-observance of the 14 days was not fatal. Counsel argued

that the contents in the original Bill did not contain any provision that required separation of 14 days. He submitted that the learned Justices rightly found that it was only the new clauses introduced at the Committee stage that had an infectious effect on Articles 1, 8A and 260 and required 14 days separation between the 2nd and 3rd reading. They were therefore null and void and the Justices rightly severed them.

Consideration

The 14 days is a requirement in respect of amendments under Articles 260 and 261. The Magyezi Bill was initiated under Articles 259 and 262 of the Constitution. As such and as the majority of the Justices of The Constitutional Court rightly found, in my view, the amendments in sections 1,3,4 and 7 of the Act were not covered by Article 260 and 261. And therefore did not require a 14 days sitting between the second and third reading.

As was established by the majority of the Justices of the Constitutional Court, the amendments that required a referendum were contained in sections 2, 5, 8, 9 and 10 and those should have complied with the 14 days requirement under Article 263(1) of the Constitution. Each of those sections are thus unconstitutional. This issue lacks merit.

ix) Closing the debate before each and every Member of Parliament could debate the Bill

The appellants' main contention on this issue was that the Members of Parliament were denied adequate time to debate and consider the Bill yet this was a matter of great national importance. They contended that 3minutes to make submissions on the Committee report was insufficient. In addition the Speaker closed the debate before every MP could debate and only 28% debated which violated Rule 133(3).

In relation to closing the debate before each Member could debate, Counsel for the respondent submitted that Rule 80(2) provides for closure of the debate and if the majority agree then the debate is closed. In this case majority agreed to the closure of the debate when the question was put. He further submitted that there is no requirement that every Member has to debate before closure.

Consideration

Rule 62(2) provides that

> "**The Speaker may at the beginning of any debate specify the period that each Member contributing to a debate may be given.**"

Part XII of the Rules provides for the Rules of debate and Rule 69(11) provides that**,**

> **"the Speaker may, on the commencement of the proceedings of the day or on any motion, announce the time limit he or she is to allow each Member contributing**

to debate and may direct a Member to take his or her seat who has spoken for the period given"

In this case the Speaker gave each Member 3 minutes and 124 Members contributed to the debate. She has the discretion according to Rule 62(2) and 69(11) to allocate time to debate and therefore cannot be faulted.

Further there is no requirement that every Member has to debate. At the close of the debate, when a question was put to close the debate no Member objected. The question was put and agreed to. I do not find that the Rules were breached and that they affected the enactment process. I agree with Cheborion, JCC in his Judgment where he held that;

"I have perused Article 79 (1) (2) which empowers Parliament to make laws in Uganda. I have also considered Article 262 that allows Parliament to amend provisions of the Constitution, as well as the Rules of Procedure of Parliament that regulate debate and proceedings in Parliament. I have not come across any specific provision, and none was cited to us as making it a mandatory requirement that for any Constitutional amendment Bill to be enacted into law, deliberations must be received from each and every Member or majority of the Members of Parliament. In my view, the only condition precedent set under Article 262 is the requirement for the

Bill to be supported by 2/3 of all the Members of Parliament.

Be that as it may, from the Hansard, 124 Members of Parliament had contributed before the Speaker closed the debate. The Leader of opposition raised her concern about being denied an opportunity to give the views of her people. In reply, the Speaker blamed her for wasting time that should have been used for more Members to debate.

I find that the Leader of Opposition equally frustrated the Speaker's effort to have more Members contribute to the debate. This however, did not adversely affect the passing of the Act."

According to the Hansard, a number of Members of Parliament debated the Bill at its second reading. The time of 3 minutes allotted to them by the Speaker appears too short though, for any meaningful debate to have taken place on this very important Bill. However, there is no record on the Hansard that Members complained that they had been prevented from debating the Bill. In any case, there is no Rule that before a Bill is passed by Parliament, each and every Member of Parliament must debate it. What is most important is for Members to be present and closely follow the debate and understand a Bill so that they can in turn explain the Bill to their electorates who sent them to represent their view in Parliament. With the over 400 Members of Parliament, it would be inconceivable for each one had to debate a Bill before passing it.

I therefore find no merit on this issue.

x) Failing to close the doors of Parliament during debate

Counsel for the 2nd appellants contended that failure to close the doors at the time of voting contravened Rule 98(4). That the rationale for the Rule is to bar Members who had not participated in the debate from decision making. He submitted that the Speaker however left the doors open and called Members who were outside the chambers to enter and vote. Counsel therefore faulted the learned Justices for in holding that no evidence was availed as to how failure to close the door was unconstitutional.

Mr. Mabirizi contended that failure to close the doors was not at the Speaker's discretion. Article 89 requires that voting in a manner prescribed by the Rules of procedure made under Article 94.

The respondent on the other hand contended that the Speaker gave reasons for failure to close the door. This was because all Members did not have seats and therefore it was not possible to lock out some Members. He submitted that Rule 8 validated the Speaker's action. She therefore acted within the ambit of these powers and court made a correct finding on this issue.

Consideration

This was a violation of **Rule 98 (4)** of the Rules of Parliament which reads:

" (4) The Speaker shall then direct the doors to be locked and the bar drawn and no Member shall thereafter enter or leave the House until after the roll call vote has been taken."

However, according to the Hansard, the voting was done in an orderly and transparent manner. There is no evidence that those Members who were absent Parliament on that day also voted. Voting was done in accordance with **Rule 98(6)** Members voted one by one by all Members present. Theoretically Parliament could sit in an open place with no door as long as it is gazzetted for that purpose. The Speaker explained the reason why she could not close the door due to the large number of Members of Parliament. This did not violate the Constitution since there was a requisite quorum to pass the Act.

For that reason this issue also fails.

xi) Consultation and Public Participation

This was issue 6(d) and (e) before the Constitutional Court and it was framed as follows:

(d). Whether the consultations carried out were marred with restrictions and violence which were inconsistent with and/ or in contravention of Articles 29 (1) (a), (d),(e) and 29(2) (a) of the Constitution.

(e). Whether the alleged failure to consult on sections 2, 5, 6, 8 and 10 is inconsistent with and/ or in contravention of Articles 1 and 8A of the Constitution.

The majority Justices answered 6(d) in the negative and 6(e) in the affirmative.

The Appellants' general contention was that the learned Justices erred in law and fact when they held that there was proper consultation of the people on the Bill. Counsel submitted that there was no consultation yet it is a fundamental value of the Constitution.

Counsel submitted that this being a matter that touched the foundation of the Constitution consultation was paramount since the rationale is to ensure that people retain their sovereignty. Counsel submitted that there was overwhelming evidence that there was no consultation. Such evidence included the fact that the process of enactment was not preceded by a consultative Constitutional Review exercise as was the case in the 2005 Constitutional amendments. There was no evidence on record that Hon. Magyezi in presenting his Bill consulted the public before tabling in Parliament. There was no structural framework for public participation. Public gatherings for the Members of the Opposition were blocked and violently dispersed by Police and other security agencies. Despite the fact that the Members were given 29 million as facilitation the purported consultation was illusory and ineffective.

Counsel further submitted that the test to ensure participation of the people in legislation was not passed since Parliament was not reasonable in closing out the people's participation but rushed to amend Articles that rotated around the sovereignty of the people. Counsel submitted that since Parliament was obliged to consult the

public on the amendments, failure to do so vitiated the entire process hence rendering the resultant law null and void. Counsel relied on the cases of **Law Society of Kenya v Attoney General, Constitutional Petition No.03 of 2016; Robert N. Gakuru & Ors vs The Governor of Kiambu County & Ors; Doctors for Life International vs The Speaker of the National Assembly & Ors. South Africa Constitutional Court Case No. CCT 12/05** in support of their submission.

The respondent's counsel refuted this allegation and submitted that the learned Justices made a proper finding that there was public participation and consultation in the process of enactment of the impugned Act. Counsel argued that unlike the Constitutions of South Africa and Kenya among others, our Constitution does not provide standard measures for consultative Constitutional Review rather it recognises various roles of people and bodies in the Constitutional amendment process thereby permitting amendment of the Constitution in various ways as provided under Article 259, 260,261 and 262. Counsel submitted that Parliament has never enacted a law to set a yardstick or guide consultation or set parameters upon which effective consultation can be measured. The cases cited by the appellant's are therefore distinguishable in the circumstances since they were decided on the basis of the Constitution which strictly provided for public participation in the law making process and also provided yardsticks for the same.

Counsel further argued that there is no requirement that all persons must express their views concerning the law, rather, what is required is that reasonable steps were taken to facilitate public participation and reasonable opportunity afforded to the public to participate in the legislative process.

Counsel further argued that notices inviting all persons who wished to be part of the process were published upon which 54 groups of persons responded to the invitation including the President of Uganda and registered political parties. That the Hansard clearly showed that the reports of the Members of Parliament through debating and voting was a representative of consultations carried out in their various constituencies. Counsel therefore invited this Court to find that there was public participation.

Consideration

Public participation is a political principle enshrined in the Constitution under The National Objectives and Directive Principles of State Policy. The Democratic Principles (i) stipulate that:-

> **"the state shall be based on the democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance."**

In **Doctors for Life International vs. Speaker of the National Assembly and Others**. (supra) Court observed that:-

> ***"If legislation is infused with a degree of openness and participation, this will minimize dangers of arbitrariness***

and irrationality in the formulation of legislation. The objective in involving the public in the law-making process is to ensure that the legislators are aware of the concerns of the public. And if legislators are aware of those concerns, this will promote the legitimacy, and thus the acceptance, of the legislation. This not only improves the quality of the law-making process, but it also serves as an important principle that government should be open, accessible, accountable and responsive. And this enhances our democracy."

Although our Constitution provides for active participation of all citizens, it is couched in general terms. It does not provide a mode of consultation and participation neither does it provide a yard stick for setting standard measures for consultation. I therefore agree with the finding of the Hon. Deputy Chief justice that there is no law that lays down a structural modus operandi for public consultation.

The question therefore is whether or not there was consultation in the circumstances.

I am guided by the South African case of the **Minister of Health vs. New Clicks South Africa (Pty) Ltd, {2005} ZACC:- Sachs, J.** observed:-

"……. <u>What matters is that at the end of the day a reasonable opportunity is offered to Members of the public and all interested parties to know about the issue and to</u>

***have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case.*"**

Further, in the **Doctors for life case** (supra) court held that:

"what is ultimately important is that the legislature has taken steps to afford the public a reasonable opportunity to participate effectively in the law-making process. Thus construed, there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided. In this sense, public involvement may be seen as "a continuum that ranges from providing information and building awareness, to partnering in decision-making."

The court further held that:-

"in determining whether Parliament has complied with its duty to facilitate public participation in any particular case, the Court will consider what Parliament has done in that case. The question will be whether what Parliament has done is reasonable in all the circumstances. And factors relevant to determining reasonableness would include Rules, if any, adopted by Parliament to facilitate

public participation, the nature of the legislation under consideration, and whether the legislation needed to be enacted urgently. Ultimately, what Parliament must determine in each case is what methods of facilitating public participation would be appropriate. In determining whether what Parliament has done is reasonable, this Court will pay respect to what Parliament has assessed as being the appropriate method. In determining the appropriate level of scrutiny of Parliament's duty to facilitate public involvement, the Court must balance, on the one hand, the need to respect Parliamentary institutional autonomy, and on the other, the right of the public to participate in public affairs. In my view, this balance is best struck by this Court considering whether what Parliament does in each case is reasonable."

In the case of **Law society of Kenya v Attorney General**, (Supra)Court observed that:-

"...To paraphrase Gakuru case (Supra), public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purpose of fulfilment of the Constitutional dictates. It behoves Parliament in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not enough to simply "tweet" messages as it were and leave it to those who care to scavage for it.

Parliament ought to whatever is reasonable to ensure that as many Kenyans are aware of the intention to pass legislation. It is the duty of Parliament in such circumstances to exhort the people to participate in the process of enactment of legislation by making use of as many for a as possible such as churches, mosques, public "barazas", national and vernacular radio broadcasting stations and other avenues where the public are known to converge and disseminate information with respect to the intended action..."

Although the above cases are from another jurisdiction, I find them persuasive in principle.

I agree with the majority learned Justices that the directive by the Inspector General of Police, Mr. Asuman Mugenyi to the District Police Commanders to curtail and restrict the conduct of consultative meetings was arbitrary and contrary to Article 29(2) since it was intended to prohibit Members from holding joint rallies or getting support from outside constituencies. This directive on the face of it would limit public participation. However evidence shows that the police did not unduly restrict consultative meetings countrywide. Although in some places police interfered with consultations which was unconstitutional, in other places rallies took place and people were consulted.

The evidence on record shows that after the Bill by Hon Magyezi was sent to the Committee on Legal and Parliamentary Affairs, the

Committee met and even received comments and views from the public and institutions such as inclusion of term limits to the Bill and adjusting tenure of the President among other views concerning the Bill.

There is evidence on record, however, that although the Committee had planned to conduct countrywide consultations, it was not facilitated by Parliament for very unclear reasons. This was a set back because it would have gone a long way in raising the level of public participation required.

Further, according to the Hansard, during the presentation of the Committee report on the Legal and Parliamentary Committee, its Chairperson stated that the Committee had extended invitations to identified stake holders and other interested parties to appear before it and submit their views on the Bill. It is also not in dispute that the Speaker cautioned the Members to comply with Article 1 and 2 of the Constitution.

The evidence further shows that Parliament facilitated each Member of Parliament with shs. 29 million to carry out consolations before debating the Bill. There is also evidence on record in the Hansard that some Members of Parliament reported that they had indeed consulted the public.

In the premises I agree with the majority Justices of the Constitutional Court that the consultative process of the enactment of the impugned Act was not adversely affected by restrictions or

violence. I therefore find that there was consultation in respect of sections 1,3,4 and 7 of the Act but there was no consultation of sections 2,5,6,8 and 10.

In the premises this issue fails.

3.Discrepancy In the Speaker's Certificate of Compliance and illegal consent.

The appellants' contention was that the learned Justices erred in holding that the validity of the entire impugned Act was not fatally affected by the discrepancies of the Speaker's Certificate of compliance. Counsel submitted that the Certificate was materially defective in content and form which rendered the assent a nullity as per Article 263(2). Counsel submitted that the Certificate only indicated the clauses in the original Bill yet the Members also agreed to introduce new clauses to the Bill. The Certificate therefore contravened Article 263(2) and S.16 of the Acts of Parliament Act. Counsel further contended that not only did the Certificate have discrepancies, there was also no Certificate of the Electoral Commission which invalidated the Act. Counsel submitted that in the circumstances, the Court therefore erred and misdirected itself on the legality of the Speaker's Certificate when it found that the Certificate only affected the newly introduced provisions and not the entire Act. Counsel relied on the case of **Semwogerere & Anor vs Attorney General. No. 1/02 (SC)** in support of their submission.

Regarding the illegal assent Counsel contended that the Presidential assent is an integral part of a law making process and any defect therein renders the law a nullity as per Article 91, 263 and s. 9(1) of the Acts of Parliament Act. Counsel submitted that the President's act of assenting to the Bill without scrutinizing it to ascertain its propriety contravened the law.

The respondent on this issue submitted that the validity of the entire Act was not fatally affected by the variances in the Speaker's Certificate. Counsel submitted that it was not materially defective to render the Presidential assent a nullity. The original Bill did not contain any provision that required its ratification through amendment and therefore the Certificate of Electoral Commission was not necessary. The decision of the learned Justices in upholding the validity of the Certificate was a recognition that it complied with the form prescribed in section 16(2) and Part VI of the second Schedule of the Acts of Parliament Act. The Constitutional Court rightly used the severance principle as espoused in Article 2(2) to find that the Articles not included in the Speaker's Certificate were unconstitutional.

Counsel invited court to uphold the findings of the majority that the discrepancies in the Speaker's Certificate and the Bill at the time of Presidential assent was not fatal to the Bill.

Consideration

Under Article **263 (2) (a)** of the Constitution:

"(2) A Bill for the amendment of this Constitution which has been passed in accordance with this Chapter shall be accented to by the Present only if:

(a) It is accompanied by a Certificate of the Speaker that the provisions of this Chapter have been complied with in relation to it."

It is not in dispute that the Bill that was sent to the President for assent, that is, **Constitution (Amendment) (No. 2) Bill 2007**, was accompanied by a Certificate of Compliance of the Speaker dated 22nd December, 2018 as required by **Article 263(2)(a)** of the Constitution above. The Certificate however indicated that only 4 Articles of the Constitution, namely, **Articles 61, 102,104 and 183,** were being amended. It excluded **Articles 77, 105, 181, 289 and 291** that had been amended by Parliament and had been included in the Bill as well.

It is also not disputed that the Bill that the President assented to contained all the 10 Articles of the Constitution that were amended by Parliament. It is thus true that there was indeed a discrepancy between the Speaker's Certificate of Compliance and the Bill that the President assented to.

My view is that the President ought not to have assented to a Bill that was at variance with the Speaker's Certificate of Compliance. He could have avoided this irregularity by refusing to assent to the Bill for non-compliance with the Constitution under Article 263.

However, I find that the Certificate of Compliance did not lie as alleged by counsel for the appellants. It stated the truth; that the provisions of **articles 259 and 262** of chapter 18 of the Constitution had been complied with in respect of amendments to:

" (a) article 61 of the Constitution;

(b) article 102 of the Constitution;

(c) article 104 of the Constitution; and

(d) article 183 of the Constitution"

It did not cover those articles that were not amended in compliance with the Constitution, namely Articles 77, 181, 29, 291,105 and 260 of the Constitution and the Justices of the Constitutional Court rightly found so. Had the Certificate stated otherwise, it would have told a lie. The Certificate covered only a part of the Bill that had complied with the Constitution, namely Sections 1, 3,4 and 7.

Assent cannot bring into law what is a nullity by the Constitution. Parts of the Bill were unconstitutional and therefore null and void. The Speaker was required to certify that the Bill was passed in accordance with the constitution. The Speaker realized that some of the provisions were unconstitutional and that is why in her Certificate, she listed only those provisions that had complied with the Constitution. In my opinion this is a valid certificate as far as the amendments that were passed in accordance with the Constitution were concerned.

The decision of **Ssemwogerere**(supra) relied on by the appellants is distinguishable in that in that case, the Bill was not accompanied by a Certificate of Compliance issued by the Speaker unlike in the instant case.

This issue also fails for the reasons given.

Issue 3: ***Whether the learned Justices of the Constitutional Court erred in law and fact when they held that the violence/scuffle inside and outside Parliament during the enactment of the Constitution (Amendment) Act No. 1 of 2018 did not in any respect contravene nor was it inconsistent with the 1995 Constitution of the Republic of Uganda.***

This issue was framed in the Constitutional Court as follows:

"5.Whether the alleged violence/ scuffle inside and outside Parliament during the enactment of the Act was inconsistent and in contravention of Articles 1, 2, 3 (2) and 8A of the Constitution."

Submissions of Counsel

The contention on this issue was that the Learned Justices of the Constitutional Court erred in law and in fact when they held that the violence inside and outside Parliament during the enactment of the Constitution (Amendment) Act did not contravene nor was it inconsistent with the Constitution.

Counsel submitted that the Bill was passed amidst violence within Parliament, outside Parliament and across the entire Country

thereby vitiating the entire process and thus making it unconstitutional. Counsel submitted that there was heavy deployment and unprecedented violence against the Members of Parliament and this led the Speaker to inquire into the existence of the armed persons in the precincts of Parliament, which fact was rightly established by the learned Justices. Further the Constitutional court observed that the directive issued by Assistant Inspector General of Police Asuman Mugenyi on consultative meetings was unconstitutional. However the Constitutional Court held that these acts were not sufficient to vitiate the enactment process.

Counsel submitted that the violence had a chilling effect on other Members of the public as well as other Members of Parliament that wished to participate to oppose the amendment. This had an adverse effect of curtailing several persons from participating. Counsel therefore submitted that it was imperative for the learned Justices to find that the process of amendment was filled with violence and was therefore contrary to Article 3(2) of the Constitution. Counsel relied on the case of **Doctors for life International & Ors v The Speaker of National Assembly & Ors** (supra)

Counsel further submitted that the violence inside Parliament included arrest, assault detention of Members of Parliament and their forceful exclusion from representing the Constituents. The actions violated Article 23, 24 and 29 of the Constitution. The

Constitutional Court however, did not make any declarations to that effect neither did it grant redress as required under Article 137.

Counsel therefore invited this Court to find that violence vitiated the enactment process.

Counsel for the respondent in reply submitted that the learned Justices rightly found that violence inside and outside Parliament did not amount to breach of the Constitution to vitiate the process of enactment.

Counsel submitted that the unprecedented violence inside Parliament was occasioned by the Members of Parliament misconduct which led to their suspension. However since the suspension was not heeded to, this led to their forceful eviction by Members of the security forces under the command of the Sergeant-at-arms.

Counsel relied on Article 79(1), 94(1), Part XIV of the Rules of Procedure and Rule 88(6) and submitted that the Speaker had the right to suspend the Members and was mandated to ensure order and decorum in the House was maintained. Counsel relied on the case of **Twinobusingye Severino v Attorney General. Constnl Petition No. 47 of 2011** in support of this submission.

Counsel submitted that the scuffles from the events that transpired on the 26th and 27th September, 2017 necessitated the limitations of the enjoyment of the Members of Parliament rights and their eventual arrest and detention by the security forces. Counsel submitted that

the enjoyment of these rights is valid only if it is done in a manner that is acceptable and demonstrably justifiable in a free and democratic society as illustrated in Article 43(1).

Counsel also relied on the case of **Hon. Lt (Rtd) Kamba Saleh & Another v Attorney General & 4 Ors. No. 16/13** on Constitutional interpretation and submitted that the entire Constitution should be read as a whole. Counsel therefore submitted that the Members of Parliament should not confuse their right to legislate to mean that it also extends to the disruption of other people's representatives right to debate as well as the disruption of the conduct of Parliamentary business.

In relation to the violence throughout the country, Counsel submitted that there was evidence that an overwhelming number of Members of Parliament carried out their consultation meetings uninterrupted and were able to vote on the Constitutional amendment Bill.

Counsel argued that regarding Article 3(2) of the Constitution, this is a new argument that force was used to amend the Constitution. This issue can therefore not be raised at this point. Counsel submitted that this notwithstanding, evidence shows that the amendment was done with full participation of the Members of Parliament and therefore the application of Article 3(2) was misconstrued.

Counsel therefore invited this court to uphold the decision of the Constitutional court on this issue.

Consideration of issue 3:

Violence inside Parliament

According to the evidence on record there were events that occurred during the proceedings of 21st, 26th and 27th which necessitated the Speaker to use her discretion and maintain order and decorum in the House as required under Rule 7(2) of the Parliament Rules of Procedure. In so doing, under Rules 77, 79(2) and 80, she suspended 25 Members who had adamantly refused to exit the House despite her orders.

Rule 81 provides that:

> **"a Member who is ordered to withdraw under sub Rule (2) of Rule 79 or who is suspended from the service of the House by virtue of sub Rule (2) or (3) of Rule 80 shall immediately withdraw from the precincts of the House until the end of the suspension period."**

According to the affidavit of Jane Kibirige the Clerk to Parliament and Mr. Ahmed Kagoye the Sergeant at arms and the Hansard, the Speaker had made calls to Members of Parliament to maintain order and decorum in the House so that the debate could proceed. When the Members defied the Speaker's order, she was therefore forced to ask the Sergeant- at -arm to evict them from the house. She suspended the House for 30minutes to enable them to be evicted. The Hon. Speaker justified her action under Rule 80(6) which states that:

"Where a Member who has been suspended under this Rule from the service of the House refuses to obey the direction of the Speaker when summoned under the Speaker's orders by the Sergeant-at-Arms to obey such direction, the Speaker shall call the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his or her direction and the Sergeant At Arms shall be called upon to eject the Member from the House."

I note however, that in the process of evicting the said Members from the House, some unknown persons brutally beat up some of the Members including those who were not suspended, thus causing chaos in Parliament. Some Members were also arrested and confined in Police stations. This led the Speaker to inquire from the President in a letter dated 23rd October, 2017 about the invasion of Parliament precincts by Security Agencies on the 27th September, 2017.

From the foregoing, in my opinion, I agree with the Justices of the Constitutional Court that the violence was caused by the Members of Parliament themselves as a result of lack of decorum on their part. In the case of **Twinobusingye Severino v Attorney General. Constitutional Petition No.47 of 2011** the Constitutional Court observed that**:**

"...although Members of Parliament are independent and have the freedom to say anything on the floor of the House, they are however, obliged to exercise and enjoy their Powers and Privileges with restraint and decorum and in

a manner that gives Honour and admiration not only to the institution of Parliament but also to those who, inter-alia elected them, those who listen, to and watch them debating in the public gallery and on television and read about them in the print media. As the National legislature, Parliament is the fountain of Constitutionalism and therefore the Honourable Members of Parliament are enjoined by virtue of their office to observe and adhere to the basic tenets of the Constitution in their deliberations and actions."

This had been further emphasised by the Deputy Speaker in his address to the House in the proceedings of 21st September, 2017 when he emphasised that:

"...the hallmark of a Parliament is courtesy among and between Members. So please let us not do things that will cause unnecessary anxiety in the House."

That notwithstanding, I note that in bringing calmness to the House, there was also violence caused by the invasion of the security agencies as indicated in the Speaker's letter. The Affidavits of Hons. Betty Nambooze, Munyagwa, Karuhanga, Odur Jonathan and Sewanyana Allan show that they were brutally tortured and treated inhumanly causing injury to the victims which acts were unconstitutional.

The respondent relied on the affidavit evidence of Gen. David Muhoozi where he stated that under Article 209(b) the UPDF can

ensure civil public compliance and in that regard, the UPDF supported the Parliamentary Police in ensuring harmony during the proceedings.

Article 209(b) states that:

"functions of the defence forces

(b) to cooperate with the civilian authority in emergency situations and in cases of natural disaster."

Even if the presence of the UPDF was justified, excessive and unwarranted force was not required in the circumstances. I find that these acts were therefore contrary to Article 23 and 24. In such circumstances, the appropriate court, if the affected Members wished to seek redress for enforcement of their rights would be the High Court which is mandated to investigate and determine the appropriate redress as per Article 50 and 137(4)(b) of the Constitution.

In conclusion, I agree with the learned Justices that even if there was violence inside Parliament on the said date, it did not vitiate the enactment process. The scuffle took place before Hon. Magyezi had moved his motion for leave to introduce the Bill under Article 94(4)(b) and thereafter, there is no evidence adduced by the appellants that the subsequent proceedings were interfered with by the security agencies in order to vitiate the process or that there was a chilling effect in Members debating. The Bill was debated and supported at the second and third reading by the votes of not less than two-thirds

of all Members of Parliament. Article 262 was observed and subsequently the Bill was passed accordingly as per Article 259 of the Constitution.

Violence outside

There is evidence that in the process of carrying out the directive by the Assistant Inspector General of Police, Mr. Asuman Mugenyi restricting the Members of Parliament within their constituencies and in some places rallies were disrupted, this contravened Article 29. However there is evidence that in other places rallies took place as rightly found by the Constitutional Court. This did not vitiate the enactment process since the Members reported during the debate that they had consulted and were therefore reporting the views of the public.

Article 3(2) is misconstrued, the Act was not amended violently. It was amended through the vote of the majority of the Members of Parliament who freely voted in favour of the amendments.

I therefore find no merit on this issue.

Issue 4: *Whether the learned Justices of the Constitutional Court erred in law when they applied the substantiality test in determining the petition.*

Submissions of Counsel:

The appellants faulted the majority Justices of the Constitutional Court for applying the substantiality test in determining the consolidated petition. They contend that whereas the applicability of

the substantiality/quantitative principles to election petitions is expressly provided for in electoral laws, the test is totally different in Constitutional matters. Therefore, the Constitutional Court acted outside the jurisdiction conferred on it by Article 137 of the Constitution when it applied the substantiality test in evaluating and assessing the extent to which the Speaker and Parliament failed to comply with and or violated the Rules of Procedure of Parliament as well as the invasion of Parliament.

The respondent contended that the Constitutional Court was right to inquire into the extent of the alleged massive irregularities and in doing so applying the qualitative and quantitative test, the Court considered whether the errors and irregularities identified sufficiently challenged the entire legislative process and lead to a legal conclusion that that the Bill was not passed in compliance with the requirements of the Constitution.

The respondent invited Court to uphold the findings of the Constitutional Court that certain irregularities /errors were mere technicalities and were not fatal to sufficiently invalidate the entire process of enactment of the **Constitution Amendment Act, No. 1 of 2018.**

Consideration of issue 4:

The Constitutional Court derives its power to determine disputes and grant remedies under Article 137 of the Constitution. Article 137(1) reads:

"**(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) Any 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

(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 a redress where appropriate." (the underlining is for emphasis)

The words of Article 137 are clear and unambiguous. The article gives the Constitutional Court the power to interpret the Constitution in order to determine whether any Act or actions complained of are inconsistent with or in contravention of the Constitution and where it finds in favor of the petitioner, to declare so and give redress or refer the matter to the High Court for investigation and appropriate redress.

The Constitutional Court is not mandated, after finding that there was contravention of or inconsistency with the Constitution, to investigate the degree of contravention or inconsistency. It just has to make a declaration to that effect.

The Constitutional Court has made declarations in the several petitions including the examples given by Mr. Mabirizi such as **Paul K Ssemwogere & 2 Others vs Attorney General, SCCA NO. 1 of 2002.**

The test applies to Presidential and Parliamentary election petitions under two specific laws, namely, **Section 59(6)(a) of the Presidential Elections Act, 2005** and **section 61(1)(a) of the Parliamentary Elections Act, 2005 .**

Section 59(6)(a) of the Presidential Elections Act, for example, provides that:

> **"(6) The election of a candidate as President shall only be annulled on any of the following grounds if proved by to the satisfaction of the court-**
>
> **(a)noncompliance with the provisions of the Act, if the court is satisfied that the election was not conducted in accordance with the principles laid down in those provisions and that the noncompliance affected the result of the election in a substantial manner."**

(The underlining is added for emphasis)

There is no similar law or Act of Parliament made under Article 137 of the Constitution that gives the Constitutional Court the legal basis to apply the substantiality test to Constitutional petitions. An Act or act is either Constitutional or unconstitutional. Although this is a tool of evaluation of evidence, the learned Justices of the

Constitutional Court erred when they relied on the Election Petition Rules and jurisprudence in determining a Constitutional matter.

For this reason I answer this issue in the affirmative.

Issue 5: ***Whether the learned majority Justices of the Constitutional Court misdirected themselves when they held that the Constitution (Amendment) Act No. 1 of 2018 on the removal of the age limit for the President and Local Council V offices was not inconsistent with the provisions of the 1995 Constitution.***

This issue was resolved together with issue 1.

Issue 6: ***Whether the Constitutional Court erred in law and in fact in holding that the President elected in 2016 is not liable to vacate office on attaining the age of 75 years.***

The issue before the Constitutional Court was whether continuing in office by the incumbent President elected in 2016 upon attaining 75 years contravenes **Articles 83(1) (b)** and **102 (c)** the Constitution. It was issue 13. All the Justices answered this issue in the negative.

Submissions of counsel

Mr. Mabirizi's main contention on this issue was that the President elected in 2016 ceases to hold office on attaining 75 years of age as per Article 102(b) and Article 83(1)(b) . He submitted that Article 102(b) prescribes the nature of a person to appear for nomination

and this has nothing to do with what happens after the nomination and elections.

He submitted that the answer to the question as to when a leader ceases to hold such qualifications is found under Article 83 (1) (b). He argued that since the President's qualifications are pegged on those of a Member of Parliament, Article 83(1) (b) therefore applies in the circumstances. According to him, when a Member of Parliament ceases to be a Ugandan citizen, a registered voter or does not possess the required academic qualifications, he/she does not wait for the five year term to elapse in order to step down. This equally applies to the President.

Mr. Mabirizi therefore faulted the learned Justices for failing to harmonise Article 83(1) (b) with 102(b) of the Constitution. He submitted that had they harmonised the said Articles, they would have found that the President elected in 2016 ceases to hold office at 75 years of age. He relied on the case of **Semwogerere v Attorney General** (supra) in support of his submissions.

Counsel for the respondent on the other hand submitted that the Constitutional Court rightly interpreted the law when it found that Article 102 (b) purely relates to the qualifications prior to nomination for election and not during the person's term in office. Counsel submitted that Article 102 (b) is clear and unambiguous and therefore the learned Justices' finding on this issue cannot not be faulted. Counsel therefore invited this Court to uphold the decision of the Constitutional Court.

Consideration of issue 6:

Article 102 provides:

> **"102. Qualification of the President**
>
> **<u>A person is not qualified for election as President</u> unless that person is-**
>
> **(a) a citizen of Uganda**
>
> **(b) not less than 35 years and not more than seventy-five years of age; and**
>
> **(c) a person qualified to be a Member of Parliament."**

83 (1) (c) reads:

> **"83. Tenure of Office of Members of Parliament**
>
> **(a)…**
>
> **(b)…if such circumstances arise that if one was not a Member of Parliament would cause that person to be disqualified for election as Member of Parliament under Article 80 of this Constitution;**
>
> **(c)…"**

The words used in Articles 83(1) (b) and 102 (b) are plain and ought to be given their natural meaning. Article 83 applies to the tenure of Members of Parliament, not the President. The requirement of age as a qualification for being elected President is at the point of election,

and not during the incumbency. The framers of the Constitution would have expressly stated so, had they intended that the President should vacate office upon attaining the age of 75.

I therefore find no merit in the submissions of the appellants on this issue.

Issue 8: What *remedies are available to the parties?*

For the reasons I have given herein, I would dismiss the appeal and the parties shall bear their costs in this Court. I would confirm the decision of the Constitutional Court.

I wish to express my gratitude to Mr. Mabirizi and Counsel for all the parties for the industry and skill they put in the preparation and presentation of this case.

Delivered at Kampala this……day of April, 2019.

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M.S.Arach-Amoko.

JUSTICE OF THE SUPREME COURT

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