THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

UNDER THE PRESIDENTIAL ELECTIONS ACT

CORAM: OWINY - DOLLO, CJ; ARACH - AMOKO, MWONDHA, MUGAMBA, MUHANGUZI, TUHAISE, & CHIBITA, JJSC.

PRESIDENTIAL PETITION No. 01 OF 2020

BETWEEN

IVAN SAMUEL SSEBADDUKA } :: PETITIONER

AND

1. THE CHAIRMAN ELECTORAL COMMISSION - BYABAKAMA SIMON MUGENYI }
2. THE ELECTORAL COMMISSION } :: RESPONDENTS
3. THE INCUMBENT - YOWERI KAGUTA MUSEVENI }
4. MINISTRY OF HEALTH }

RULING OF THE COURT

The Petitioner herein has petitioned the Supreme Court, under the provisions of the Presidential Elections Act, 2005, as amended, and the Presidential Elections (Election Petitions) Rules, SI - 13 of 2001. He faults the Respondents herein, of a wide range of conduct and wrongs from alleged outright incompetence, to deliberate conduct and actions designed to negate the holding of a free and fair presidential election in the year 2021. All this, he alleges, are to the benefit of the 3rd Respondent whom he accuses of not willing or ready to hand over power to someone else. The Petitioner's plea, as can be gathered from the pleadings in petition and the supporting affidavits, is for orders of this Court that would ensure the conduct and holding of a free, and fair, presidential elections in the year 2021.

Background:

The Petitioner who has indicated his wish to contest for the presidency of the Republic of Uganda in the impending presidential election of 2021, petitioned Chairperson of the Electoral Commission (the 1st Respondent herein) for a waiver of the requirement that, alongside other requirements he apparently does not contest, a presidential aspirant has to at least secure endorsement of a specified number of registered voters from a specified percentage or fraction of districts of Uganda, before such an aspirant can qualify for nomination as a candidate to contest in the presidential election. While he contends in the Petition that there is actually no Covid-19 pandemic in Uganda, he nonetheless sought the waiver from the 1st Respondent claiming that to move around the country for the requisite endorsements by the registered voters would expose the populace to the dangers of contracting the virus.

It was upon failure to secure a waiver from the 1st Respondent that he then brought this Petition now under consideration by this Court. The Respondents answered the petition severally; and each traversed the claims the Petitioner made in the Petition, and discounted the Petition as lacking in merit. Accordingly, they gave notice of preliminary points of objection they intended to raise against the Petition, and move this Court to strike it out with costs. At the pre-hearing conference in Court, in preparation for the substantive hearing of the Petition, representation was as follows: The Petitioner appeared by himself. The 1st and 2nd Respondents were represented by Counsel Sabiiti Eric (Senior Legal Officer for the 2nd Respondent). The 3rd Respondent was represented by Counsel Karugire Edwin and Bibangamba Richard. The 4th Respondent was represented by Counsel George Kalemera and

Richard Adrole; respectively, Commissioner Civil Litigation, and Principal State Attorney, in the Chambers of the Attorney General.

Upon the conclusion of the pre-hearing conference, in which counsel for the Respondent reiterated their points of objection to the Petition, Court directed that the parties file written submissions in support of their respective case. In their written submissions, counsel for the Respondents raised the preliminary points of objection they had given notice of in the respective answers to the Petition. These are, in sum, as follows: -

(i) This Court has no jurisdiction to entertain the Petition.

(ii) The Petitioner has no *locus standi* in this Court.

(iii) The 3rd Respondent as the President of the country is not liable to be subjected to any Court process, save where he has been a candidate in a presidential election that has been concluded.

(iv) The 1st Respondent cannot be personally held liable for his conduct of any election.

(v) The 4th Respondent is not a proper party to the proceedings.

(vi) The Petition is frivolous, vexatious, and an abuse of the Court process.

The Petitioner, for his part, made his written response thereto, reiterating the claims and contention he made in the Petition. Consequent upon these contentions, the Respondents proposed issues for Court's consideration. This Court has duly framed the issues for its determination as follows: -

1. *Whether this Court has jurisdiction to consider the Petition.*
2. *Whether the Petitioner has locus standi to bring this Petition.*
3. *Whether the 1st and 4th Respondents are proper parties to this Petition.*
4. *Whether the 3rd Respondent is a proper party to the Petition.*

5. *Whether the Petition is frivolous, or vexatious, and an abuse of Court process.*
6. *What remedies are available to the parties?*

Submissions:

The Petitioner chose to exercise his right to remain silent; which this honorable Court has respected and taken into account.

The Respondents were on common ground in their respective submissions on the issues; which we shall consider here below.

Issue No.1

Counsel for the Respondents submitted that Article 132 of the Constitution, and section 59 (1) of the Presidential Elections Act, 2005, as amended, do not confer any jurisdiction on the Supreme Court to hear a Petition that is not challenging the election of a person as President. Counsel contended that, therefore, since the instant Petition before this Court is not challenging the validity of the election of any person as president, it has no legal basis; hence it must be struck out.

Issue No. 2

Counsel for the Respondents submitted that the Petitioner has neither claimed nor adduced any evidence that he has been nominated as a presidential candidate. He has not shown what legal right he has to present the Petition. Therefore, under Article 104 (1) of the Constitution and section 59 (1) of the Presidential Elections Act of 2005, as amended, the Petitioner has no *locus standi* to petition this Court as he has done.

Issue 3

Counsel for the Respondents submitted that the 1st and 4th Respondents are not proper parties to this Petition. Counsel submitted that under Section 49 of the Electoral Commission Act, a member of the

Commission or employee of the Commission acting under the direction of the Commission, shall not be personally liable to face any civil proceedings for any act he or she does in good faith. Counsel contended that in such a situation it is not the 1st Respondent, but the 2nd Respondent, who would be made a Respondent in a Petition arising from, or challenging, their acts.

Counsel further submitted that, the 4th Respondent as a government department, has no corporate status or legal capacity conferred upon it by any law enacted by Parliament. Therefore, it can neither sue nor be sued. Counsel further argued that under Article 119 of the Constitution, suits or actions for wrongs committed by government officials must be brought in the name of the Attorney General. Counsel argued further that Rule 3 of the Presidential Elections (Elections Petitions) Rules S.I. 16 of 2005 does not designate the 4th Respondent as a proper Respondent to a Petition such as the instant one before this Court.

Issue 4

Counsel submitted that the pursuant to the provision of Article 98 (4) of the Constitution 3rd Respondent, being holder of the office of President of Uganda, is not liable to proceedings in any Court of law; except a Petition by an aggrieved candidate in a presidential election, challenging the validity of the 3rd Respondent's election as President, pursuant to the provision of Article 104 (1) and (8) of the Constitution. Otherwise, any other action brought in Court against the holder of office of President is barred by the provision for immunity from proceedings accorded to him by the Constitution; as the 3rd Respondent is so accorded. Counsel submitted further that in the present situation, the Petitioner is not an aggrieved candidate challenging the election of the 3rd Respondent; hence he the Petition is incompetent.

Issue 5

Counsel for the Respondents argued that the Petition does not disclose any cause of action as provided for under Section 59 of the Presidential Elections Act, as amended; hence it is incompetent, premature, devoid of merit, and wrongfully brought this Court.

Issue 6

The Respondents therefore urged this Court in their prayer that this Court finds the Petition incompetent; and strike it with costs to the Respondents.

COURT'S CONSIDERATION AND RESOLUTION OF THE ISSUES

We consider that the first and second issues herein can conveniently be disposed of together. The jurisdiction of the Supreme Court is provided for under Article 132 of the Constitution; which confers on the Court appellate jurisdiction only. An appeal to this Court may be brought by any person aggrieved by a decision of the Court of Appeal sitting as a Court of Appeal or as a Constitutional Court. It is thus clear from this provision of the Constitution that the Supreme Court is not a Court of first instance or seized with original jurisdiction. The only provision in the Constitution, which confers onto the Supreme Court original jurisdiction, or as a Court of first instance, as an exception to the general rule, is Article 104 of the Constitution which provides for a Petition as the manner in which a presidential election may be challenged. It provides as follows: -

"(1) Subject to the provisions of this Article, any aggrieved candidate may petition the Supreme Court for an order that a candidate declared by the Electoral Commission elected was not validly elected."

Section 59 (1) of the Presidential Elections Act also provides that: -

"(1) An aggrieved candidate may petition the Supreme Court for an order that a candidate declared elected as President was not validly elected."

It is thus manifest from the provisions of the Constitution and the Presidential Elections Act, that the Supreme Court exercises exclusive original jurisdiction as a Court of first instance, only in the limited circumstance of a presidential election petition. Court's jurisdiction must be conferred by a clear provision of the law; and not by inference. The instant Petition before this Court has evidently been brought before the nominations of any candidate for President has taken place; leave alone the election of anyone as President. Accordingly, then, the Petitioner not being an aggrieved party within the meaning ascribed thereto by the provisions of the Constitution and the Presidential Elections Act referred to herein above, neither has *locus standi* to bring this Petition before this Court, nor is this Court seized with jurisdiction over the Petition at all.

The genesis of this Petition before Court is the Petitioner's grievance that the 1st Respondent declined or failed to waive for him, the requirement that he must first obtain the endorsements of a number of registered voters from a specified number of districts of Uganda, to enable him be considered for nomination as a presidential candidate. The decision of the 1st Respondent in this regard is one made in the period preceding the election day. Under the provisions of Articles 61 and 64 of the Constitution, all decisions made by the Commission prior to the vote, are actionable in the High Court by way of an appeal. The other course of action available to the Petitioner if he has any cause of action would be to proceed in the High Court under the provisions of Article 50 of the Constitution which mandates the High Court to enforce

rights of any person aggrieved by actions such as the one the Petitioner has erroneously and wrongfully brought before this Court.

On the issue of the 1st and 4th Respondents having been made Respondents in the Petition, since this Petition is brought under the Presidential Elections Act, it is Rule 3 of the Presidential Elections (Election Petitions) Rules S.I. - 16 of 2005, which provides for who may be made a Respondent in such a petition, as follows: -

"'Respondent' means the person whose election is complained of in a petition; and where the petition complains of the conduct of the Commission, includes the Commission."

It was pursuant to this provision that this Court struck out the Attorney General as having been wrongfully made a Respondent in *Amama Mbabazi vs Yoweri Kaguta Museveni & Ors - Presidential Election Petition No. 1 of 2016*, since the Attorney General was then not specified as a Respondent under the Rules shown above. It was on account of this decision that the Attorney General had to expressly be included in the Presidential Elections (Election Petitions) Rules S.I. - 68 of 2019 for inclusion as a Respondent in a presidential elections petition. It follows from this that since the 1st and 4th Respondents are not specified as persons who could be made Respondents under the Presidential Elections (Election Petitions) Rules, neither of them can be lawfully made Respondent in a presidential election petition, as the Petitioner has sought to do.

Further to this, the provision of section 49 of the Electoral Commission Act is unmistakably clear that it is only where a member or employee of the Electoral Commission has acted *mala fide* that he or she may be liable to any civil proceedings for that act. It was thus incumbent on the Petitioner to adduce evidence showing that the 1st Respondent as Chairperson of the 2nd Respondent had acted in bad faith. The only

evidence he has presented in this Petition in this regard is that the 1st Respondent failed or declined to waive for him, the requirement that he obtains the endorsements of registered voters to enable him be considered for nomination as a presidential candidate. The 1st Respondent has pointed out that the need for endorsements is a mandatory legal requirement; over which he has not been conferred any power to waive. It is thus evident that in declining to waive the requirement for the Petitioner to obtain endorsement of registered voters, the 1st Respondent was obliging the clear provision of the law; hence he has acted in good faith in this regard. This is therefore a well - founded decision; for which the Petitioner has no justification for holding him liable at all.

The inclusion of the 4th Respondent as a party to the Petition, also offends the provisions of Article 250 (2) of the Constitution, and section 10 of the Government Proceedings Act, which provide that civil proceedings by or against the Government shall respectively be instituted by or against the Attorney General. In ***Gordon Sentiba & 2 Ors vs The Inspectorate of Government - SCCA No. 6 of 2008***, in which a suit brought against the Inspectorate of Government was challenged for being improper, this Court pronounced itself on the matter as follows: -

> *"There is no provision in the Constitution, the Inspectorate of Government Act, or any other law, which confers corporate status on the respondent; and it would be wrong for this Court to confer such status on the respondent when Parliament in its wisdom did not find it necessary to do so for effective enforcement of the powers of the respondent."*

This clear position of the law applies squarely to the 4th Respondent in the instant Petition before this Court. Accordingly, then, it was unlawful for the Petitioner to add the 4th Respondent as a party in the Petition,

when it is a Government Department without any corporate identity or capacity to sue or be sued. If there was any wrong committed by the purported 4th Respondent herein, then it was the Attorney General who, pursuant to the provision of the law pointed out above, who should have been made a Respondent in the Petition.

On the issue of the 3rd Respondent as a party to this Petition, we should point out that it is common knowledge that the purported 3rd Respondent in this Petition is holder of the office of President of the Republic of Uganda. Article 98 (4) of the Constitution confers immunity on the holder of office of President of the Republic of Uganda, as follows: -

"While holding office, the President shall not be liable to proceedings in any Court."

The immunity conferred on the holder of the office of President of the Republic is only excepted in one circumstance; namely under the application of the provisions of Article 104 of the Constitution, which as we have pointed out above, is that the President may only be made a party to a suit when it is a Petition challenging his or her election as President. Clause (8) of Article 104 of the Constitution provides as follows: -

"(8) For the purpose of this Article, Article 98 (4) of the Constitution shall not apply."

In *Sekikubo & Ors vs Attorney General & Ors - S.C. Constitutional Appeal No. 1 of 2015*, this Court seized the opportunity to pronounce itself on the issue of immunity accorded the President by law. It reviewed a number of authorities on the matter, inclusive of the case of *Nixon v Fiitzgerald - 457 US 731 (1982)*; and stated as follows: -

"According to the above authorities and others cited by counsel, the rationale for the grant to the President of privilege and immunity from Court proceedings while holding office, is to ensure that the exercise of presidential duties and functions are free from hindrance and distraction, considering that the Chief Executive of the government is a job that, aside from requiring all the office holder's time, also demands undivided attention.

'Because of the singular importance of the President's duties, diversion of his energies by concern with private law suits would raise unique risks to the effective functioning of government' (See: Nixon v Fiitzgerald, per Powell J supra)."

The Petition before us is not one challenging the election of the 3rd Respondent in a presidential election; which alone would be permissible as an exception to the provision for immunity accorded the 3rd Respondent as shown herein above. Accordingly, then, it offends the well spelt out constitutional provision on the immunity accorded the 3rd Respondent as holder of the office of President of the Republic of Uganda. The inclusion of the 3rd Respondent as a party in this Petition is unjustified, and therefore wrong.

On the issue that the Petition is frivolous and or vexatious, the law considers an action frivolous or vexatious when it discloses no reasonable cause of action. This is when such action is plainly unreasonable, and clearly devoid of any merit; with no prospect of success at all. Such an action or claim not founded on any solid ground, renders it impossible for the person asserting the claim to prove it; with the unfortunate resultant effect that it only served to waste Court's time. An action is also termed frivolous and or vexatious, and thereby amounting to an abuse of Court process, when such action is presented in a scandalous and outrageous manner. An action fits under that

category when the pleadings are couched in language that is uncouth, repugnant, and repulsive; and does not advance or is devoid of reason, but instead assails the personality of a person or persons.

In the case of *Bernard Miller & 2 Ors vs The Attorney General - 2016/CLE/GEN/1272*, the Supreme Court of the Commonwealth of the Bahamas, cited the Court of Appeal case of the *Attorney General of the Duchy of Lancaster vs London and North Western Railway Co. [1892] 3 Ch. 274*, in which, on the rule governing treatment of frivolous and vexatious pleadings, Lindley L.J. stated at p. 277 that: -

> *"It appears to me that the object of the rule is to stop cases which ought not to be launched - cases which are obviously vexatious, or obviously unsustainable."*

In the Kenyan Court of Appeal cases of *Deox Tibeingana vs Vijay Reddy - Misc. Applica. No. 665 of 2019*, and *Caneland Ltd. & Ors vs Delphis Bank Ltd. - C.A. No. 344 of 1999*, Court held as follows: -

> *"... the employment of judicial process is only regarded generally as an abuse when any party improperly uses the issue of judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice."*

We have made a finding herein above that this Petition discloses no cause of action; and is therefore incompetent, and incurably defective. It should never have been brought before this Court at all. It is one of those actions which no reasonable tribunal would ever entertain. It has only served to waste Court's valuable time.

There is another limb to the issue of frivolity and vexatiousness of this Petition, which is graver that the first limb considered above. In the entire body of his Petition, from the beginning to the end, the Petitioner has done nothing else, but relentlessly rained a stream or torrents of

invectives, mindless abuse and insults, and despicable expressions on each of the parties to the Petition; with the exception of himself. It is quite apparent that the real purpose of the Petition, poorly veiled as a Presidential Election Petition, is nothing else but to afford the Petitioner the use of the Supreme Court, which is the highest Court in the country, as a forum to pour scorn, contempt, disdain and ridicule, on the other parties to the Petition; whom he has unabashedly referred to as being foolish, stupid, incompetent, and a host of other offensive utterances that are not permissible even in a political rally.

He has, most inexplicably, not spared the Justices of this Court; to whom he has most unjustifiably and baselessly attributed all sorts of imaginable wrongs, descriptions, and blame. This Court, as the top Court of the country, would be failing in its duty in the administration of justice if it were not to address and pronounce itself on this outrageous and ignominious act. Such pleadings, of course, most unfortunately detract from the universally sanctity and dignity with which the Court is always regarded. No Court charged with the mandate to render justice to all without fear or favour or ill will, could ever allow any person, whatever such a person's mental state is, to ridicule the Court and willfully drag it to the gutters, as it were, with such abandon.

We would be failing in our duty to the Judiciary of Uganda, to which millions of people have flocked over the years in search of justice, if we were to look the other way, or shy away, thus permitting this grave mischief and abuse of the due process to pass without sanction. We would in the event be guilty of condoning impunity. The Court finds itself left with no option but to cite the Petitioner, as we hereby do, for contempt of Court. He must show cause why he should not be held liable for having acted in contempt of this Court; and should not face the consequential penalty that would ensue from his acts of contempt.

In the result, the Respondents' preliminary points of objection are sustained in their entirety; with the consequential following orders: -

(i) The Petition is hereby struck out with costs to the Respondents.

(ii) The Petitioner shall appear before this Court on the 11th day of November, 2020, at 9.30 a.m. to show cause why he should not be liable to be held for having acted in contempt of Court.

Dated, and signed, at Kampala this 4th day of November, 2020.

Alfonse C. Owiny - Dollo
Chief Justice

Stella Arach - Amoko
Justice of the Supreme Court

Faith Mwondha
Justice of the Supreme Court

Paul Mugamba
Justice of the Supreme Court

Ezekiel Muhanguzi
Justice of the Supreme Court

Percy Tuhaise
Justice of the Supreme Court

Mike Chibita
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

IN THE MATTER OF CONTEMPT OF COURT PROCEEDINGS

CORAM: OWINY - DOLLO, CJ; ARACH - AMOKO, MWONDHA, MUGAMBA, MUHANGUZI, TUHAISE, & CHIBITA, JJSC.

(Arising from Presidential Election Petition No. 01 of 2020 - Ivan Samuel Ssebadduka vs The Chairman Electoral Commission & 3 Ors)

IN RE: IVAN SAMUEL SSEBADDUKA

SENTENCING RULING OF THE COURT

When this Court delivered its ruling on the preliminary objection that had been raised in the petition from which this matter arises, it pointed out that it had taken cognizance of and made a finding that the Petitioner had, in his pleadings and affidavit evidence, as well as written communications he made to Court on divers occasions, conducted himself in a manner that amounted to contempt of Court. This Court therefore cited him as a contemnor. Since the acts constituting the offence of contempt in this case, which Court has taken cognizance of, is manifest from the face of the record, Court is seized with the jurisdiction to deal with it summarily.

However, the Court chose to formally charge the contemnor with the offence of contempt of Court; and thereby afford him the opportunity, pursuant to the time honoured cardinal principle of natural justice, to appear and show cause why Court should not find him guilty and convict him of the offence of contempt of Court; and punish him accordingly. At the contempt hearing, the charges, and particulars of the offence contained in his pleadings and affidavit evidence, as well as his several written utterances filed in Court, which constituted the offence of contempt of Court, were read out and explained to him. These statements were as follows: -

Court: ***CONTEMPT OF COURT CHARGES.***

On the 7th of September, 2020 at the Supreme Court Registry, you Ivan Samuel Ssebadduka, tendered and uttered a document referring to the Hon. the Chief Justice, as:-

"1. The Incompetent Head of the Judiciary

2. The head of the Centre of Injustice

3. Head of the Highest level of Injustice"

On the 9th day of September, 2020 at the Supreme Court Registry you tendered and uttered a document referring to the Hon. the Chief Justice as:-

"1. The Dishonourable Chief Justice.

2. Chief of Injustice.

3. Stupid of you and stupid judges.

4. We shall challenge you word by word if you dare come up with a Stupid Judgment.

5. This is the justification for calling you 'Dishonourable' and if you are clever enough – you should challenge us."

On the 4th of November, 2020 you tendered another document in which you referred to their Lordships, Justices of the Supreme Court as:-

"1. Self-imposed Justices of the Supreme Court

2. Centre of Injustice

3. This is our country and it deserves better than you-incompetent fools.

4. If you find us offensive and our offense is much more grave than what Museveni did in the 'bush' then you are stupid indeed."

On 5th November, 2020 you tendered another document in which you addressed their Lordships as follows:-

1. *Were you drunk to fix the Hearing Dates or you were under the influence of drugs?*
2. *How do you expect us to treat you with honor when you dishonor yourselves?*
3. *It is very unfortunate that we entrust you with the Judiciary because you don't deserve to be Judges*
4. *A Judge must have Judgment but it is very unfortunate that you don't have common sense which is common.*
5. *Common sense is not uncommon as most people think but unfortunately, you don't have even common sense.*
6. *We are going to expose your ignorance to the world and everyone will know that you are Incompetent Fools.*
7. *I will be happy to speak in your face and prove to you that you are Incompetent Fools.*
8. *You cannot even challenge us legally because your Contempt of Court is useless.*
9. *We did not offend you or your so-called Supreme Court because it is not a Court in the first place.*
10. *It is a Council of Fools who deserve to die with immediate effect.*
11. *We don't have any fear for you whatsoever and if you think we fear you then you are mad.*
12. *We reject your so-called Ruling because it is not a Ruling in the first place.*
13. *It is a Bogus Statement to dismiss a Petition not a Ruling.*
14. *How can a Court fail to know that it has Jurisdiction unless it is headed by a fool.*

We are proud to call you Incompetent Fools because that is who you are.

15. We are going to expose you if you dare plan evil again.

16. This is all we have in response to your Bogus Ruling.

(18). May your foolishness increase tenfold because that is what you deserve."

Having been afforded the opportunity to defend himself and possibly purge himself of the grave offence of contempt he was charged with, the contemnor appeared for the contempt proceedings, and astonished Court further when he seized the benefit of the audience Court had given him, to instead boastfully reveal that all that he has done has been a deliberate machination. From a prepared statement he read out in Court, he was vehemently unabashed, and entirely unrepentant. Instead, he reiterated and perpetuated the very scurrilous utterances against the Justices of this Court, and the Court itself, for which he had already been cited for contempt. His response to the charges and expressions were wholly devoid of any show, or indication, of remorse.

He disclosed that his purpose in petitioning the Supreme Court had been to avail him the opportunity to subject the Court, and the other parties to the Petition, to abuse and contempt. He made it abundantly clear that he had deliberately and carefully stage managed his conduct under inquiry to express his total disgust and disregard for the authority of this Court; which he declared he has no respect for. He disclosed that he had filed the so-called Presidential Election Petition knowing very well that it had no merit; and expected that it would certainly be thrown out by Court. He thereby callously abused the opportunity Court had afforded him to redeem himself through showing cause why he should not be punished for contempt.

So far as we can gather, such an affront to a Court of law, necessitating Court to pronounce itself on the act of contempt committed against itself is without precedent. The contemnor has, in his pleadings, affidavit evidence, and other written communications, relentlessly, and with utter abandon, poured abuse, scorn, and ridicule, on the persons of the Justices of this Court, and the Court itself. He has thus committed contempt in the face of the Court. Despite the indignation with which the Justices of this Court have had to bear this grave affront, it is nonetheless pertinent that from the very outset, we warn ourselves on the position of the law regarding the issue of contempt of Court.

In ***Attorney General vs Times Newspapers Ltd & Anor [1991] 2 All ER 398***, the issue for Court's consideration was that a Newspaper publisher had knowingly published information regarding a matter before Court; but which the publisher was not a party to. This publication had the effect of impeding or interfering with the due administration of justice in that case. The Court made a finding that the publisher was liable in contempt of Court. In his judgment, Lord Acner, who traced the history of the law of contempt of Court, stated as follows: -

> *"The term contempt of Court is of ancient origin having been used in England certainly since the thirteenth century and probably earlier. The term has been criticized as inaccurate and misleading, suggesting in some contexts that it exists to protect the dignity of judges. Over 100 years ago, Bowen LJ explained in* ***Re Johnson (1888) 20 QBD 68*** *at 74:*
>
> > *'The law has armed the High Court of Justice with the power and imposed on it the duty of preventing ... any attempt to interfere with the administration of justice. It is on that ground, and not on any exaggerated notion of the dignity of individuals that insults to judges are not allowed. It is on the same ground that insults to witnesses or to jurymen is not allowed.'*

Nearly 70 years ago, a similar comment was made by the Lord President (Clyde) in ***Johnson v Grant 1923 SC 789*** *at 790. He said:*

> *'The phrase "contempt of Court" does not in the least describe the true nature of the class of offence with which we are here concerned ... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice ... It is not the dignity of the Court which is offended – a petty and misleading view of the issues involved – it is the fundamental supremacy of the law which is challenged.'*

Approaching 50 years later in ***Morris v Crown Office [1970] 1 All ER 1079*** *at 1087,* ***[1970] 2 QB 114*** *at 129, Salmon LJ observed:*

> *'The sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented ...'*

Shortly thereafter, Lord Cross of Chelsea in ***A-G v Times Newspapers Ltd [1973] 3 All ER 54*** *at 83,* ***[1974] AC 273*** *at 322 commented:*

> *'"Contempt of Court" means an interference with the administration of justice and it is unfortunate that the offence should be continued to be known by a name which suggests to the modern mind that its essence is a supposed affront to the dignity of the Court. Nowadays when sympathy is readily accorded to anyone who defies constituted authority the very name of the offence predisposes many people in favour of the alleged offender. Yet the due administration of justice is something which all citizens, whether on the left or the right or in the centre, should be anxious to safeguard.'*

In the same year, the Report of the Committee on Contempt of Court (***Comnd 5794***) (the ***Phillimore Committee***) presented to Parliament in December 1974 stated in its very first paragraph:

> *'The law relating to contempt of Court has developed over the centuries as a means whereby the Courts may act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice either in relation to a particular case or generally.'*

More recently, Lord Diplock in ***A-G v Leveller Magazine Ltd [1979] 1 All ER 745****, at 749,* ***[1979] AC 440****, at 449, thus summarized the position:*

> *'... although criminal contempts of Courts may take a variety of forms, they all share a common characteristic: they involve an interference with the due administration of justice, either in a particular case or more generally as a continuing process. It is justice itself which is flouted by contempt of Court ...'*

In ***Morris & Ors. vs The Home Office [1970] 1 All E.R. 1079***, at 1087, Salmon L.J. stated as follows: -

> *"The archaic description of these proceedings as 'contempt of Court' is in my view unfortunate and misleading. It suggests that they are intended to buttress the dignity of the judges and to protect them from insult. Nothing could be further from the truth. No such protection is needed. The sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented:* ***Skipworth's Case, L.R. 9 Q.B. 230*** *and* ***R vs Davies, [1906] 1 K.B. 32.*** *This power to commit for what is inappropriately called 'contempt of Court' is sui generis and has from time immemorial reposed in the judge for the protection of the public." (**emphasis added**).*

In ***Jenison vs Baker [1972] 1 All E.R. 997***, Salmon LJ stated at p. 1001, as follows: -

> *"'Contempt of Court' is an unfortunate and misleading phrase. It suggests that it exists to protect the dignity of judges. Nothing could be further from the truth. The power exists to ensure that justice is done. And, solely to this end, it prohibits acts and words tending to obstruct the administration of justice. The public at large, no less than the individual litigant, have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered, the rights, and the liberty, of the individual will perish.*
>
> *Contempt of Court may take many forms. It may consist of what is somewhat archaically called contempt in the face of the Court, e.g. by disrupting the proceedings of a Court in session, or by improperly refusing to answer questions when giving evidence. It may in a criminal case consist of prejudicing a fair trial by publishing material likely to influence a jury. It may, as in the present case, consist of refusing to obey an order of the Court. These are only a few of the many examples that could be given of contempt. Contempt have sometimes been classified as criminal and civil contempt. I think that at any rate this is an unhelpful and almost meaningless classification."*

It is noteworthy that this principle of law is securely embedded in the 1995 Constitution. Article 126 (1) thereof provides as follows: -

> *"(1) Judicial power is derived from the people and shall be exercised by the Courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people."*

Article 126 (1) of the Constitution, cited above, derives from the provisions of Article 1 of the Constitution on sovereignty of the people;

which recognises that all power vests in the people, and that all power and authority of the organs of government derives from the Constitution, which in turn derives its authority from the people. Therefore, any affront on judges, who are indeed the handmaidens of justice, is in fact an affront on the people in whom judicial power vests; and for whom the judges render justice through the exercise of due process. Any insult, as this one is, directed at the Justices of this Court, or at any judicial officer for that matter, amounts to contempt.

While the purpose of the law of contempt seems to be for the protection of the dignity, integrity, and authority of the Courts of judicature, the law is in reality in place for the protection of the public from any act calculated to obstruct or interfere with the due course of justice, or the lawful process of the Courts. The judges and Courts are understandably in the fore in this regard, hence the expression "contempt of Court", because the conduct of judicial process is conferred upon them by the Constitution; under the authority, and in the name, of the people. In the result, the law of contempt of Court is indeed for the protection of the public. Authorities abound in support of this position of the law. In ***Robert Austin Mullery vs R. [1957] E.A. 138***, the Court of Appeal in its judgment read by Sir Newnham Worley P., stated at p. 142 as follows: -

> *"Scandalous attacks upon judges are punished ... upon the principle that they are, as against the public, not the judge, an obstruction to public justice; and a libel on a judge, in order to constitute a contempt of Court, must have been calculated to cause such an obstruction. Temperate criticism in good faith is immune. <u>The punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual judges of the Court from a repetition of the attack, but from protecting the public</u>, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the*

*Court, from the mischief they will incur if the authority of the tribunal is undermined or impaired" (**Halsbury's Laws of England (3rd Edition) Vol. 8, s. 9**).*

*... in the case reported as **Mr. Lechmere Charlton's Case, 2 MY. & CR. 316; 40 E.R. 411** at p. 661, Lord Chancellor Cottenham said in the course of his judgment,*

> *"Every insult offered to a judge in the exercise of the duties of his office is a contempt".*

*... in that case, the judgment was ... ... in fact based upon a finding that the insulting writing went further and included a plain and direct threat, the object of which was to induce a judicial officer to depart from the course of his judicial duty and to adopt a course which he would not otherwise pursue." (**emphasis added**).*

We find the guidance spelt out in ***R. v. Metropolitan Police Commissioner, Ex parte Blackburn (No. 2). [1968] 2 All ER 319***, on how Court should handle an allegation of contempt of Court quite apt. Therein, at 320, Lord Denning M.R. made the following very instructive statements which we feel we should quote *in extenso*; namely that: -

"This is the first case, so far as I know, where this Court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us, but which we will most sparingly exercise: more particularly as we ourselves have an interest in the matter. Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the Press or

over the broadcast, to make fair comment, even outspoken comment, on matters of public interest.

Those who comment can deal faithfully with all that is done in a Court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication. Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."

Salmon LJ said, at 320, that: -

"It is the inalienable right of everyone to comment fairly on any matter of public importance. This right is one of the pillars of individual liberty - freedom of speech, which our Courts have always unfailingly upheld. It follows that no criticism of a judgment, however vigorous, can amount to contempt of Court, provided it keeps within the limit of reasonable courtesy and good faith. The criticism here complained of, however rumbustious, however wide of the mark, whether expressed in good taste or bad taste, seems to me to be well within those limits."

Edmund Davies L.J., for his part stated, at 321, that: -

"The right to fair criticism is part of the birthright of all subjects of Her Majesty. Though it has its boundaries, that right covers a wide expanse, and its curtailment must be jealously guarded against. It applies to the judgment of the Courts as to all other topics of public

importance. Doubtless, it is desirable that critics should, first, be accurate and, secondly be fair, and that they should particularly remember and be alive to that desirability if those whom they would attack have, in the ordinary course, no means of defending themselves. In ***R. v. Gray [1900] 2 Q.B. 36****, at p. 40,* ***[1900-03] All E.R. Rep. 59****, at p. 62, Lord Russel of Killowen C.J., said:*

> *'Judges and Courts are alike open to criticism, and if reasonable arguments or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court.'"*

In the case of ***Morris & Ors. vs The Home Office*** (supra), Salmon L.J. stated at p. 1086 as follows: -

> *"Everyone has the right publicly to protest against anything which displeases him and publicly to proclaim his views, whatever they may be. It does not matter whether there is any reasonable basis for his protest or whether his views are sensible or silly. He can say or write or indeed sing what he likes when he likes and where he likes, providing that in doing so he does not infringe the rights of others. Every member of the public has an inalienable right that our Courts shall be left free to administer justice without obstruction or interference from whatever quarter it may come. Take away that right and the freedom of speech together with all the other freedoms would wither and die, for in the long run it is the Courts of justice which are the last bastion of individual liberty."*

In exercising jurisdiction over this matter, we applaud the priceless words of wisdom quoted above; and embrace it as good law, which is applicable to our circumstance. We, accordingly, caution ourselves from the very outset, and keep in mind that it is not our injured personal

feelings or interests as judges, which the law of contempt of Court serves to protect. We also take cognizance of the constitutionally embedded right to enjoy freedom of speech; which it is our duty as a Court of law to protect and uphold. We must therefore ensure that the application of the law on contempt of Court must not be done in breach of the constitutionally protected rights and freedoms of expression.

It is amply clear that in the instant case before us, the contemnor's grossly diabolical purpose was to impede the course of justice; and thereby impair public confidence in and respect for the Supreme Court in its administration of justice. Contempt of Court is grave; as it targets the very essence of the rule of law. It therefore naturally attracts sanctions; which must be commensurate with the gravity of the act of contempt committed. Section 107 of the Penal Code Act provides for the offence arising from an array of acts, which interfere with or obstruct judicial process; for which we could have had the contemnor prosecuted. We have however chosen not to do so for two reasons.

First, is that the provision under section 107 (3) of the Act that the acts referred to therein are offences, is not exclusive to the Act; *'but in addition and not in derogation of the power of the High Court to punish for contempt of Court.'* While the provision of the Penal Code Act above recognizes the powers of the High Court to punish for contempt, we should point out that the Supreme Court also, in the exceptional circumstance of a Presidential Election Petition, is a Court of first instance; albeit a final one too. In this regard, it takes direct evidence. Accordingly, the power conferred on the High Court to punish for contempt should, *mutatis mutandis*, be recognised as one enjoyed by the Supreme Court, or any Court of law. The power to levy punishment for contempt of Court is derived from the Common Law. Second, is that Article 28 (12) of the 1995 Constitution of Uganda provides that: -

"(12) Except for contempt of Court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law."

The Constitution therefore recognizes the gravity of the criminal, as well as civil, offence of contempt of Court; for which it singles the offence out as an exception to the constitutional provision on prohibition of trial and conviction of anyone for a criminal offence which is not expressly defined by law, and the penalty therefor prescribed. It is, thus, proper that conduct amounting to contempt of Court that is committed in the face of Court should be handled expeditiously, and in a timely manner; which is something not easily achievable through the ordinary criminal trial process.

With regard to civil contempt of Court, Lord Denning MR, stated in ***Comets Products UK Ltd vs Hawkex Plastics Ltd [1971] 1 All ER 114***1 at 1143-1144, [1971] 2 QB 67 at 73-74, as follows: -

"Although this is a civil contempt, it partakes of the nature of a criminal charge. The defendant is liable to be punished for it. He may be sent to prison. The rules as to criminal charges have always been applied to such a proceeding. ... it must be proved with the same degree of satisfaction as in a criminal charge."

In ***A-G v Leveller Magazine Ltd [1979] 1 All ER 745***, at 749, ***[1979] AC 440,*** at 449, Lord Diplock stated as follows: -

"... although criminal contempt of Courts may take a variety of forms, they all share a common characteristic: they involve an interference with the due administration of justice, either in a particular case or more generally as a continuing process. It is justice itself which is flouted by contempt of Court, not the individual Court or judge or judge who is attempting to administer it."

In the ***Morris & Ors. vs The Home Office*** case (supra), a group of young University students had invaded the gallery of the Court, shouting slogans, scattering pamphlets, singing songs; thus, breaking up the hearing. The trial resumed only when they were removed. They were convicted of the offence of contempt of Court; and were sentenced to various terms of imprisonment. On appeal, Lord Denning M.R. stated at p. 1081 as follows: -

> *"In sentencing them in this way, the judge was exercising a jurisdiction which goes back to centuries. It was well described over 200 years ago by Wilmot C.J. in an opinion which he prepared but never delivered. He said:*
>
> > *'... it is a necessary incident to every Court of Justice ... to fine and imprison for contempt to the Court, acted in the face of it ...'*
>
> *That is* ***R v Almon (1765) Wilm 243****, at 254. The phrase 'contempt in the face of the Court' has a quaint old-fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these Courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power - a power instantly to imprison a person without trial - but it is a necessary power. So necessary indeed that until recently the judges exercised it without any appeal. There were previously no safeguards against a judge exercising his jurisdiction wrongly or unwisely. This was remedied in 1960. An appeal now lies to this Court; and, in a suitable case, from this Court to the House of Lords. With this safeguard, this jurisdiction can and should be maintained. Eleven of the appellants have exercised this right pf appeal; and we have put all other cases aside to hear it. For we are*

here concerned with their liberty; and our law puts the liberty of the subject before all else."

Furthermore, in upholding the sentence levied on the appellant students as not excessive, Lord Denning M.R. stated as follows: -

"Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the root of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So, let them support the law and not strike it down."

With regard to jurisdiction over the offence of contempt of Court, in advising against subjecting it to the ordinary criminal process, in preference to a prompt trial, Davies L.J., at p. 1084, quoted a passage from the judgment of Blackburn J. in ***Skipworth's Case (1873) L.R. 9 QB 230,*** at p. 233, and ***28 LT 227***, stating as follows: -

"... if we are to wait for that to be done by ordinary criminal process and an ordinary trial, there might be great mischief done, because that process is slow, and before that process could come into train the mischief would be done by the due administration of justice being hampered and thwarted."

Davies L.J. also quoted a passage from the judgment of Wills J., wherein the learned judge had referred to the famous judgment of Wilmot C.J. in ***In R v Almon (1765) Wilm 243***, as follows: -

"... a considerable part of the undelivered judgment of Wilmot C.J. to which we have referred is devoted to shewing that the real offence is the wrong done to the public by weakening the authority and influence of a tribunal which exists for their good alone. He adds that such conduct is pre-eminently the proper subject of summary jurisdiction. Attacks upon the judges, he says, 'excite in the minds of the people a general dissatisfaction with all judicial determinations ... and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction of justice, and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the judges as private individuals, but because they are the channels by which the King's justice is conveyed to the people' ... The public mischief is identical, and in each instance the undoubted possible recourse to indictment or possible criminal information is too dilatory and too inconvenient to afford any satisfactory remedy."

It is incumbent on all persons to accord Courts of law due deference; and thereby enable the Courts execute the due process, which is the administration of justice without any fetter, obstruction, or hindrance, whatsoever. Having found that the contemnor before us has committed the offence of contempt of Court, for which he has shown no sign of contrition, we must in the exercise of our sentencing discretion, impose on him such sentence as is commensurate with the gravity of the offence he has mindlessly committed. This will serve as a deterrence to all and any person who may contemplate committing such an offence. The justification for levying a penalty is the duty of Court to protect the sanctity and integrity of the due process; which is the administration of justice, upon which law and order is fulcrumed.

In the result, this Court sentences the contemnor herein to serve three years in prison.

Dated, and signed, at Kampala this 25th day of **November, 2020.**

Alfonse C. Owiny - Dollo

Chief Justice

Stella Arach - Amoko

Justice of the Supreme Court

Faith Mwondha

Justice of the Supreme Court

Paul Mugamba

Justice of the Supreme Court

Ezekiel Muhanguzi

Justice of the Supreme Court

Percy Tuhaise

Justice of the Supreme Court

Mike Chibita

Justice of the Supreme Court