

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
*(Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi & Gashirabake, JJCC)*

Constitutional Petition No. 48 of 2017

**BETWEEN**

Muslim Centre for Justice and Law=====Petitioner No. 1

Nakasi Diana (suing through a next friend Nabalamba Milly)====Petitioner No. 2

**AND**

Attorney General=====Respondent

**JUDGMENT OF FREDRICK EGONDA-NTENDE, JCC**

**Introduction**

- [1] Petitioner No.1 is a Non-Governmental Organisation that envisions a Ugandan society which upholds universal faith-based principles in ensuring equitable access to justice and provides legal aid to the marginalised communities. Petitioner No.2 is a minor suing through her next friend Nabalamba Milly. The petition is supported by the affidavits of Senganda Jaffer, the President of Petitioner No.1 and Nabalamba Milly.
- [2] The Petitioners contended that Section 2(2) and 42 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 and Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations, S.I 214-1 are inconsistent with and contravene articles 20(2), 22(1), 24, 43 and 45 of the Constitution.
- [3] The Petitioners contended that Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations S.I 214-1 is inconsistent with and contravenes article 79 (2) of the Constitution and also contended that section 34 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 is inconsistent with and contravenes article 26 (1) of the Constitution.

- [4] The Petitioners further contended that the actions of the Minister of Finance Planning and Economic Development of prescribing the maximum liability instead of minimum liability recoverable by parties from an insurer is inconsistent with and in contravention of article 79 of the Constitution.
- [5] Petitioner No. 2, a minor, represented by her next friend, was the victim of an accident by an unidentified vehicle that ran her over, inflicting severe injuries to her lower limbs in September 2010. Both limbs were subsequently amputated and she has had to undergo several other surgeries whose cost is in excess of shs.20,000,000.00. She is aggrieved that the law in place in relation to victims of an unidentified vehicles or uninsured vehicles is currently suspended and not in force. Secondly, even if it were in force, it is inadequate to afford her sufficient compensation in violation of her right to access justice.
- [6] The right of access to justice is one of those not expressly provided for in Chapter 4 of the Constitution but is saved and available under article 45 of the Constitution.
- [7] The Petitioners sought the following declarations:
- i. That Section 42 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 and Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations S.I 214-1 are inconsistent with and in contravention of articles 20(2), 22(1), 24, 43 and 45 which provides for the right to access justice and adequate remedy and thus null and void.
  - ii. That regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations S.I 214-1 is inconsistent with and in contravention of article 79(2) of the Constitution and thus null and void.
  - iii. That section 34 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 is inconsistent with and in contravention of article 26(1) of the Constitution and thus null and void.
  - iv. That the act of the Minister of Finance Planning and Economic Development prescribing the maximum liability instead of the minimum liability recoverable by third parties from the insurer is inconsistent and in contravention of article 79 of the Constitution.

[8] The petitioners sought the following remedies against the respondent:

- i. That the Honourable Court be pleased to grant an order of redress against the Respondent for compensation of the loss incurred by the 2<sup>nd</sup> Petitioner.
- ii. That the Honourable Court be pleased to grant consequential orders necessary to give effect to the declarations in (i) and (ii).

[9] The respondent opposed the petition. The respondent filed an answer to the petition supported by the Affidavits of Ms. Emelda Adongo Senior State Attorney and Mrs. Evelyn Nkalubo Muwemba Director of Legal and Board Secretary at the Insurance Regulatory Authority of Uganda.

[10] The respondent in the answer to the petition contended that all the impugned provisions of law and or actions in the petition were not inconsistent with and or in contravention with article 20(2), 22(1), 24, 43, 45, 70, 79 (2) of the Constitution. He disputed the fact that the impugned law was enacted in 1989. He further contended that the petition is misconceived, frivolous and vexatious and raises no issue or question for interpretation by this Honourable Court.

### **Submissions of Counsel**

[11] At the hearing of the petition, the petitioners were represented by Mr. Luyimbazi Nalukoda and Mr. Abubaker Masudi. The Respondent was represented by Mr. Richard Adrole Principal State Attorney and Mr. Samuel Tusubira State Attorney.

[12] Counsel for the petitioners submitted that section 2(2) of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 which exempts motor vehicles owned by the government from compulsory third party insurance is inconsistent with article 21(2) of the Constitution since the same is discriminatory. He referred this Court to Kampala Capital City Authority v Kabandize and 10 others Supreme Court Civil Appeal No. 13 of 2014 where the Supreme Court cited with approval Osotraco Ltd v Attorney General

(2003) 2 EA 654 where the court granted an order of eviction against the government on the ground that the law applied uniformly.

- [13] Counsel for the petitioners contended that the practicability of section 2(2) is to the effect that a third party who is injured by a private vehicle gets compensation under the insurance scheme whereas the one injured by a government vehicle is denied compensation implying the law discriminates payers and beneficiaries of the policy.
- [14] Counsel for the petitioners argued that the suspension of the Nominal Defendant Council by Section 42 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 contravenes the right of access to justice and adequate remedy. It is therefore inconsistent with and in contravention of article 45 of the Constitution since the aggrieved party cannot seek redress. Counsel referred us to Anita Kuswaha Vs Pushap Sudan Transfer Petition (C) No. 1343 of 2008 consolidated with 12 others where the Supreme Court of India laid down the four facets of the right to access to Justice which among others include set up of adjudicatory mechanism where a victim can seek a remedy and submitted that Parliament thought it wise to set up Nominal Defendant Council while enacting the Motor Vehicle Insurance (Third Party Risks) Act, Cap 214 in 1989 as a mechanism for compensating persons injured by uninsured and unidentified vehicles commonly known as hit and run accidents. However, the same was suspended and victims injured by uninsured and unidentified vehicles like the 2<sup>nd</sup> Petitioner were left with no remedy and the government has not set up any other adjudication mechanisms to help such victims.
- [15] Counsel for the petitioners also submitted that the right of access to justice includes the right to an effective remedy and referred us to the provisions in the Universal Declaration of Human Rights, 1948 and Article 2(3) (a) and (b) of the International Convention on Civil and Political Rights, 1966 which places an obligation on each state party to ensure that any person whose rights or freedoms are violated gets an adequate remedy notwithstanding the official capacity of the person who has violated the rights and freedoms.



- [16] Counsel for the Petitioners argued that Section 34 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 which provides for UGX 150,000 (One hundred and fifty thousand shillings) as compensation to the victim and costs incidental to the Judgment as a liability of the nominal defendant council infringes on the right to adequate remedy and right to property. Counsel for the Petitioners relied on the case of Phillip Karugaba V the Attorney General SCCA No. 1 of 2004 for the proposition that the money a decree holder is entitled to is his or her property.
- [17] Counsel for the petitioners also argued that the premium rates provided for under Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) S.I No. 214-1 is low as compared to the current economy of Uganda and nature of injuries sustained by the victims involved in a hit and run accidents. He contended that setting a limitation on an award results into inadequate compensation which is inhuman and degrading to the accident victims whose limbs are amputated like the 2<sup>nd</sup> Petitioner hence in contravention with Articles 20(2), 22(1), 24, 43 and 45 of the Constitution.
- [18] Counsel for the Petitioners prayed to this Court to declare that the impugned provisions are unconstitutional for being inconsistent with articles 20 (2), 22(1), 24, 26 (1), 43, 45 and 79 (2) of the Constitution and an award of general damages of UGX 1,000,000,000 (One billion) as compensation of the injuries sustained by the Petitioner no. 2 as result of the being knocked by an unidentified motor vehicle.
- [19] In reply, counsel for the respondent submitted that the petition is frivolous, misconceived and an abuse of Court process and raises no question for constitutional interpretation. It was the submission of Counsel for the respondent that the impugned sections of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 and Regulation of the Motor Vehicle Insurance (Third Party Risks) Act Cap S.I. No. 214-1 are consistent with the provisions of the Constitution.
- [20] Counsel for the Respondent argued that the government motor vehicles are not exempted or indemnified from liability and or paying compensation to the

aggrieved party and it was his submission that the legislature exempted government vehicles from mandatory third-party insurance risks policy because the government has financial ability to compensate injured parties. Counsel for the respondent contended that there is no preferential treatment given to the government because the effect of what the policy is set out to achieve is visited on the government in event that a government vehicle gets involved in an accident.

- [21] Counsel for the Respondent further submitted that the case of Kampala Capital City Authority V Kabandize and 10 others Supreme Court Civil Appeal No. 13 of 2014 and Osotraco ltd V Attorney General (2003) 2 EA 654 dealt with different treatment of government therefore distinguishable and not applicable to the current circumstances where the government is not exempted from liability.
- [22] Concerning the suspension of the operation of Sections 15 and 14 of Motor Vehicle Insurance (Third Party Risks) Act Cap 214 by the enactment of the impugned Section 42, Counsel for the respondent submitted that the operation of Nominal Defendant Council was hit by the implementation challenge of depletion of funds in National Insurance Corporation as demonstrated in the Hansard dated 24<sup>th</sup> April 1991 and 8<sup>th</sup> May 1991. He contended that the suspension did not take away the rights of the parties to seek alternative redress. The petitioner no.1 can maintain an action against the government without relying on the provisions in the impugned section.
- [23] Counsel for the respondent contended that the liability by Nominal Defendant Council provided for under the impugned Section 34 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 was meant to provide some form of compensation to the victims. Counsel for Respondent stated that the act did not extinguish the right to bring a claim against the tortfeasor. Therefore, the provision is not contrary to article 26 of the Constitution. Counsel cited the case of Law Society of Kenya V Attorney General Constitutional Appeal No. 148 of 2014 for the proposition that nothing stops Court from coming up with an adequate remedy.

- [24] Counsel for the Respondent further submitted that the minister exercised his discretion after consulting with the stakeholders to set the maximum premium payable instead of the minimum not to encourage insurers to settle claims to the lowest and make premiums exorbitant and unaffordable which would lead to evading the same.
- [25] Counsel for the Respondent concluded by submitting that Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) S.I 214-1 is not inconsistent with Articles 20(2), 22(1), 24, 43 and 45 of the Constitution. Counsel prayed that this court dismisses the petition with costs.

### **Analysis**

- [26] In their written submissions the petitioners' counsel proposed 6 issues for determination. These are: (1) Whether the Petition raises issues for constitutional interpretation. (2) Whether section 2 (2) of the Motor Vehicle Insurance (Third Party Risks) Act, Chapter 214, is inconsistent with and contravenes article 21 (1) and 43 (1) of the Constitution. (3) Whether section 42 of the Motor Vehicle Insurance (Third Party Risks) Act, is inconsistent with and in contravention of article 45 of the Constitution. (4) If issue no. 3 is answered in the affirmative, whether section 34 of the Motor Vehicle Insurance (Third Party Risks) Act, is inconsistent and in contravention of article 26 of the Constitution. (5) Whether regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations is inconsistent with and contravenes articles 20 (2), 22 (1), 24 and 45 of the Constitution. (6) Whether there are any remedies available to the petitioners.
- [27] I propose to deal with the said issues as framed.
- [28] However, I will start by setting out the available guidelines in constitutional interpretation which were summarised by Mwendha, JSC, in David Tusingwire v Attorney General, [2017] UGSC 11, as follows:
- (i) The Constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent with or in contravention of the



Constitution is null and void to the extent of its inconsistency (See Article 2 (2) of the Constitution. Also, See **Presidential Election Petition No. 2 of 2006 (SC) Rtd Dr. Col. Kiiza Besigye v. Y. K. Museveni**

- (ii) In determining the constitutionality of a legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining the constitutionality of either effect animated by the object of the legislation intends to achieve. **See Attorney General v. Silvatori Abuki Constitutional Appeal No. 1988 (SC)**
- (iii) The entire Constitution has to be read together as an integral whole with no particular provision destroying the other but each sustaining the other. This is the rule of harmony, the rule of completeness and exhaustiveness (See **P. K. Ssemwogere and Another v. Attorney General Constitution Appeal No I of 2002 (SC) and the Attorney General of Tanzania v. Rev Christopher Mtikila (2010) EA 13.**
- (iv) 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 social economic and political cultural values so as to extend the benefit of the same to the maximum possible. See **Okello Okello John Livingstone and 6 others v. The Attorney General and Another Constitutional Petition No I of 2005, South Dakota v. South Carolina 192, USA 268. 1940.**
- (v) Where words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural meaning. The language used must be construed in its natural and ordinary sense.
- (vi) Where the language of the Constitution or a statute sought to be interpreted is imprecise or ambiguous a liberal, general or purposeful interpretation should be given to it. (See **Attorney General v Major David Tinyefunza Constitutional Appeal No. I of 1997 (SC)**
- (vii) The history of the country and the legislative history of the Constitution is also relevant and useful guide to Constitutional Interpretation. See (**Okello John**



**Livingstone and 6 others v. Attorney General and Another (Supra).**

- (viii) The National objectives and Directive principles of state policy are also a guide in the interpretation of the Constitution. Article 8A of the Constitution is instructive for applicability of the objectives.’

[29] I shall apply these principles to the interpretation of the Constitution in the instant case.

**Issue No.1: Whether the petition raises matters of constitutional interpretation**

[30] The first issue for determination is whether the petition raises matters of Constitutional interpretation. According to Article 137 of the Constitution, a person who is aggrieved by an act or omission done under the authority of any may petition the Constitutional Court for a declaration to that effect and redress. Article 137 (3) of the Constitution also grants this Court the jurisdiction to grant a declaration that a law, act or omission is inconsistent with or contravenes a provision of the Constitution.

[31] For this Court to have jurisdiction, the petition must show on its face that interpretation of a provision of the Constitution is required in relation to an impugned law, act or omission of any person or authority. It is not enough to allege that a constitutional provision has been violated. See Ismail Serugo v Kampala City Council & Another [1999] UGSC 23. The petitioners contend that section 2(2), 42 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 and Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations S.I 214-1 are inconsistent with and contravene Articles 20(2), 22(1), 24, 43 and 45 of the Constitution, Section 34 of the Motor Vehicle Insurance (Third Party Risks) Act Cap 214 is inconsistent with and contravenes Article 26(1) of the Constitution and Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations S.I 214-1 is inconsistent with and contravenes Article 79 (2) of the Constitution. Clearly this petition raises questions for constitutional interpretation.

[32] Issue 1 is answered in the affirmative.

**Issue No. 2: Whether section 2 (2) of the Motor Vehicle Insurance (Third Party Risks) Act, Chapter 214, is inconsistent with and contravenes article 21 (1) and 43 (1) of the Constitution.**

[33] I will begin by bringing in view the impugned provisions. Section 2 of the Motor Vehicle Insurance (Third Party Risks) Act, states,

**‘2. Vehicles to be insured against third party risks.**

(1). It shall not be lawful for any person to use, or to cause or to permit any other person to use, a vehicle on a road unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance in respect of third party risks that complies with the requirements of this Act.

***(2) Subsection (1) shall not apply to a vehicle owned by the Government of Uganda.***

(3). Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

(4). A person convicted under subsection (3) shall, unless the court for special reasons thinks fit to order otherwise, and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from holding or obtaining a driving permit for twelve months from the date of conviction, in addition to the penalties that may be imposed under subsection (3).’

[34] I will also bring in view the provisions of article 21 of the Constitution in full.

**21. Equality and freedom from discrimination**

(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

(3) For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

(4) Nothing in this article shall prevent Parliament from enacting laws that are necessary for—

(a) implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society; or

(b) making such provision as is required or authorised to be made under this Constitution; or

(c) providing for any matter acceptable and demonstrably justified in a free and democratic society.

(5) Nothing shall be taken to be inconsistent with this article which is allowed to be done under any provision of this Constitution.

[35] The gist of the attack under this head is that the provisions that exempt government vehicles from the application of section 2 (1) of the Motor Vehicles (Third Party Risks) Act has the effect of allowing victims of third party risks caused by vehicles owned by government not to have equal benefit of that the victims of third party risks caused by non-government vehicles have as a result of insurance for third party risks that is taken out compulsorily by non-government vehicles. While all vehicles are not permitted to be driven on roads while not insured against third party risks government vehicles are exempted from the requirement for taking out insurance against third party risks. It is contended for the petitioners that this discriminates between the

victims who can benefit from insurance against third party risks while the victims in respects harm inflicted by government vehicles are not able to benefit from the insurance against third party risks.

- [36] It is thus contended that the two categories of victims or affected persons do not have equal protection of the law as required under article 21 (1) of the Constitution.
- [37] It is true that government owned vehicles are treated differently from non-government owned vehicles with regard to taking out insurance for third party risks. However, government is not exempted from liability for third party risks and must meet them directly from its coffers. The victims of third party risks caused by government vehicles are able to recover from the government directly. The victims of third party risks caused by non-government vehicles are also entitled to proceed against the owners or drivers of the vehicles in question and may receive a limited benefit from the third party insurance policies taken out by the owners of those vehicles as provided by law.
- [38] The law in question does not affect the liability of perpetrators of third party risks to the victims of those risks. Liability remains the same and the tortfeasors are liable in a like manner. The only difference is that the non-government tortfeasor is enjoined to take out insurance against third party risks partly to ameliorate the risk of failure of that owner from meeting the liability. On the other hand, as was argued for the respondent, the government is capable to meeting its claims and can thus be exempt from those provisions without hurting the chances of recovery by victims in event of the third party risks liability arises.
- [39] The non-government owners of vehicles on the road could be individuals, companies or statutory organisations. Such individuals or organisations may become insolvent, or expire unlike government which is presumed perpetual. If such individuals or organisations became insolvent they would not probably be able to meet liability of several kinds including that arising from third party risks. The intention of the law in providing for compulsory taking out of insurance is to guard against some such risks which ordinarily do not arise



with government. The victims to third party risks arising from use of government vehicles are not worse off by the exemption provided to the taking out insurance against third party risks.

[40] It is useful to note that with regard to the recovery of third party claims the law requires all claimants to proceed against the owner, driver or the Council and not against the insurance company. All claimants are treated similarly with regard to recovery of their claims.

[41] See section 39 of the Motor Vehicle (Third Party Risks) Act which states,

**‘39. Third party to sue the insured, etc. and not the insurer.**

In all third party claims in respect of damages to property of, the death of or bodily injury, to any person, arising from any accident, the third party shall proceed against the owner, or the driver or the council, as the case may be, and not the insurer.

[42] I would find that section 2 (2) of the Motor Vehicles (Third Party Risks) Act is not inconsistent with nor does it contravene article 21 (1) and article 43 (1) of the Constitution.

**Issue No. 3: Whether section 42 of the Motor Vehicle Insurance (Third Party Risks) Act, is inconsistent with and in contravention of article 45 of the Constitution**

[43] I will start by setting out the impugned provisions under this head. Section 42 provides,

**‘42. Suspension of Part III.**

Sections 15 to 36 are suspended and, accordingly, the definitions of “board” and “council” and any other provisions of the Act applicable to the suspended provisions are to the extent of that application also suspended.’

[44] I will also set out article 45 of the Constitution.

**‘45. Human rights and freedoms additional to other rights**

The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.’

- [45] The contention of the petitioners under this head is that the petitioners have a right of access to justice which is not expressly set out in the bill of rights but was saved by the provisions of article 45 which recognises the existence of rights not enumerated in the bill of rights in the Constitution. The petitioners further contend that section 42 of the Motor Vehicle (Third Party Risks) Act which suspends the operation of the part 3 of the Act, which provides for the setting and operation of the Nominal Defendant Council, the body which would compensate victims of unidentified vehicles that caused third party damage, contravene their right to access to justice.
- [46] The provisions in question which are suspended have never come into effect, a deliberate decision of Parliament, in the law that gave birth to the said provisions. There might be policy or practical reasons that actuated Parliament to take this decision.
- [47] I agree that petitioners have a right of access to justice in our courts. There is nothing barring them from exercising this right in light of current law. They may hope to benefit from the new law but until it comes into effect they can derive no enforceable right from it. Nor can they assert that the law that suspends the coming into effect of such provision is unconstitutional. Parliament in its wisdom has chosen to determine when it will come into effect.
- [48] I would answer this issue in the negative.

**Issue No.4: If issue no. 3 is answered in the affirmative, whether section 34 of the Motor Vehicle Insurance (Third Party Risks) Act, is inconsistent and in contravention of article 26 of the Constitution**

[49] This issue was dependent on issue no. 3 being answered in the affirmative. As it has been answered in the negative this issue is moot. I need not discuss it nor make a finding in relation to the same.

**Issue No. 5: Whether regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations is inconsistent with and contravenes articles 20 (2), 22 (1), 24 and 45 of the Constitution.**

[50] I will start by setting out the impugned regulation.

[51] Regulation 4 of the Motor Vehicle Insurance (Third Party Risks) Regulations S.I 214-1 provides that:

**‘Premium rates.**

The premium payable under the Act shall be in accordance with the rates set out in the Second Schedule to these Regulations, whereby the liability of an insurer per policy shall not exceed one million shillings per person per accident, and the aggregate liability per accident shall not exceed ten million shillings.

[52] The said regulation puts a cap on the amount of money an insurer may pay in respect of any policy. It is this cap that is being attacked as contravening articles 20 (2), 22 (1) 24 and 45 of the Constitution. It must be understood that the cap under these regulations has nothing to do with liability of the tortfeasor or the owner of the vehicle that caused third party risks to arise. Any claimant must proceed directly, pursuant to section 39 of the Motor Vehicles (Third Party Risks) Act, against the driver or owner of the vehicle to claim for such compensation as may be due. That liability is unqualified and the obligation to pay rests squarely with the unsuccessful defendant. The right of access to justice is clearly available and I fail to see how the same is breached.

[53] Neither am I able to see how the provisions of this regulation amount to torture or cruel, inhuman or degrading treatment or punishment contrary to article 24 of the Constitution.

[54] Similarly, I do not see how the provisions of this regulation contravene the right to life under article 22 (1) of the Constitution or the constitutional imperative that all fundamental rights and freedoms must be respected and protected by all persons including government agencies in accordance with article 20 (2) of the Constitution.



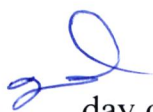

[55] The third party risks insurance scheme created by statute is ultimately a compact between participating insurance companies that relates to the amount of premium that must be paid and the benefit which would be paid in event of the risk arising or liability arising. It does not extinguish any liability as determined a court.

[56] I would answer this issue in the negative.

[57] As all the 4 substantive issues have been answered in the negative I would dismiss this petition with no order as to costs given that it is a matter in the public interest.

### **Decision**

[58] As Musoke, Madrama, Mugenyi and Gashirabake, JJCC, agree this petition is dismissed with each party bearing its own costs.

Signed, dated and delivered at Kampala this  day of  2023



Fredrick Egonda-Ntende  
**Justice of the Constitutional Court**



**THE REPUBLIC OF UGANDA  
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA  
CONSTITUTIONAL PETITION NO. 48 OF 2017**

**1. MUSLIM CENTRE FOR JUSTICE AND LAW  
2. NAKASI DIANA (SUING THROUGH A NEXT FRIEND  
NABALAMBA MILLY):.....PETITIONERS**

**VERSUS**

**ATTORNEY GENERAL:.....RESPONDENT**

**CORAM: HON. MR. JUSTICE FREDRICK EGONDA-NTENDE, JCC  
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC  
HON. MR. JUSTICE CHRISTOPHER MADRAMA, JCC  
HON. LADY JUSTICE MONICA K. MUGENYI, JCC  
HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JCC**

**JUDGMENT OF ELIZABETH MUSOKE, JCC**

I have had the advantage of reading in draft the judgment of my learned brother Egonda-Ntende, JCC. I agree with it and for the reasons given by learned brother, I too would dismiss the Petition with no order as to costs.

Dated at Kampala this .....22.....day of .....March..... 2023.



.....  
**Elizabeth Musoke**

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA,  
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA  
(CORAM; EGONDA NTENDE, MUSOKE, MADRAMA, MUGENYI,  
GASHIRABAKE, JJCC/JJCA)

CONSTITUTIONAL PETITION NO. 48 OF 2017

1. MUSLIM CENTRE FOR JUSTICE AND LAW}
2. NAKASI DIANA Suing through next of friend  
NABALAMBA MILLY} ..... PETITIONER

VERSUS

ATTORNEY GENERAL} ..... RESPONDENT

JUDGMENT OF JUSTICE CHRISTOPHER MADRAMA IZAMA, JCC

I have read in draft the Judgment of my learned brother Hon. Mr. Justice Fredrick Egonda – Ntende JCC.

I concur with the Judgment and the orders issued and have nothing useful to add.

Dated at Kampala the 22 day of November 2023



Christopher Madrama Izama

Justice Constitutional Court



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA  
AT KAMPALA**

*(Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi & Gashirabake, JJCC)*

**CONSTITUTIONAL PETITION NO. 48 OF 2017**

**BETWEEN**

1. MUSLIM CENTRE FOR JUSTICE  
AND LAW
2. DIANA NAKASI (Thru Next Friend  
MILLY NABALAMBA) ..... PETITIONERS

**AND**

**THE ATTORNEY GENERAL ..... RESPONDENT**

**JUDGMENT OF MONICA K. MUGENYI, JCC**

1. I have had the benefit of reading in draft the judgment of my brother, Justice F. Egonda-Ntende, JCC in respect of this Petition.
2. I agree with the conclusions and the orders issued.

Dated and delivered at Kampala this  day of , 2023.



**Monica K. Mugenyi**  
**Justice of the Constitutional Court**



**THE REPUBLIC OF UGANDA**

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

*[Coram: Egonda-Ntende, Musoke, Madrama, Mugenyi & Gashirabake, JJCC]*

**CONSTITUTIONAL PETITION NO. 48 OF 2017**

**1. MUSLIM CENTRE FOR JUSTICE AND  
LAW::::::::::::::::::::::::::::::::::::PETITIONER NO. 1**

**2. NAKASI DIANA (SUNG THROUGH  
A NEXT FRIEND NABALAMBA  
MILLY)::::::::::::::::::::::::::::::::::::PETITIONER NO. 2**

## VERSUS

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

**JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA/JCC**

I have had the benefit of reading in draft the judgment prepared by my learned brother, Hon. Justice Egonda-Ntende, JA/JCC. I concur with the judgment and have nothing useful to add.

Dated at Kampala this .....20..... Day of .....Nov.....2023.

*John R.*

Christopher Gashirabake  
**JUSTICE OF THE CONSTITUTIONAL COURT**