



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA  
AT KAMPALA**

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

**CONSTITUTIONAL PETITION NO. 6 OF 2018**

**COL. (RTD) DR. KIZZA BESIGYE ..... PETITIONER**

**VERSUS**

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

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

### **A. Introduction**

1. This Petition was lodged by Col. (Rtd) Dr. Kizza Besigye ('the Petitioner'), a self-styled socio-political activist, that was in May 2016 arraigned for the offence of Treason contrary to section 23(2)(a) of the Penal Code Act, Cap. 120. The Petitioner now challenges the constitutionality of that statutory provision and the offence of treason created thereby for their perceived inconsistency with Articles 20(2), 21(2), 28(12), 29, 43 and 44 of the Constitution. He does also contest his repeated appearances before Magistrates Courts owing to the failure by the office of the Director of Public Prosecutions (DPP) to commit him to the High Court for trial, for its supposed contravention of Articles 24, 28(1), 43(2)(a), 44 and 120(5) of the Constitution. The Petition is supported by an affidavit deposed by the Petitioner and lodged in this Court on 30<sup>th</sup> January 2018.
2. It is opposed by the office of the Attorney General ('the Respondent'), which neither discerns any question for constitutional interpretation in the Petition nor any infringement of the cited constitutional provisions. The Respondent contends that the impugned statutory provision and any act undertaken thereunder by the DPP are necessary, in the public interest and demonstrably justifiable in a free and democratic society. The Answer to the Petition is supported by the affidavit of Ms. Goretti Arinaitwe, a Senior State Attorney in the Attorney General's Chambers that was sworn and lodged in this Court on 8<sup>th</sup> February 2018.
3. At the hearing, the Petitioner was represented by Messrs. Ernest Kalibbala and Apollo Katumba; while Messrs. Geoffrey Madete and Allan Mukama, Senior State Attorney and State Attorney respectively, appeared for the Respondent.

### **B. Petitioner's Case**

4. The Petitioner contends that section 23(2)(a) of the Penal Code Act and any actions undertaken pursuant thereto are unconstitutional, and the impugned statutory provision is not demonstrably justifiable in a free and democratic society

given that it is vague, over-arching and can be whimsically applied including for purposes of political persecution.

5. In his affidavit in support of the Petition, he attests to having been arrested on 18<sup>th</sup> February 2016; initially confined in his home, and arraigned for the offence of treason in the Chief Magistrates Court of Moroto on 13<sup>th</sup> May 2016, before on 18<sup>th</sup> May 2016 being re-arraigned before the Chief Magistrates Court of Nakawa for fresh charges of the same offence. He further avers that since he was released on bail in July 2016, he has appeared before the Chief Magistrates Court of Nakawa numerous times but has neither been committed to the High Court nor have investigations into the matter been concluded.
6. In his view, the incessant inquiries and his repeated appearances over a period of eighteen months, which have resulted in a delayed prosecution, amount to torture; cruel, inhuman and degrading treatment and abuse of legal process, and are thus inconsistent with Articles 24, 28(1) and 120(5) of the Constitution and not demonstrably justifiable in a free and democratic society. He further opines that his repeated appearances before the Magistrates Court are inconsistent with Articles 28(1), 43 and 44; while the offence with which he is charged is inconsistent with Articles 29(1)(b) and (d), 38(2), 43 and 44 of the Constitution, as well as being so vague as to defy understanding.

#### **C. Respondent's Case**

7. Conversely, it is the Respondent's contention that the Petition does not disclose any question for constitutional interpretation, is devoid of merit, frivolous and vexatious. The Petitioner's contestations are opined to be imprecise and the impugned actions too generalist to constitute matters for constitutional interpretation. In any event, the alleged constitutional violations either by the impugned statutory provision or the actions and processes undertaken thereunder are denied on the premise that they are reasonable restrictions that are intended to protect the fundamental rights and freedoms of other members of the population, the public interest and are demonstrably justifiable in a free and democratic society.



8. The affidavit evidence deposed on the Respondent's behalf essentially re-echoes the foregoing averments, and attests to the provisions of section 23(2)(a) being precise and neither over-arching nor fanciful.

**D. Issues for Determination**

9. The Respondent raised the issue of the Court's interpretative jurisdiction, and indeed expressed its intention to raise preliminary points of law in that regard, but subsequently advanced no legal arguments on the issue. The State is therefore presumed to have abandoned the issue.
10. At any rate, quite clearly the Petition does raise the question of the constitutionality of section 23(2)(a) of the Penal Code Act, as well as the actions and processes that have ensued thereunder in relation to the Petitioner. Without belabouring the point, therefore, I am satisfied that the Petition does raise a question for constitutional interpretation and is properly before this Court.
11. The Petition was argued on the basis of the following issues:

*I. Whether Section 23(2)(a) of the Penal Code is inconsistent with or in contravention of any of Article 20(2), 21(2), 28(12), 29, 43 and 44 of the Constitution of Uganda.*

*II. Whether, in respect of offences only triable by the High Court, requiring an accused person to appear for mention repeatedly before a Magistrates Court without being committed to the High Court for trial is inconsistent with and in contravention of Articles 20(2), 21(2), 24, 28, 43(2)(a), 44 and 120(5) of the Constitution?*

*III. Remedies.*

**E. Determination**

12. I propose to address the two substantive issues raised in this Petition together, and conclude with a determination of the remedies available to either party, which I shall determine separately.



**Issues 1 & 2:**        *Whether Section 23(2)(a) of the Penal Code is inconsistent with or in contravention of any of Article 20(2), 21(2), 28(12), 29, 43 and 44 of the Constitution of Uganda & Whether, in respect of offences triable by the High Court, requiring an accused person to appear for mention repeatedly before a Magistrates Court without being committed to the High Court for trial is inconsistent with and in contravention of Articles 20(2), 21(2), 24, 28, 43(2)(a), 44 and 120(5) of the Constitution?*

13. Under *Issue No. 1*, the Petitioner urges the Court to abide the rules of constitutional interpretation in respect of legislation as espoused in **Olara Otunnu v Attorney General, Constitutional Petition No. 12 of 2010**, where emphasis is laid on the legislation's purpose and effect, so that if the purpose of an Act of Parliament is inconsistent with a provision of the Constitution the Act would be declared unconstitutional. Similarly, a provision of an Act would be unconstitutional if its implementation has the effect of engendering inconsistency with the Constitution. Finally, the same judicial precedent is opined to advance the principle that a constitutional provision containing a fundamental right is a permanent provision that must be given an interpretation that realizes the full benefit of the enshrined right, as well as a dynamic, progressive, liberal and flexible interpretation so as to maximize its benefits.
14. It is proposed on the Petitioner's behalf that a party who seeks to uphold a statutory provision that derogates from a right guaranteed by the Constitution bears the burden of proof that the derogation in issue is demonstrably justifiable in a free and democratic society. Deference is further made to the case of **Katiba Institute & Others v Attorney General & Others (2018) 2 EA 97** for the proposition that ambiguity and vagueness in a statutory provision makes that provision void.
15. Learned Counsel for the Petitioner posit that section 1 of the Penal Code Act presents a contradiction as to the whether the principles enshrined therein reflect the values, norms and aspirations of the people of Uganda as articulated in Article 126(1) of the Constitution. It is argued that, although section 23(2)(a) of that Act relates to the offence of treason, its overall purpose and/ or effect on democracy in Uganda renders it no different from the now defunct section 50 of the same Act that was struck down by the Supreme Court in **Charles Onyango Obbo & Another v Attorney General, Constitutional Appeal No. 2 of 2002**.

16. In comparison with Article 3 of the Constitution and section 23(1) of the Penal Code Act, which are considered to be clear on what the offence of treason entails, section 23(2)(a) of the same Act is opined to create another category of treason that is unclear and imprecise contrary to the dictates of Article 28(12) of the Constitution that envisages well defined criminal offences that clearly demarcate the unlawful conduct envisaged thereunder.
17. It is argued that section 23(2)(a) falls short on such clarity, learned Counsel's construction thereof suggesting that whereas force would be required to *compel* the Government, in the context of *constraining* it no force is required. This, in Counsel's view, leaves the ordinary Ugandan citizen unable to know when they are committing an offence under that statutory provision. Counsel wonder whether words spoken in the exercise of one's freedom of speech, which are informed by a human being's conscience or belief and publicly spoken would amount to constraining the Government and, therefore, treason.
18. In the same vein, it is argued that it is not clear whether the phrase '*overawe Parliament*' means engaging Parliament with a view to causing it to change its mind, or the mobilization and convergence of people at Parliament to question any Government policy would amount to treason. It is proposed that whereas section 23(2)(b) makes it clear that it is the use of an armed force that is treasonous, section 23(2)(a) criminalizes any forceful action. It is thus opined that section 23(2)(a) of the Penal Code Act is not only undefined for purposes of Article 28(12), it is an affront to the right to a fair hearing as espoused in Article 28(1) of the Constitution.
19. Conceding that the rights to freedom of speech, expression, thought, conscience and belief are not absolute within the context of Article 20(2), it is nonetheless argued that a derogation therefrom by any law must be such as is demonstrably justifiable in a free and democratic society. It is opined that the criminalization of the acts engaged in by the Petitioner in this case is not so justifiable.
20. It is thus proposed that section 23(2)(a) of the Penal Code Act permits the forceful silencing of any form of disagreement with a position adopted by the Government; has the effect of the domination and control of Ugandans who wish to change the



view of a sitting Government or who disagree with the outcome of a national exercise; is against the values, norms and aspirations of the Ugandan people; is discriminatory under Article 21(2) of the Constitution and does not have a place in a modern, democratic and progressive society. The impugned statutory provision is construed to have the effect of declaring treasonable any non-violent act that is intended to change the mind of the Government. Referring to **Moses Mwandha v Attorney General, Constitutional Petition No. 5 of 2007**, it is proposed that a democratic society should be able to tolerate a good deal of annoyance and disorder so as to encourage the greatest possible freedom of expression, particularly political expression.

21. With regard to the constitutionality of subjecting an accused person to repeated appearances in a Magistrates Court without committal to the High Court, it is argued that in the exercise of its powers the office of the DPP should have regard for the public interest, the interests of the administration of justice and the need to prevent the abuse of legal process. In the instant case, where the Petitioner was arraigned for treason in 2016 and no attempt has since been made to commit him for trial, it is opined that such conduct derogates from his right to a fair and speedy trial in so far as it inhibits his ability to defend himself owing to the passage of time. Rather, than promote the administration of justice, this conduct is considered to amount to political persecution and discrimination; neither promotes nor respects citizens' rights as enshrined in Article 20(2) of the Constitution; amounts to cruel, inhuman and degrading treatment that is prohibited by Article 24, and is not demonstrably justifiable in a free and democratic society.

22. Conversely, the Respondent contends that the Penal Code Act having been in existence when the 1995 Constitution was promulgated, it should be construed with such modifications, adaptations and qualifications as to bring it in conformity with the Constitution. This position is backed by Article 274 of the Constitution, and the following observation in *Black, Henry Campbell, Handbook on the Construction and Interpretation of Laws, 1911, St. Paul Minn.: West Publishing Company, 2<sup>nd</sup> Edition*:



Every Act of the legislature is presumed to be valid and constitutional until the contrary is shown. All doubts are resolved in favour of the validity of the Act. If it is fairly and reasonably open to more than one construction, that construction will be adopted which will reconcile the statute with the Constitution and avoid the consequences of unconstitutionality.

23. Article 274 reads as follows:

- (i) **Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.**
- (ii) **For purposes of this article, the expression “existing law” means the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this Constitution, including any Act of Parliament or Statute or statutory instrument enacted or made before that date which is to come into force on or after that date.**

24. Learned State Counsel invoke Articles 3(2) and (4) of the Constitution to contend that section 23(2)(a) of the Penal Code Act, in *pari materia* with Article 3(2), reflects the values, norms and aspirations of the people of Uganda as enshrined in those constitutional provisions. It is argued that section 23(2) clearly spells out one of the elements of the offence of treason, to wit, the intention to effect any of the eventualities stated in clauses (a) and (b) of that statutory provision, and prescribes the penalty in respect thereof. The overt manifestation of that intention is urged to be as stipulated in the definition of an overt act in section 32 of the Act. It reads as follows:

**For the purposes of any offence defined in this Chapter, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act in furtherance of the commission of the offence defined or every act of conspiring with any person to effect that purpose and every act done in furtherance of the purpose by any of the persons conspiring shall be deemed to be an overt act manifesting the intention.**

25. Learned State Counsel thus argue that the definition of an overt act under section 32 of the Act gives fair warning of the nature of conduct that would constitute the

offence of treason under section 23(2)(a) and, accordingly, that statutory provision is neither ambiguous nor inconsistent with Article 28(12) of the Constitution.

26. It is further argued that the rights and freedoms enshrined in Article 29 of the Constitution are not absolute given that they are not envisaged in the non-derogable rights delineated in Article 44 of the Constitution. On the contrary, they are purportedly susceptible to justifiable limitations provided that their restriction meets the following criteria:

- I. The restriction is prescribed by law.
- II. The restricting law is foreseeable.
- III. The restricting law is subject to effective control.
- IV. The restricting law does not negate the essence of the right in question.
- V. The restricting law is reasonably required to protect the rights of others.

27. Criminal law is opined to be one of the measures by which organized societies safeguard individual interests given that a crime is conceived as an offence against the public even when it is perpetuated against an individual. It is thus argued that section 23(2)(a) of the Penal Code Act is a permissible limitation to the freedom of conscience and expression as contemplated under Article 43 of the Constitution, does not negate the rights and freedoms guaranteed by Article 20(2) of the Constitution, the enjoyment of those rights and freedoms being subject to any existing law. As such, it is opined, the impugned statutory provision cannot be held to be inconsistent with that constitutional provision.

28. It is the Respondent's contention that section 23(2)(a) is couched in general terms and is not selective in its application so as to carry connotations of discrimination contrary to Article 21(1) of the Constitution. It is opined that the impugned provision does not negate the non-derogable rights under Article 44 either but, rather, is complimentary to Article 3(1) insofar as the said constitutional provision prohibits the taking or retention of control over the Government of Uganda, save as lawfully provided for by the Constitution.



29. In terms of the constitutionality of the delayed committal of the Petitioner to the High Court for trial, learned State Counsel propose that no criminal trial may be brought to the High Court unless the accused person has been committed for trial thereto in accordance with the Magistrates Court Act, Cap. 16 (MCA). It is argued that to the extent that a Magistrates Court does not have jurisdiction to try the offence of treason; under section 166 of the MCA, a magistrate before whom a person accused of treason is arraigned is enjoined to remand him/ her in custody to await appearance before a court that has jurisdiction to try the offence. Section 166 of the MCA reads as follows:

**Where a charge has been brought against a person in a court having no jurisdiction to try the offence with which he or she is charged, the magistrate shall remand the accused person in custody to appear before a court having jurisdiction to try that offence.**

30. It is further proposed that there is no time limit within which an accused person may be committed to the High Court for trial, this usually depending on the conclusion of investigations and the determination by the DPP that the evidence assembled is sufficient to sustain the preferred charges. In the event that the evidence is deemed insufficient for purpose or there are other circumstances that make a successful prosecution improbable, it is opined, the DPP would be at liberty to terminate the proceedings in the Magistrates Court and waive the accused person's committal to the High Court, as purportedly transpired in this case. Learned Counsel cite Article 120(3)(a), (b) and (d) of the Constitution and section 168(1) of MCA, which are reproduced below.

Article 120(3) of the Constitution

- (i) .....
- (ii) .....
- (iii) **The functions of the Director of Public Prosecutions are the following –**
  - (a) To direct the police to investigate any information of a criminal nature and to report to him or her expeditiously;**
  - (b) To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial;**
  - (c) .....



- (d) To discontinue at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority; except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court.

Section 168(1) of the MCA

**When a person is charged in a magistrate's court with an offence to be tried by the High Court, the Director of Public Prosecutions shall file in the magistrate's court an indictment and a summary of the case signed by him or her or by an officer authorised by him or her in that behalf acting in accordance with his or her general or special instructions.**

31. It is further argued that the court order for a person accused of a capital offence to appear for mention before the Magistrates Court until the office of the DPP is ready to commit him/ her to the High Court is borne out of the lack of jurisdiction by the Magistrates Court to try the offence itself and, without citing the enabling legal provision, it is opined that the repeated appearance for mention is permitted by law and thus consistent with Article 21(1) of the Constitution.
32. In addition, on the premise that Article 21(3) of the Constitution defines the term *discrimination* to mean differential treatment on the basis of the parameters spelt out in that provision, it is argued that requiring a capital offender to repeatedly appear for mention before a Magistrates Court is not an act of discrimination as it is premised on a lawful court order and thus consistent with Article 21(2) of the Constitution.
33. Learned State Counsel further defer to the definition of torture in the Prevention and Prohibition of Torture Act, 2012 (which was enacted to give effect to Articles 24 and 44(a) of the Constitution) to argue that an order for the re-appearance of a capital offender for mention before a Magistrates Court does not amount to torture under Article 24 of the Constitution but, rather, the exercise of a recognized judicial function. Section 2(1) and (4) of that Act define torture as follows:

- (i) In this Act, torture means any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by**

or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as—

- (a) obtaining information or a confession from the person or any other person;
  - (b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or
  - (c) intimidating or coercing the person or any other person to do, or to refrain from doing, any act.
- (ii) .....
- (iii) .....
- (iv) **The definition of torture set out in subsection (1) does not include pain or suffering arising from, inherent in or incidental to a lawful sanction.**

34. It is the contention that accused persons' re-appearance for the mention of their cases before committal to the High Court is not inconsistent with Article 28(1) of the Constitution either insofar as it ensures that they are only committed to the High Court when investigations are complete and is thus an administrative mechanism that engenders the speediness of the trial once it commences. Furthermore, the said mechanism is opined to be consistent with Articles 43(2)(a) and 120(5) of the Constitution to the extent that it ensures that only sustainable charges are committed to full trial thus negating connotations of political persecution, or disregard for the public interest, the proper administration of justice and due legal process.

35. By way of reply, I understood learned Counsel for the Petitioner to argue that in a multi-party political dispensation (such as obtains in Uganda), active players in national governance will inevitably oppose the positions and policies adopted by the sitting Government with a view to cause it to adopt an alternative position. In their view, this is democratic and lawful provided that it is not done forcefully, hence the vitality of clarity as to what would constitute 'force' under section 23(2)(a) of the Penal Code Act so as to amount to the offence of treason.

36. Against that background, it is argued that Article 274(1) of the Constitution (that calls for the interpretation of laws that were in existence in 1995 when the



Constitution was promulgated) would not cure a constitutional deficiency that emanates from the improper definition of a criminal offence; rather, the pre-existing law would have to first abide the constitutional dictates of Article 28(12) before it can be construed with the necessary modifications.

37. In Counsel's view, although Article 3(1) of the Constitution does set up the offence of treason, the prohibition in Article 3(2) against the use of '**violent or other unlawful means**' to abrogate the Constitution is intended to address the sort of abrogation that occurred in 1966 and is not necessarily sufficient for the establishment of the offence of treason, otherwise section 23 of the Penal Code Act would be unnecessary. The definition of an overt act in section 32 of that Act is opined to be unhelpful to the definition of treason under section 23(2)(a) given citizens' right to influence Government policy by exercising their freedom of association and expression, whichever way they opt to do so.

38. Counsel reiterate the need for the restriction of the rights and freedoms espoused in Article 29 of the Constitution to be demonstrably justifiable in a free and democratic society, which the impugned statutory provision is not. It is proposed that sections 1 and 23(2)(a) of the Penal Code Act are a relic of the colonial times when a foreign minority leadership imposed itself on a local majority population hence the justification for oppressive legislation, a position that is neither tenable today nor envisaged in the notion of the State deriving its power from the people and exercising it in the name of the people and in conformity with their values, norms and aspirations.

39. In relation to the delayed committal of the Petitioner, it is argued that the constitutional prerequisite for a speedy trial would of necessity include speedy rather than open-ended, never-ending investigations. This is considered an abuse of court process and an affront to the Constitution. Hence, the arraignment of accused persons for actions the investigation of which is incomplete simply because they are political actors is opined to be abusive, discriminatory on the basis of political beliefs and tantamount to cruel, inhuman and degrading treatment.

40. This petition, in my estimation, is broadly about the rights of political activists and indeed the greater citizenry to express themselves on public policy in Uganda



without being perceived to have committed the offence of treason under section 23(2)(a) of the Penal Code Act. The Petitioner would appear to be concerned about the ambiguity of the offence of treason as established in that statutory provision, which ambiguity in his view could be construed to the detriment of persons engaged in activities that are justified in a democratic, multi-party dispensation. In addition, the Petitioner contests the practice of capital offenders repeatedly appearing for mention before a Magistrates Court without being promptly committed to the High Court for trial, using his arraignment for the impugned offence for purposes of illustration.

41. For brevity, the contested statutory provision is reproduced below.

Section 23(2) of the Penal Code Act

**Any person who forms an intention to effect any of the following purposes –**

**(a) to compel by force or constrain the Government as by law established to change its measures or counsels or to intimidate or overawe Parliament;**

**(b) .....**

**and manifests any such intention by an overt act or by any utterance or by publishing any printing or writing, commits an offence and shall suffer death.**

42. Although the Petitioner was arraigned under the first component of clause (a), that is, ***‘to compel by force or constrain the Government as by law established to change its measures or counsels,’*** he would appear to challenge the entire provision, as he is very well entitled to do. For the avoidance of doubt, the material aspects of that Indictment are reproduced below.

**CHARGE**

**UGANDA VS:**

**RTD COL. DR. KIIZA BESIGYE KIFEFE, M/A AGED 60 YEARS, BUSINESSMAN, RESIDENT OF KASANGATI BUHINJA ZONE, WAMPEWO PARISH, NANGABO SUB-COUNTY, WAKISO DISTRICT.**

**STATEMENT OF OFFENCE**

**TREASON CONTRARY TO SECTION 23(2)(A) OF THE PENAL CODE ACT.**

## **PARTICULARS OF OFFENCE**

*RTD COL. DR. KIIZA BESIGYE KIFEFE AND OTHERS AT LARGE BETWEEN 20<sup>TH</sup> FEBRUARY AND 11<sup>TH</sup> MAY 2016, IN DIVERSE PLACES OF UGANDA, FORMED AN INTENTION TO COMPEL BY FORCE OR CONSTRAIN THE GOVERNMENT OF UGANDA, AS BY LAW ESTABLISHED, TO CHANGE ITS MEASURES OR COUNSELS AS TO THE LAWFULLY METHODS OF ACCEDING TO THE OFFICE OF PRESIDENT OF THE REPUBLIC OF UGANDA AS BY LAW PRESCRIBED AND MANIFESTED SUCH INTENTION BY OVERT ACTS AND UTTERANCES TO WIT;*

- A) BETWEEN THE 20<sup>TH</sup> FEBRUARY AND 11<sup>TH</sup> MAY 2016 AT VARIOUS PLACES, IN WAKISO AND KAMPALA DISTRICTS, RTD COL. DR. KIIZA BESIGYE KIFEFE DEMANDED FOR AN INDEPENDENT INTERNATIONAL AUDIT BE CONDUCTED BEFORE A NEW PRESIDENT CAN BE SWORN IN.*
- B) ON THE 7<sup>TH</sup> APRIL 2016 AT KASANGATI IN THE WAKISO DISTRICT, RTD COL. DR. KIIZA BESIGYE KIFEFE UTTERED WORDS TO THE EFFECT THAT HE WOULD ESTABLISH A CABINET FOR THE REPUBLIC OF UGANDA.*
- C) BETWEEN THE 20<sup>TH</sup> FEBRUARY AND 11<sup>TH</sup> MAY 2016 AT VARIOUS PLACES, IN WAKISO AND KAMPALA DISTRICTS, RTD COL. DR. KIIZA BESIGYE KIFEFE UNLAWFULLY DECLARED HIMSELF THE WINNER OF THE PRESIDENTIAL ELECTIONS, 2016.*
- D) BETWEEN THE 20<sup>TH</sup> FEBRUARY AND 11<sup>TH</sup> MAY 2016 AT VARIOUS PLACES, IN WAKISO AND KAMPALA DISTRICTS, RTD COL. DR. KIIZA BESIGYE KIFEFE INCITED THE PUBLIC TO DEFY LAWFUL AUTHORITY AND MOBILISED THE MASSES TO ATTEND HIS SWEARING IN AS PRESIDENT OF THE REPUBLIC OF UGANDA.*
- E) BY RTD COL. DR. KIIZA BESIGYE KIFEFE UNLAWFULLY TAKING THE PRESIDENTIAL OATH AND UNDERTAKING TO EXECUTE THE FUNCTION OF THE PRESIDENT OF THE REPUBLIC OF UGANDA.*

43. It is the Petitioner's case that section 23(2)(a) of the Penal Code Act is inconsistent with Articles 20(2), 21(2), 28(12), 29, 43 and 44, while the contested pre-trial practice adopted in his prosecution contravenes Articles 20(2), 21(2), 24, 28, 43(2)(a), 44 and 120(5) of the Constitution. The invoked constitutional provisions are reproduced below.

### Article 20(2): Fundamental and other human rights and freedoms

- (i) .....
- (ii) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.**

Article 21(2): Equality and freedom from discrimination

- (1) .....
- (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.**

Article 24: Respect for human dignity and protection from inhuman treatment

**No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.**

Article 28(1) and (12): Right to a fair hearing

- (1) **In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.**
- (2) .....
- (3) .....
- (4) .....
- (5) .....
- (6) .....
- (7) .....
- (8) .....
- (9) .....
- (10) .....
- (11) .....
- (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 is prescribed.**

Article 29:       Protection of freedom of conscience, expression, movement, religion, assembly and association

- (1) **Every person shall have the right to –**
- (a) **Freedom of speech and expression which shall include freedom of the press and other media;**
- (b) **Freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;**



- (c) Freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution;
- (d) Freedom to assemble and demonstrate together with others peacefully and unarmed and to petition; and
- (e) Freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

**(2) Every Ugandan shall have the right –**

- (a) To move freely throughout Uganda and to reside and settle in any part of Uganda;
- (b) To enter, leave and return to Uganda; and
- (c) To a passport or other travel document.

Article 43(2)(a): General limitation on fundamental and other human rights and freedoms

- (1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
- (2) Public interest under this article shall not permit –
  - (a) Political persecution;
  - (b) Detention without trial
  - (c) Any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.

Article 44: Prohibition from derogation from particular human rights and freedoms

**Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms –**

- (a) Freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) Freedom from slavery or servitude;
- (c) The right to a fair hearing;
- (d) The right to an order of habeas corpus.

Article 120(5): Director of Public Prosecutions

- (1) .....
- (2) .....
- (3) .....
- (4) .....
- (5) **In exercising his or her powers under this article, the Director of Public Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process.**

44. I am alive to the general rules of constitutional interpretation as severally laid down by the courts in Uganda. These rules have since been aptly summed up in **Uganda Law Society v Attorney General, Constitutional Petition No. 52 of 2017** as follows:

1. 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 inconsistencies.
2. The entire Constitution has to be read together as an integral whole with no particular provision destroying the other. This is the rule of harmony, the rule of completeness and exhaustiveness and the rule of paramountcy of the Constitution.
3. In determining the constitutionality of legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining the constitutionality of either unconstitutional purpose or an unconstitutional effect animated by the object the legislation intends to achieve.<sup>1</sup>
4. All provisions bearing on a particular issue should be considered together to give effect to the purpose of the instrument.
5. Where the 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.
6. Where the language of the constitution or statute sought to be interpreted is imprecise or ambiguous a liberal, general or purposeful interpretation should be given to it.
7. The words of the Constitution prevail over all unwritten conventions, precedents and practices.
8. The history of the country and the legislative history of the Constitution is also (a) relevant and useful guide to constitutional interpretation.

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<sup>1</sup> See **Andrew Karamagi & Another v Attorney General, Constitutional Petition No. 5 of 2016**, which gives a clearer rendition of that principle of interpretation.



45. With specific regard to a legislation's purpose and effect, the Supreme Court did in **Attorney General v Salvatori Abuki, Constitutional Appeal No. 1 of 1998** observe that **'a statutory provision can be declared unconstitutional where its purpose and effect violates a right guaranteed by an Article of the Constitution.'** Given the peculiar facts of this case, I do also take cognizance of the clarion call made by this Court in **Major General David Tinyefuza v Attorney General, Constitutional Petition No. 1 of 1996** where it was observed (per Manyindo, DCJ):

In interpreting our Constitution this court must not lose sight of our chequered history on human rights. The framers of the Constitution had this in mind when they stated in the Preamble:-

"Recalling our history which has been characterized by political and constitutional instability;

Recognizing our struggle against the forces of tyranny, oppression and exploitation;

Do hereby, in and through this Constituent Assembly solemnly adopt, enact and give to ourselves and our posterity, this Constitution of Uganda ..."

46. The Petitioner in this case advances a two-pronged challenge to section 23(2)(a) of the Penal Code Act: first, it is alleged to be void on account of its vagueness or ambiguity, which in itself would be inconsistent with Article 28(12) of the Constitution; and, secondly, its purpose and effect are purportedly inconsistent with the freedoms of speech, expression, thought, conscience and belief expressed in Article 29(1)(a) and (b) of the Constitution.

47. The *void-for-vagueness doctrine* essentially requires **'that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'** See **Kolender v. Lawson (1983), United States Supreme Court, No. 81-1320**. Thus, legislative provisions that have not been defined with sufficient conciseness and presented threats in their enforcement have invariably been adjudged by this Court to be void on account of their vagueness. See **Francis Tumwesige Ateenyi v Attorney General, Constitutional Petition No. 36 of 2018** and **Andrew Karamagi & Another v Attorney General, Constitutional Petition No. 5 of 2016**.

48. The application of that doctrine would, however, be subject to the rules of statutory interpretation, as well as the dictates of Article 274(1) of the Constitution. It seems to me that the meaning of a statutory provision must be interrogated before it can be deduced to be vague. Accordingly, it becomes necessary to render an interpretation of section 23(2)(a) of the Penal Code Act in accordance with established rules of statutory interpretation. I find apposite summation of these rules in the Oxford Dictionary of Law, 2009, 7<sup>th</sup> Edition, p. 295 as follows:

- (i) An Act must be construed as a whole, so that internal inconsistencies are avoided.
- (ii) Words that are reasonably capable of only one meaning must be given that meaning whatever the result. This is called the **literal rule**.
- (iii) Ordinary words must be given their ordinary meanings and technical words their technical meanings, unless absurdity would result. This is the **golden rule**.
- (iv) When an Act aims at curing a defect in the law any ambiguity is to be resolved in such a way as to favour that aim (the **mischief rule**).
- (v) .....
- (vi) .....
- (vii) .....
- (viii) The rule ***noscitur a sociis*** (known by its associates): when a word or phrase is of uncertain meaning, it should be construed in the light of the surrounding words.

49. A literal interpretation of section 23(2)(a) of the Penal Code Act would suggest that it establishes two categories of treason: the intention to either compel by force or constrain a lawfully established Government to change its '*measures*' or '*counsels*', or to intimidate or '*overawe*' Parliament. In both instances, the criminalised intention may manifest as an overt act as defined in section 32 of the same Act, an utterance or by the publication of any printing or writing. The penalty for the said offence, in any event, is death. It will suffice to observe here that, to the extent that the impugned provision does so define the offence of treason and prescribe the death sentence as the penalty therefor, I am unable to find any inconsistency with Article 28(12) of the Constitution.

50. However, the definition of the offence notwithstanding, it is the Petitioner's contention that the impugned statutory provision is couched in such vague terms as to render a reasonable person unable to deduce the prohibition therein. The following ambiguities are highlighted by the Petitioner:



- (a) Unlike section 23(2)(b) that only criminalizes the use of an armed force to invade Uganda, section 23(2)(a) criminalizes any forceful action.
- (b) Unlike the compulsion of Government by force in section 23(2)(a), the element of force being clear to the Petitioner, it is not clear what would amount to *constraining* the Government without force under that statutory provision, for instance, would words publicly spoken in the exercise of one's freedom of speech as informed by one's conscience or belief amount to constraining the Government and, therefore, treason?
- (c) It is not clear what would amount to *measures* or *counsels* under the impugned statutory provision.
- (d) It is not clear whether to '*overawe Parliament*' means engaging Parliament with a view to causing it to change its mind, or the mobilization and convergence of people at Parliament to question any Government policy would amount to overawe and thus treason.

51. From the foregoing arguments, it is quite clear that the Petitioner does in fact appreciate the distinction between the force envisaged in section 23(2)(b) vis-à-vis that in 23(2)(a). The force that is articulated in section 23(2)(b) is conceded to clearly criminalize the invasion of Uganda using armed forces. Far from criminalizing any forceful action, the Petitioner does in his submissions concede an understanding of the compulsion of Government by force as envisaged under section 23(2)(a). It would be absurd to contemplate any forceful action wheresoever and against whomever employed as having been criminalised by that legal provision as to do so would suggest, for instance, that the forceful eviction of one's tenant would amount to treason. From a literal construction thereof, it seems quite clear to me that section 23(2)(a) restricts the impugned act of forceful compulsion to a lawfully established Government of the Republic of Uganda.

52. With regard to the Petitioner's misgivings as to the meaning of the constraining of Government, the literal meaning of the word *constrain* is to compel or force a course of action, meaning that it is simply an alternative description of the word

'*compel*' that is used earlier in the provision. There is no contestation from the Petitioner as to the meaning of the word *compel* in the impugned provision, therefore quite clearly the draftsmanship of the said provision simply placed two synonyms alongside each other, presumably for emphasis.

53. A similar drafting approach is adopted with regard to the terms *measures* and *counsels* of Government. The usage of measures in the impugned provision draws a literal construction of plans, courses of action, policies etc. Indeed, the same usage can be deduced from the use of the same word in section 39(2)(a) of the same Act. So that, although it is not readily apparent what the literal meaning of the term *counsels* is, applying the *noscitur a sociis* rule of interpretation, its meaning can be deduced within the context of the surrounding words to carry a meaning that is synonymous with the term '*measures*' that is used earlier, to wit, plans, policies and course of action.

54. The first limb of the offence of treason contrary to section 23(2)(a) of the Penal Code Act would thus denote the intention to forcefully (albeit without necessarily an armed invasion) compel a lawfully established Government to involuntarily change its plans, policies or agenda.

55. In terms of the second limb to the offence, whereas there is no contestation from the Petitioner as to what it means to intimidate Parliament, he questions the meaning of the '*overawe*' of Parliament. That term would appear to similarly be a synonym of the term intimidate given that it literally means to overwhelm into submission, which carries connotations of intimidation as first used in the impugned provision. As alluded to earlier in this judgment, the use of surrounding words in a sentence to provide context to the meaning of seemingly unclear terms is a recognised rule of statutory interpretation, to wit, *noscitur a sociis* (known by its associates): '**when a word or phrase is of uncertain meaning, it should be construed in the light of the surrounding words.**'<sup>2</sup> Construed in accordance with Article 3(1) and (2) of the Constitution, the second limb thus denotes the

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<sup>2</sup> See *Oxford Dictionary of Law, 2009, 7<sup>th</sup>. Ed., p. 295*



intention to intimidate Parliament – one of the branches of Government, into abandoning its legislative function under the established constitutional order.

56. My reference to the Constitution brings me to the second stricture to the *void-for-vagueness* doctrine. It is informed by the application of Article 274(1) of the Constitution as articulated by the Supreme Court in **Attorney General v. Joseph Tumushabe (2018) UGSC 32**<sup>3</sup> as follows (per Mulenga, JSC):

The existing law so saved “*shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it in conformity with this Constitution.*” In order to bring the 1992 UPDF Act in such conformity, it is necessary to construe the provisions establishing the courts martial there-under as if they were enacted by Parliament under the authority of the Constitution. (my emphasis)

57. Thus, to the extent that the framers of the Constitution established a new constitutional order, the construction of any pre-existing laws would of necessity be subject to related constitutional provisions so as to engender their subjugation to the *grund norm*. So that, to my mind, any perceived ambiguity in a pre-existing statutory provision that has since been clarified by the Constitution would be resolved in such a way as to harmonise it with the relevant constitutional provision. It is only where such harmonisation is untenable that a pre-existing statutory provision may be subjected to the void-for-vagueness test.

58. As highlighted in my earlier construction of section 23(2)(a), I take the view that a cursory construction of that provision would suggest that the essential ingredients thereof are simply synonyms that are juxtaposed against each other. The terms *compel* and *constrain* meaning literally the same thing, as do *measures* and *counsels* and *intimidate* and *overawe*. To that extent, any reasonable citizen that seeks to avoid getting drawn into the offence of treason as defined under that legal provision would get a more or less accurate understanding of the ingredients of the offence from the simpler rendition of the terms used. I would therefore disallow the

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<sup>3</sup> Also reported as Constitutional Appeal No. 3 of 2005.

proposition that section 23(2)(a) of the Penal Code Act is so vague as to be rendered void.

59. In any event, as intimated earlier in this judgment, section 23(2)(a) of the Penal Code Act does echo the offence of treason as captured in Article 3(2) of the Constitution insofar as it defines treason to include the abrogation of the Constitution by '**other unlawful means**' that are not necessarily violent but have the effect of overturning the lawfully established constitutional order. I understood the Petitioner to express concern about the effect of the impugned section on the right to freedom of speech, expression, thought, conscience and belief in a multiparty dispensation where those with divergent views ought to be free to express them in a bid to influence and indeed change public policy. Applying the interpretative rule of constitutional harmony, I find that the Constitution does elsewhere make provision for the expression of a diversity of views, as well as the participation of the Ugandan citizenry in the enactment of public policy. Hence, Objective II(i) of the National Objectives and Directive Principles of State Policy, and Articles 38 and 79 of the Constitution provide as follows:

II. Democratic Principles

- (i) **The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.**

Article 38: Civic rights and activities

- (1) **Every Ugandan has the right to participate in the affairs of government, individually or through his or her representatives in accordance with the law.**
- (2) **Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations.**

Article 79: Functions of Parliament

- (1) **Subject to the provisions of this Constitution, Parliament shall have the power to make laws on any matter for the peace, order, development and good governance of Uganda.**



- (2) Except as provided in this Constitution, no person or body other than Parliament shall have the power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.
- (3) Parliament shall protect this Constitution and promote the democratic governance of Uganda.

60. The import of Objective II(i) and Article 38 is to confer the Ugandan people with the mandate to participate in their own governance, including the right to participate in governance issues either individually or through their representatives, or influence governance policies through civic organisations. Article 79(1), on the other hand, formally vests the legislative function of government in the people's parliamentary representation. Construed against the backdrop of the '**political and constitutional instability**' that is recognised in the Preamble to the Constitution as having characterized Uganda's history, it would appear that the shift to people's participation in governance was intended to entrench constitutionalism and socio-political stability. Thus, whereas Article 29(1)(a) and (b) does articulate the freedoms of speech, expression, thought, conscience and belief; as quite correctly acknowledged by learned Counsel for the Petitioner, the said individual freedoms are not absolute but must of necessity be exercised with due regard for the corporate or communal rights of other members of the society and the public interest. *See Article 43(1) of the Constitution.*

61. In the instant case, it is the Petitioner's contention that the actions for which he was arraigned should not have been criminalized in a free and democratic society. As can be deduced from his Indictment, the actions in question include his demand for an independent international audit of the presidential election results before the swearing-in of the new President, before declaring himself the winner of the 2016 presidential election. He thereupon incited and mobilized the public to defy lawful authority and attend his swearing-in as President of the Republic of Uganda; took the presidential oath of office undertaking to execute the functions of the President, and declared his intention to establish a Cabinet for the Republic of Uganda.

62. With the greatest respect, I do not deduce the foregoing actions (if true) to have been simple disagreements with a position taken by or changing the view of a sitting Government, as the Petitioner opines. It seems to me that the declaration

of a parallel Government would have the effect of overturning the constitutional order established by the 1995 Constitution, or indeed the constitutional order of any civilized nation. It cannot, therefore, be simplistically relegated to a non-violent act intended to change the view of the Government.

63. Before proceeding further with this issue, it is necessary to consider the Supreme Court decision in **Charles Onyango Obbo & Another v Attorney General** (supra), to which the Court was referred by learned Counsel for the Petitioner, given its applicability to the limitations on fundamental rights as expressed in Article 43 of the Constitution. It was observed (per Mulenga, JSC):

It is apparent from the wording of clause (2) that the framers of the Constitution were concerned about a probable danger of misuse or abuse of the provision in clause (1) under the guise of defence of public interest. For avoidance of that danger, they enacted clause (2), which expressly prohibit the use of political persecution and detention without trial, as means of preventing, or measures to remove, prejudice to the public interest. In addition, they provided in that clause a yardstick, by which to gauge any limitation imposed on the rights in defence of public interest. The yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. This is what I have referred to as "a limitation upon the limitation". The limitation on the enjoyment of a protected in defence of public interest is in turn limited to the measure of that yardstick. In other words, such limitation, however otherwise rationalised, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society. The Co-existence in the same constitution, of protection and limitation of the rights, necessarily generates two competing interests. On the one hand, there is the interest to uphold and protect the rights guaranteed by the Constitution. On the other hand, there is the interest to keep the enjoyment of the individual rights in check, on social considerations, which are also set out in the Constitution. **Where there is conflict between the two interests, the court resolves it having regard to the different objectives of the Constitution.** (my emphasis)

64. This observation by the Supreme Court correctly points a court faced with conflicting constitutional interests to the objectives of the Constitution as *inter alia* set out in the National Objectives and Directive Principles of State Policy ('National Objectives'), the justiciability of which is now a fairly well settled matter. With the greatest respect, in my humble view, the National Objectives are more binding to



the courts in Uganda than the authorities from other jurisdictions that were relied upon in the Charles Onyango Obbo case to arrive at its decision.

65. Objective I(i) of the National Objectives succinctly designates them as guiding principles for the interpretation of the Constitution in the following terms:

**The following objectives and principles shall guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or interpreting the Constitution or any other law ... for the promotion of a just, free and democratic society. (my emphasis)**

66. For present purposes, under the sub-title '*Political Objectives*', Objective III(i) and (v) are instructive on the intention of the framers of the Constitution as to what would promote a just, free and democratic society. They are reproduced below.

- (i) **All organs of State and people of Uganda shall work towards the promotion of national unity, peace and stability.**
- (ii) .....
- (iii) .....
- (iv) .....
- (v) **The State shall provide a peaceful, secure and stable political environment which is necessary for economic development.**

67. Meanwhile, the objective of the protection and promotion of fundamental and other human rights and freedoms is encapsulated in Objective V as follows:

- (i) **The State shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively.**
- (ii) **The State shall guarantee and respect the independence of nongovernmental organisations which protect and promote human rights.**

68. My construction of Objectives III(i) and (v) read together with Objective I(i) is that a just, free and democratic society was anticipated by the framers of the Constitution to *inter alia* entail peace and stability, as well as a peaceful, secure and stable political environment. The State was obligated to operate within that framework to engender the promotion and observance of human rights.

69. Indeed, Article 19(3) of the International Covenant for Civil and Political Rights (ICCPR) does recognise the need for the restriction of freedom of expression ‘**for the protection of national security or of public order (ordre public)**’ in the following terms:

**The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**

- (a) For respect of rights or reputations of others,**
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.**

70. That provision of the ICCPR was applied in the case of **Capital Radio (Private) Ltd v The Broadcasting Authority of Zimbabwe & 2 Others, Civil Application No. 162 of 2001** as follows:

Freedom of expression is not, however, absolute. Every system of international and domestic rights recognizes carefully drawn and limited restrictions on freedom of expression to take into account the values of individual dignity and democracy. Under international human rights law, national laws that restrict freedom of expression must comply with the provisions of Article 19(3) of the International Covenant on Civil and Political Rights.

71. Against that background, the alleged domination and control of Ugandans that disagree with an electoral result, ought to be construed alongside constitutional provision for electoral challenges to disputed elections. *See Article 104 of the Constitution*. Far from suppressing freedom of expression, such provision for electoral contests provides a constitutional avenue by which those that disagree with an electoral result can channel their misgivings. Thus, Article 3(2) of the Constitution and section 23(2)(a) of the Penal Code Act would be construed to address scenarios where, despite the available constitutional framework for electoral redress, recourse is made to activities that threaten the peaceful, secure and stable political environment envisaged in a just, free and democratic society.



72. Construing the limitations in Article 43(2)(a) and (c) of the Constitution in accordance with Objective III(i) and (v), it seems to me that section 23(2)(a) of the Penal Code Act is, within the precincts of Article 3(1) and (2) of the Constitution, a justifiable limitation to the freedoms of speech, expression, thought, conscience and belief articulated in Article 29(1) of the Constitution. Article 29(1)(a) and (b) ought to be construed together with the prohibition in Article 3(2) of the Constitution against the abrogation of the Constitution by unlawful means. That constitutional prohibition is, in my judgment, sufficient legal justification for the limitation of the freedoms encapsulated in Article 29(1) of the Constitution in a free and democratic society. Consequently, section 23(2)(a) that supplements the offence of treason created under Article 3(2) would be in the public interest referred to in Article 43(1) in so far as it protects and preserves a lawfully established constitutional order; and to that extent, it is reasonably justifiable (and, I might add, foreseeable) in a free and democratic society in accordance with Article 43(2)(c) of the Constitution.

73. With utmost respect, I find no evidence on record that the values, norms and aspirations of the Ugandan people would include the governance misnomer of two parallel national administrations; nor is there any material on record to support the notion that *'a good deal of annoyance and disorder'* are tenets of a *'modern, democratic and progressive society'*, as is the proposition herein. In like vein, I find no evidence of the discriminatory application of the impugned statutory provision as against the Petitioner vis-à-vis any other Ugandans that find themselves in the circumstances he found himself. Whereas I do perceive the innuendo herein that the impugned provision targets political actors with divergent views, with respect, it ought to be appreciated that contestations in courts are not determined on the basis of unproven inferences and innuendos. In accordance with the age-old procedural adage that he who alleges must prove, the onus of proof of these allegations would rest solidly with the Petitioner.

74. I therefore find no political persecution of the Petitioner on account of the application of section 23(2)(a) of the Penal Code Act *per se*, neither do I deduce any inconsistency with Article 29(1)(a) and (b) of the Constitution. In the result, I am satisfied that section 23(2)(a) of the Penal Code Act is not inconsistent with