

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

CONSTITUTIONAL PETITION NO. 014 OF 2018

- 10 1. ABC CAPITAL BANK LTD}  
2. BANK OF AFRICAN UGANDA LTD}  
3. BANK OF BARODA UGANDA LTD}  
4. BANK OF INDIA UGANDA LTD}  
5. BARCLAYS BANK UGANDA LTD}  
15 6. CAIRO INTERNATIONAL BANK LTD}  
7. CENTENARY BANK LTD}  
8. CITIBANK UGANDA LTD}  
9. COMMERCIAL BANK OF AFRICA LTD}  
10. DFCU BANK LTD}  
20 11. DIAMOND TRUST BANK UGANDA LTD}  
12. ECO BANK UGANDA LTD}  
13. EQUITY BANK UGANDA LTD}  
14. EXIM BANK UGANDA LTD}  
15. GT BANK LTD}  
25 16. FINANCE TRUST BANK LTD}  
17. FINCA BANK LTD}  
18. HOUSING FINANCE BANK LTD}  
19. KCB BANK UGANDA LTD}  
20. MERCANTILE CREDIT BANK LTD}  
30 21. NC BANK UGANDA LTD}  
22. OPPORTUNITY BANK LTD}  
23. ORIENT BANK LTD}  
24. POST BANK LTD}  
25. PRIDE MICRO – FINANCE LTD}  
35 26. STANBIC BANK UGANDA LTD}





5 March 2018 issued by the second respondent under section 42 of the TPC Act, addressed to the petitioners and requiring the 1<sup>st</sup> to the 30<sup>th</sup> petitioners to furnish to the second respondent details of all bank accounts held by them for the two-year period of 1<sup>st</sup> January 2016 to 31<sup>st</sup> of December 2017 are inconsistent with and contravene article 27 (2) of the Constitution read  
10 together with articles 2, 20, and 43 (2) (c) of the Constitution.

The facts in support of the petition are that the 1<sup>st</sup> to 30<sup>th</sup> petitioners are licensed financial institutions whose core business include inter alia the acceptance of deposits from the public, lending and extending credit, issuing and administering means of payment and providing money  
15 transmission services. In offering the services the petitioners enter into an arrangement with the customers to open accounts where the customers may deposit and withdraw money. Further that the petitioners provided the services to a wide variety of persons, both natural and juridical. The petitioners stated that on 16<sup>th</sup> March 2018, in relation to the bank financial  
20 institutions and 19<sup>th</sup> March 2018 in relation to the non-bank financial institutions, the second respondent issued to the managing directors of the petitioners, a notice purportedly issued under section 42 of the TPC Act, requiring each of the petitioners to furnish it with details of all bank accounts held by them for the two years period commencing 1<sup>st</sup> January,  
25 2016 to 31<sup>st</sup> December 2017, which details were to include but were not limited to the following; the account name, the account number, the name of the signatory, the type of account, a taxpayer identification number (TIN) where available, the national identification numbers or business registration numbers where applicable, total credits for each of the two  
30 years, total debits for each of the two years, current balance, account holders telephone contact email. The required information was supposed to be availed by 30<sup>th</sup> March 2018.

On 28<sup>th</sup> and 29<sup>th</sup> of March 2018, the second respondent issued a clarification in respect of the notices indicating the format in which the information, the  
35 subject matter of the notice, should be presented and extending the date of submission of the information to 20<sup>th</sup> April 2018. The details of the bank

5 accounts sought by the second respondent constitute bank account information of the entire Uganda banking sector, and is subject to the constitutionally protected right of privacy of the account holders under article 27 (2) of the Constitution and is also subject to the banker/customer contractual duty of confidentiality.

10 The petitioners averred without prejudice to article 17 (g) enshrining the duty of citizens of Uganda to pay taxes, and the second respondent statutory mandate to collect the said taxes and the legitimate public interest in tax collections, that section 41 and 42 of the TPC Act contravene and are inconsistent with the above cited provisions of the Constitution in that:

15 Section 41 (7) (a) and 42 (4) (a) purport to nullify any law relating to privilege which includes, but is not limited to the privilege against self-incrimination and legal professional privilege, which is a derogation from the right to a fair hearing enshrined in article 28 of the Constitution and entrenched by article 44 (c) of the Constitution.

20 Further that the provisions of section 41 give the second respondent unfettered powers to access premises, records and data storage devices without any reasonable cause, administrative or democratic supervision of all safeguards; infinite powers that impair the right to privacy enshrined under article 27 (2) of the Constitution in a manner that far exceeds what is  
25 necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and democratic society contrary to article 43 (2) (c) of the Constitution.

Further that the provisions of section 42 give the second respondent unfettered powers to obtain information without any reasonable judicial,  
30 administrative or democratic supervision or grant infinite powers that impair the right to privacy enshrined in article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society, contrary to article  
35 43 (2) (c) of the Constitution.



5 The petitioners further asserted that the notice issued to the petitioners contravenes and is inconsistent with the provisions of the Constitution in that:

10 It was issued to all financial institutions in Uganda in respect of each and every bank account Uganda, in an indiscriminate fishing exercise lacking any objective and rational basis and which accordingly impairs the right to privacy of all bank account holders in Uganda enshrined under article 27 (2) of the Constitution in a manner that exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and democratic society,  
15 contrary to article 43 (2) (c) of the Constitution.

It was issued contrary to the express provisions of section 42 (1) of the TPC Act, does not indicate the part of tax law that is intended to be administered with the benefit of the information sought from the petitioners which impairs the right to privacy of all bank account holders in Uganda enshrined  
20 under article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society, contrary to article 43 (2) (c) of the Constitution.

25 That section 42 of the TCP relates to investigations and there is no pending tax investigation in relation to each and every bank account holder in Uganda and therefore it impairs the right to privacy of all bank account holders in Uganda enshrined under article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and  
30 demonstrably justifiable in a free and Democratic society contrary to article 43 (2) (c) of the Constitution.

In the premises, the petitioners pray for declaration that sections 41 (7) (a) and 42 (4) (a) of the TPC Act, 2014 to the extent that they purport to nullify any law relating to privilege which includes, but is not limited to the  
35 privilege against self-incrimination and legal professional privilege,

5 derogate from the right to a fair hearing enshrined in article 28 of the Constitution, contrary to article 44 (c) and are accordingly null and void.

A declaration that section 41 of the TPC Act, 2014 impairs the right to privacy enshrined in article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is  
10 accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society, in breach of article 43 (2) (c) of the Constitution and is, accordingly, null and void.

A declaration that section 42 of the TPC Act, 2014 impairs the right to privacy enshrined in article 27 (2) of the Constitution in a manner that far exceeds  
15 what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society, contrary to article 42 (2) (C) of the Constitution and is, accordingly, null and void.

A declaration that the notice impairs the right to privacy of all bank account  
20 holders in Uganda enshrined in article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society, contrary to article 42 (2) (c) of the Constitution. Wherefore the petitioners pray that the petition is granted  
25 and the declarations issued with costs of the petition to the petitioners and for any other remedies that this court may deem fit to grant.

The petition is supported by the affidavits of Candy Wekesa Okoboi, Angelina Namakula Ofwono, Peninnah Kasule, Patrick Anok and Wilbrod Humphreys Owor.

30 The affidavits only support the averments in the petition but do not add the facts other than attaching notices from the second respondent dated 16<sup>th</sup> of March 2018 entitled "Notice to obtain information of account holders" addressed to the various petitioners. The second letter is dated 29<sup>th</sup> of March 2018 seeking to obtain information on account holders and also  
35 addressed to the various petitioners.



5 The first respondent opposed the petition and filed an answer to the petition in which it denies all the allegations contained in the petition. In the answer to the petition, the first respondent averred that the petition is misconceived, is frivolous, vexatious and raises no issues or questions as to interpretation of the Constitution by this court. That the first respondent  
10 has not by any act or omission violated or infringed any provisions of the Constitution and that the petition offends the Constitutional Court (Petitions and References) Rules. Further that the petition is improperly before the court as the alleged claims are in respect of rights and freedoms whose protection and enforcement should be before a competent court.

15 Without prejudice, the first respondent averred that the petition is not justiciable before this court and the allegations in it about the acts do not contravene or are not inconsistent with the articles of the Constitution referred to. They assert that the first respondent acted within its constitutional mandate. The first respondent's answer to the petition is  
20 supported by the affidavit of Charity Nabasa, a state attorney in the Chambers of the Attorney General which supports the answer to the petition on oath.

For its part, the second respondent did not file any answer to the petition but addressed the court in written submissions on the issues raised by the  
25 petitioners.

At the hearing learned counsel Mr. Masembe Kanyerezi appearing jointly with learned counsel Mr. David F.K. Mpanga, learned counsel Brian Kalule and learned counsel Mr. Timothy Lugaizi appeared for the petitioners. The learned State Attorney Mr. Ojambo Bichachi and learned State Attorney Mr.  
30 Sam Tusibira represented the first respondent. Learned Counsel Mr. Alex Alideki and learned Counsel Mr. Ronald Baluku Masamba represented the second respondent.

The court was addressed in written submissions and judgment reserved on notice.



## 5 Submissions of the Parties.

With reference to the material facts, the petitioner's counsel submitted that in confirmation of the legality of its notices, the second respondent has since withdrawn the impugned notices to indicate that it does not intend to insist on their enforcement. They contend that this does not detract from the questions raised before the court in relation to the constitutionality of the issuance of the notices in the first place and of the provisions of the Tax Procedures Code Act, 2014 that underpinned the notices. That if these questions are not adjudicated upon, it is likely that the second respondent will make another attempt in future to issue similar notices whether to all or to some financial institutions. In the premises, the petitioners raised the following issues:

1. Whether sections 41 (7) (a) and 42 (4) (a) of the TPC Act 2014, to the extent that they purport to nullify any law relating to privilege which includes, but is not limited to, the privilege against self-incrimination and legal professional privilege, are inconsistent with the right to a fair hearing enshrined in Article 28 and article 44 (c) of the Constitution?
2. Whether sections 41 and 42 of the TPC Act, 2014 are inconsistent with and contravene article 27 (2) of the Constitution read together with articles 2, 20, and 43 (2) (c) of the Constitution?
3. Whether the notice is inconsistent with and contravenes Article 27 (2) of the Constitution, read together with article 43 (2) (c) of the Constitution?
4. What remedies are available to the parties?

The petitioner's counsel submitted that the petition was lodged pursuant to article 137 of the Constitution and that this court has jurisdiction to hear and determine petitions that call for interpretation of the Constitution. For this court to have jurisdiction they state that the petition must prima facie show that an interpretation of a provision of the Constitution is required (see **Ismail Serugo vs Kampala City Council and another; Constitutional Appeal No 2 of 1998**).

5 The petitioner submitted that the court is required to interpret articles 2, 20,  
27 (2), 28, 43 (2) (c), and 44 (c) of the Constitution to ascertain whether  
sections 41 and 42 of the TPC Act, 2014 and the actions of the second  
respondent are unconstitutional. In the premises, the petitioner submitted  
10 that there are questions as to interpretation of the Constitution and this  
court should exercise its jurisdiction to determine the issues raised in the  
petition.

With regard to principles of interpretation of the Constitution, the petitioner  
submitted that the Constitution is the supreme law and any law or custom  
that is inconsistent with it is void to the extent of the inconsistency in terms  
15 of article 2 of the Constitution. They highlighted some principles which have  
been applied in the interpretation of the Constitution. These include the  
principle that the entire Constitution must be read and interpreted as an  
integral whole with no particular provision destroying the other but each  
part sustaining the other. Secondly, a constitutional provision containing a  
20 fundamental right is a permanent provision intended to cater for all times  
to come and must be given a broad, generous and liberal interpretation that  
realises the full benefit of the guaranteed rights (See **Charles Onyango Obbo  
and another vs the Attorney General; Constitutional Appeal No 2 of 2002**).  
Further in considering the constitutionality of a particular provision, the  
25 court should consider not just the purpose of the provision, but its effect  
(see **Attorney General vs Salvatori Abuki; Supreme Court Constitutional  
Appeal No 01 of 1998** and **The Queen vs Big M Drug Mart Limited [1985] 1 RCS  
295**).

Issue 1:

30 **Whether sections 41 (7) (a) and 42 (4) (a) of the TPC Act 2014, to the extent  
that they purport to nullify any law relating to privilege which includes, but  
is not limited to, the privilege against self-incrimination and legal  
professional privilege, are inconsistent with article 28 and article 44 (c) of  
the Constitution?**



5 The petitioners' counsel submitted that both section 41 (7) (a) and 42 (4) (a) of the Tax Procedures Code Act, 2014 provide that *"this section shall have effect despite – (a) any law relating to privilege or the public interest respect of access to premises or places, or the production of any property record, including in electronic format,"*. The plain and natural meaning and  
10 the effect of the provision is to override any law relating to privilege or the public interest. To that extend the legal privilege and the right against self-incrimination are overridden by the above provisions and contravene article 28 of the Constitution which guarantees the right to a fair hearing and which right is entrenched and cannot be derogated from under article 44 (c) of the  
15 Constitution.

They submitted that the legal professional privilege is a general rule of common law which states that that the communication between the legal adviser and his or her client are protected from disclosure provided that certain requirements are met. The purpose and scope of privilege is to  
20 enable legal advice to be sought and given in confidence (see **Balabel and another vs Air India (1988) 2 All ER P.246.**)

The petitioners contend that the legal professional privilege must be seen in light of the broader right of access to justice through the seeking of legal advice without hindrance or deterrence (See **Dr. Robert Ayisi vs the Kenyan Revenue Authority; Petition No 412 of 2016 HCK**). They submitted that in the  
25 premises, the legal professional privilege has long been held to be a core tenet of the right to a fair hearing/trial. Counsel also relied on **Thint (Pty) Ltd vs National Director of Public Prosecution and others [2008] ZACC 13 183 – 184**. The petitioners also rely on **her Majesty the Queen vs Lavalee, Rackel & Heintz & Others [22] 3 RCS 209** where the Supreme Court of  
30 Canada held that the solicitor/client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. Such protection is insured by labelling as unreasonable any legislative provision that interferes with the solicitor client privilege more than is absolutely  
35 necessary. In **Dr. Robert Ayisi** (supra) section 59 (1) of the Tax Procedures Act (Kenya) empowered the Commissioner of tax or any other authorised

5 person to require any person to furnish any information, attend to any place, produce for examination any documents requested. Similar to the Ugandan provision it provided that:

"this section shall have effect despite –

10 a) any law relating to privilege of the public interest with respect to access to premises or places, or the production of any property or record, including in electronic format;"

The court held that the provision breached the privilege rule and was therefore unconstitutional.

15 They submitted that similarly the impugned provisions of the TPC Act, 2014 of Uganda override all forms of privilege and therefore contravene the right to fair hearing guaranteed under article 28 which is also a right from which there can be no derogation under article 44 (c) of the Constitution. That the privilege against self-incrimination has also been recognised as a fundamental tenet of the right to a fair hearing. This is because it means  
20 that trial will be rendered unfair if self-incriminating evidence is used.

In the premises, the petitioner submitted that the impugned provisions of the Tax Procedures Code Act, 2014 contravene article 28 and 44 (c) of the Constitution.

25 In reply, the first respondents counsel with reference to the facts submitted that the petition is anticipatory and does not call for interpretation of the Constitution. Secondly that the actions of the respondents are legitimate, lawfully exercised within the legal framework and constitutional mandate and does not infringe any provisions of the Constitution as alleged. Thirdly that the allegations contained in the petition are non-justiciable before the  
30 constitutional court.

As far as issue 1 is concerned, the first respondent's counsel submitted that section 41 (1) of the TPC Act, 2014 Allows the Commissioner, for purposes of administering any provision of the tax law, at all times and without prior notice, full and free access to any premises or place, any record, including



5 a record in electronic format or any data storage device. It also provides  
that the Commissioner may make an extract or copy from any record,  
including a record in electronic format of any information relevant to a tax  
obligation. Secondly section 42 (1) of the TPC Act, provides that the  
Commissioner may by notice in writing whether a person is not liable to tax  
10 or not, request that person to furnish within the time specified in the notice  
any information that may be stated in the notice. Secondly it may require  
the person to attend at a time and place designated in the notice for the  
purpose of being examined by the Commissioner concerning the tax affairs  
of that person or any other person, and for that purpose the Commissioner  
15 require the person to produce any record, including an electronic format, in  
the control of that person. Counsel emphasised that under section 42 (4) of  
the TPC Act, it is stipulated that: this section shall have effect despite –

(a) any law relating to privilege or the public interest with respect to the giving of  
information on the production of any record, including in electronic format; or

20 (b) any contractual duty of confidentiality.

Counsel submitted that this court can only exercise its jurisdiction where  
the petition shows on the face of it that interpretation of a provision of the  
Constitution is required and that it is not enough to merely allege that a  
constitutional provision has been violated. Secondly the petitioner should  
25 show prima facie the effect of the alleged violation before a question can be  
referred to the constitutional court. The first respondents counsel relied on  
several authorities for this assertion namely **Mbabali Jude vs Edward  
Kiwanuka Ssekandi; Constitutional Petition No 28 of 2012;** and **Ismail Serugo  
vs Kampala City Council and Attorney General; Constitutional Appeal No 2**  
30 **of 1998.**

The first respondents counsel submitted that an issue that calls for  
constitutional interpretation must involve or show that there is an apparent  
conflict with the Constitution by an Act of Parliament or some other law or  
an act of omission done or omitted to be done by some person or authority.  
35 Further, the dispute where the apparent conflict exists must be such that



5 its resolution must depend on the interpretation of a provision of the Constitution and not one which is merely for enforcement.

Further, the first respondents counsel submitted that not every violation of a provision of the Constitution calls for interpretation of the Constitution. The respondents relied on several other principles of interpretation of the  
10 Constitution that I have considered.

The first respondents counsel submitted in relation to section 42 (1) of the TPC Act, 2014 that it empowers the Commissioner General URA for purposes of administering any provision of the tax law to require any person, by notice in writing, whether or not they are liable for tax, to furnish,  
15 within the time specified in the notice, any information that may be stated in the notice. Further section 41 (1) of the TPC Act, 2014 empowers the Commissioner General for the purposes of administering any provision of the tax law, full and free access to any record, including a record in an electronic format and to make an extract or copy for any record, including  
20 a record in electronic format, of any information relevant to a tax obligation. The first respondents counsel submitted that the above provisions do not infringe articles 27 and 28 regarding the right to privacy and the right to a fair hearing respectively. Neither does it infringe the provisions of article 44 (c) of the Constitution which entrenches the provisions of article 28 (1)  
25 of the Constitution on the right of a fair hearing.

In reply, the second respondent's counsel set out the facts and addressed the issues as stated in the petitioners written submissions.

The second respondent's counsel submitted that the impugned sections of the TPC Act, 2014 do not in any way contravene articles 28 and article 44 (c)  
30 of the Constitution and does not nullify the law relating to the privilege against self-incrimination and legal professional privilege but simply fit their application to the confines of the Constitution. Further that while article 44 guarantees the non-derogation from the right to fair hearing enshrined under article 28, the Constitution also provides for general  
35 limitation under article 43. While the right to fair hearing is absolute, there

5 are other component rights to the right of fair hearing which are not absolute. The second respondents counsel relied on **Brown vs Scott (Procurator Fiscal Dunfermline) and another [2000] 2 All ER** at page 119 where the court found that the right not to incriminate oneself is not an absolute right and that an interference with the right may be justified if the  
10 particular legislative provision was enacted in pursuance of illegitimate object if the scope of the legislative provision is necessary and proportional to the achievement of the aim. In the premises, the second respondents counsel also submitted that the limitation right against self-incrimination is acceptable and demonstrably justifiable in a free and Democratic society.

15 Counsel submitted that the right against self-incrimination was limited in the public interest and relied on the same authorities submitted by the first respondents counsel. Secondly they also submitted that the limitation is acceptable and demonstrably justifiable in a Democratic society Uganda to the extent that the law was enacted in the public interest. Counsel made  
20 similar submissions like the first respondents counsel. They further added that the legislative objective of providing for the effective tax collection is a sufficiently important to override the fundamental right of the petitioners against self-incrimination in order to achieve the sufficiently important objective of the provision of public amenities through effective tax collection  
25 and deal with challenges like offshore accounts, tax evasion, illicit with commission, money-laundering which in most cases are tools used to evade tax. That a person complying with the impugned provisions of section 41 and 42 of the TPC Act is not precluded from exercising either the rights provided for in the constitution such as the right to access a court of law,  
30 the right to challenge any tax assessment, the right to legal representation, the right to presumption of innocence, the right to fair hearing and the only right excepted is the right to professional privilege. The second respondent's counsel submitted that the petition is a blanket petition which was exaggerated and misconceived and an attack on the duty of the  
35 respondent to collect tax revenue.



5 The petitioners counsel also submitted that the measures designed to meet the objective of the legislation are rationally connected to and are not arbitrary, unfair or based on irrational considerations. They strike a balance between the public interest and enjoyment of the rights and freedoms of the petitioners. Further that the means used to impair the right to freedom must  
10 be no more necessary than to accomplish the objective and that it is evident that the means used to impair the right to privacy, legal professional privilege, right against self-incrimination are not more than necessary to accomplish the objective of ensuring effective tax collection on the basis of an objective and credible data and record.

15 Counsel also submitted that the legal professional privilege is not absolute privilege and majorly depends on the circumstances of each case. In other words, it can be limited by the statute in unambiguous words. This can be gleaned from the speech of Lord Taylor of Gosforth CJ in **R vs Derby Magistrates Court, Ex Parte B [1996] AC 487** for the proposition that legal  
20 professional privilege has been held by the European Court of Human Rights to be part of the right to privacy guaranteed by article 8 of the convention and held to be part of the community law in **A M & S Europe vs Commissioner of the European Communities (Case 155/79) [1983] QB 878**.

The second respondent's counsel submitted that courts ordinarily construe  
25 general words in a statute, although literary capable of having some startling or unreasonable consequence, such as overriding fundamental human rights, as not having been intended to do so. An intent to override such right must be expressly stated or appear by necessary implication. This can be found in the speech of Lord Steyn and Lord Hoffman in **R vs Secretary of State for the Home Department ex parte Simms (2000) 2 AC**  
30 **115**. Further, the principle itself is traced to **Straddling vs Morgan (1560) 1 PL 199**.

In the premises, the second respondents counsel submitted that sections 41 and 42 of the impugned law does not in any way contravene article 28  
35 article 44 (c) and do not nullify the law relating to privilege against self-incrimination and legal professional privilege but simply limits the

5 application within the confines of the Constitution for the purpose of ensuring effective tax administration for the public good.

In rejoinder the Petitioners' counsel reiterated submissions on the issue of the jurisdiction of this court submitted that the petition seeks interpretation of articles 2, 20, 27 (2), 28, 43 (2) (c, and the 44 (c) of the Constitution to  
10 ascertain whether sections 21 and 42 of the TPC Act, 2014 are unconstitutional for being inconsistent with the aforesaid provisions of the Constitution. In the premises, the petition demonstrates on its face that there is a question as to interpretation of the Constitution and the constitutional court has jurisdiction to determine it.

15 On the question of whether the rights of self-incrimination and legal privilege are derogable, the petitioner's counsel submitted that the first respondent and the second respondent submitted that the right to legal privilege and against self-incrimination are not expressly provided for under article 28 and therefore there are only implied which makes them not  
20 absolute or non-derogable. Counsel contends that the submission is both factually and conceptually erroneous. In the first place article 28 (11) provides that where a person is being tried for a criminal offence, neither that person nor his spouse shall be compelled to give evidence against that person. And that this is the classic right or privilege against self-  
25 incrimination and it was erroneous to say that the right is not applicable under article 28 of the Constitution.

Secondly, even if the rights were implied, it does not make them any lesser rights as long as they form part of the right to a fair trial and therefore they should enjoy the full protection accorded to that right. They contend that  
30 article 28 of the Constitution is a composite package of rights which stand or fall as a whole. Further article 45 of the Constitution saves any other rights specifically mentioned and chapter 4 of the Constitution shall not be regarded as excluding other rights not declared in the Constitution. In the premises, the petitioners submitted that the right to legal privilege and the  
35 right against self-incrimination form part of the right of a fair hearing under



5 article 28 of the Constitution and is non-derogable under article 44 (c) of the Constitution.

10 In rejoinder the Petitioners counsel submitted on the question of whether there was any justifiable limitation to the right of privacy and legal privilege, that according to the respondents, article 27 and 44 allow justifiable  
15 limitation on the enjoyment of the right to privacy and legal professional privilege. That had the legislature intended to protect legal professional privilege, it would have expressly provided for it as it did under section 14 of the Anti-Money-Laundering Act 2013 and it would be against the principle of parliamentary sovereignty of legislating if the judiciary legislates what  
20 Parliament has already enacted. The petitioner's position is that the first respondent reference to rights namely the right to legal privilege which forms part of the right to a fair hearing under article 28 and the right to privacy guaranteed under article 27 of the Constitution on the other. The right to a fair hearing and by extension the right to legal privilege is non-  
25 derogable. In any event, the submissions of the first respondent to the extent that they seek a justification for the derogation from the right to legal privilege are misconceived. Secondly the fact that legal privilege is expressly protected in the Anti-Money Laundering Act is legally irrelevant. It is just one example of a statute that recognises and meets the constitutional protection of the right to a fair hearing.

30 Thirdly the petitioners submitted that there is no such principle of parliamentary sovereignty under Ugandan law and instead under article 2 of the Constitution, it is the supreme law of Uganda and any other law or custom which is inconsistent with any provisions of the Constitution shall be void to the extent of the inconsistency. In Uganda, what exists is  
"Constitutional Sovereignty". Whereas Parliament has power to legislate, any legislation it passes should not be inconsistent with the Constitution and by declaring any such Act inconsistent, the court would be performing its functions under article 137 of the Constitution.

35 In further rejoinder to the submissions of the second respondent, the petitioner's counsel submitted that there is no authority that supports



5 division of the elements of a right to a fair hearing into parts which are non-derogable and parts from which derogation is permissible. This is because article 44 (c) of the Constitution is clear that the right to a fair hearing is non-derogable.

10 Secondly, the case of **Soon Yeon Kong Kim and Another v the Attorney General; Constitutional Reference No 6 of 2007** confirmed that the right to fair hearing includes pre-trial procedures. This is intended to ensure that the provisions of the Constitution have life in practical meaning. In the context of the petition, it will be wholly superficial to say that the right to a fair hearing is protected when proceedings are in court when such  
15 proceedings rely on documents or evidence obtained, in violation of the right to legal privilege or the right against self-incrimination.

Further, the TCP Act, 2014 creates offences which can result into prosecutions especially sections 55 (1) (c) and (d) which create the offence of failure to provide the reasonable assistance under section 41 and failure  
20 to comply with a notice under section 42. The likelihood of persecution may arise under the impugned section and therefore any prosecutions thereunder which removed legal privilege or the right to self-incrimination violated the right to a fair hearing.

25 Fourthly, the authority of **Brown vs Scott** relied on for this submissions was not interpreting a constitutional right of a fair hearing as is understood under the Ugandan Constitution but concerned the right against self-incrimination at common law. Instead the Ugandan Constitution is clear about the right of a fair hearing in terms of whether it is a non-derogable right, and there is no room to argue that only parts of the rights are non-  
30 derogable and therefore the precedents relied on by the respondents were cited out of context.

On the question of whether public interest can allow derogation from the right against self-incrimination, the argument that the right should be limited in public interest of tax collection is misplaced. The petitioners  
35 counsel submitted that the submissions and cases of the respondents are

5 founded on a wrong premise. The authorities cannot apply in light of the express provisions of article 44 (c) of the Constitution and secondly the right to a fair hearing includes the right against self-incrimination and legal professional privilege.

10 Further counsel submitted that it is wrong for the second respondent to submit that it had not been demonstrated that the implementation of the impugned statutory provisions amounts to self-incrimination. That what is required in the constitutional petition is to test the provisions of the impugned law against provisions of the Constitution to assess whether the effect would be inconsistent with the Constitution according to the decision  
15 of the court in **Attorney General vs Salvatori Abuki; Supreme Court Constitutional Appeal No 01 of 1998**. In that Judgment the Supreme Court held that in considering the constitutionality of a particular provision, the court is enjoined to consider not just the purpose of the provision but also its effect. In the premises there was nothing in the submission that there  
20 was no proof of self-incrimination in the petition.

Further, the petitioner's counsel submitted that it is erroneous to submit that the right to self-incrimination is only relevant in criminal law. That the important sections 41 (7) (a) and 42 (4) (a) of the TCP Act, nullify without restriction "any law relating to privilege and public interest". The  
25 nullification therefore applies to criminal laws as well and for that matter violates article 28 (11) which enshrines the right against self-incrimination.

Further the privilege against self-incrimination must include not being compelled to confess which right is violated under the impugned laws. This is because section 41 (3) (a) of the TCP Act, requires an occupier of premises  
30 or place to answer questions relating to an investigation either orally or in writing. It would therefore invoke the privilege against self-incrimination.

Further are the limitations demonstrably justifiable? In rejoinder the petitioner's counsel submitted that the right to fair trial is non-derogable and the submissions on their limitation are irrelevant. Counsel further  
35 submitted that the issue of legal professional privilege as being a right that



5 should be upheld was settled a long time ago in the case of **R vs Derby Magistrates Court, ex parte B [1996] 1 AC 487** where it was observed that:

10 The principle which runs through all these cases, and the many other cases which were cited, is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. .... must be sure that what he tells his lawyer in confidence will never be relayed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rest.

15 Further, the petitioner's counsel submitted that the need to administer justice overrides the need to collect revenue.

Issue 2:

**Whether sections 41 and 42 of the TPA Act 2014 are inconsistent with and contravene articles 27 (2) of the Constitution read together with articles 2, 20, and 43 (2) (c) of the Constitution.**

20 The Petitioners Counsel submitted that Article 27 (2) of the Constitution provides that "no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property." The petitioners rely on **Harold Bernstein and Others vs L. Von Weilligh Bester NO and Others Case No. CCT 23/95** paragraphs 68 – 69 for the  
25 definition of privacy. As far as illustrations of breach of the right to privacy is concerned, it was held that:

30 "... Examples of wrongful intrusion and disclosure which have been acknowledged at common law are entry into a private residence, the reading of private documents... The disclosure of private facts which have been acquired by a wrongful act of intrusion, and the disclosure of private facts contrary to the existence of a confidential relationship. These examples are clearly related to either the private sphere, or relations of legal privilege and confidentiality."

35 The petitioner's counsel submitted that there is no doubt that the activities and information which was sought under sections 41 and 42 of the TPC Act relate to the privacy of individuals. For instance, section 41 gives the second

5 respondent full and free access to any premises or place, any records of any data storage devices of any person and the scope of the section is so wide that includes private premises, private information, private records and devices without any limitation.

10 The petitioners rely on **Dr. Robert Ayisi vs the Kenya Revenue Authority** (supra) where a similar section was declared unconstitutional for breach of the right of privacy enshrined in article 31 (a) of the Constitution. They submitted that by the same token, the decision applies to section 42 of the TPC Act, 2014 of Uganda.

15 The petitioner's counsel further submitted that section 22 of the TPC Act, empowers the second respondent to require any person to furnish any information specified and that the scope of this information is so wide as to breach the right to privacy of communication and information.

20 The petitioners further maintained that even though the right to privacy can be derogated from, such derogation has to be in the public interest and this does only permit any limitation which is acceptable and demonstrably justifiable in a free and Democratic society (see **Charles Onyango and another vs Attorney General** (supra)). Further that section 42 and 41 of the TPC Act go beyond what is acceptable and demonstrably justifiable in a free and Democratic society. Firstly, the sections give the second respondent  
25 unfettered powers to access premises, records and data storage devices. Further, the powers are not subject to any judicial or quasi-judicial control or even any administrative supervision. The impugned provision grants to the Uganda Revenue Authority powers to enter onto any premises or place and to access tax records or any data storage devices of any person even  
30 in the absence of search warrants issued by a judicial authority. The power to enter private premises and to go through intimate possessions is a grossly disproportionate intrusion into the inner sanctum of the persons involved.

35 The petitioners also rely on the **Investigating Directorate: Serious Economic Offences and another vs Hyundai Motors Distributors (Pty) Ltd and others**



5 **CCT 1/00** Where the court considered the proportionality of a provision that  
allowed for a search and seizure in the context of the right to privacy and  
observed that the impugned provisions ought to strike a balance between  
the need for such powers and right to the privacy of individuals. Further, the  
legislation must set up an objective standard that must be met prior to  
10 violation of the right to privacy and thus there ought to be sufficient  
safeguard against an unwarranted invasion of the right to privacy.

The petitioners also relied on **Ashok Rama Mistry vs the Interim National  
Medical and Dental Council of South Africa and others CCT 13/97** where the  
constitutional court dealt with the constitutionality of the powers of entry,  
15 examination, search, of the inspectors under section 28 (1) of the **Medicines  
and Related Substances Control Act** Vis-à-vis the right to privacy held to  
the extent that the statute permitted entry without a warrant into private  
homes and rifling through intimate possessions, such activities would  
intrude on the “inner sanctum” allowing the authority to breach the right to  
20 personal privacy protected by section 13. They found that the language of  
the legislature under section 28 (1) to be so broad as to permit such entry  
and inspection in breach of section 13 which had to be justified by the state  
as being reasonable and justifiable in terms of section 33 of the Interim  
Constitution. Further the constitutional court found that the carte blanche  
25 right of the authority to enter any place, including private dwellings, where  
they reasonably suspect medicines to be, to inspect documents which may  
be of the most intimate kind was substantially disproportionate to the public  
purpose of section 28 (1) and did not pass the proportionality test. The  
Petitioners’ counsel submitted that this precedent applies to sections 41 and  
30 42 of the TPC Act which allows access to private dwellings premises  
without a warrant. Secondly the scope of the information the second  
respondent is entitled to collect is unrestricted. Counsel reiterated earlier  
submissions about the extent of the invasion of the right of privacy and the  
unfettered power of the second respondent which they submitted was  
35 grossly disproportionate and is not acceptable in a free and Democratic  
society.



5 In reply, the first respondents counsel submitted in relation to article 27,  
that it does not confer an absolute right to privacy. Further the rights and  
freedoms on fair hearing under article 28 of the Constitution is an absolute  
right that may not be derogated from under article 44 (c) of the Constitution.  
Further counsel submitted that article 28 of the Constitution has no express  
10 provision on legal privilege and self-incrimination. That the two rights are  
implied and as such the right to protection against self-incrimination and  
the legal professional privilege are not absolute and can be derogate from.

The first respondents counsel submitted that section 41 and 42 of the TCP  
Act, allow interference with the said rights in pursuance of a legitimate aim  
15 under an Act of Parliament where it is justified, necessary and  
proportionate in achieving the general public interest and for enforcement  
of a provision of an enactment of the law so long as the limitation is  
acceptable and demonstrably justifiable in a free and Democratic society.

The first respondents counsel submitted that the right and freedom of legal  
20 privilege and protection from self-incrimination can be curtailed under  
article 43 of the Constitution which provides for the general limitation on  
fundamental and other human rights and freedoms. They also relied on the  
**Charles Onyango Obbo and another vs Attorney General; Constitutional  
Appeal No 2 of 2002** which interpreted article 43 of the Constitution for the  
25 proposition that any law that the derogates from any human right in order  
to prevent prejudice to the rights or freedoms or other public interest is not  
inconsistent with the Constitution. The yardstick is whether the limitation is  
acceptable and demonstrably justifiable in a free and Democratic society.  
Further, the first respondents counsel relied on article 17 (1) (g) of the  
30 Constitution which provides that it is the duty of every citizen of Uganda to  
pay taxes.

The first respondent's counsel submitted that the intention of legislature in  
enacting section 41 of the TPC Act, 2014, empowering the Commissioner  
General to require any person by notice in writing, whether or not liable for  
35 tax to furnish, within the specified time in the notice, any information that  
may be stated in the notice and to have full and free access to any record,

5 including a record in electronic format and to make an extract or copy from  
any record, including a record in electronic format of any information  
relevant to a tax obligation was to enable the Uganda Revenue Authority  
effectively collect taxes and curtail tax evasion and fraud. That the intention  
of legislature is legitimate and not irrational or whimsical. Further, sections  
10 41 and 42 of the TCP Act 2014 gives a clear and unambiguous mandate an  
application and intention. The intention in enacting them can be discerned  
from the short title which is "investigations; access to premises, records  
and data storage devices". The short title to section 42 is "notice to obtain  
information or evidence". He submitted that the aim is the investigation of  
15 fraud and tax evasion is a legitimate purpose. In the premises, the alleged  
infringement is acceptable and demonstrably justifiable in a free and  
Democratic society as the object is necessary for the good governance of  
the nation.

20 The first respondents counsel further maintained that the obligations  
imposed under the impugned sections 41 and 42 of the Act are acceptable  
and demonstrably justifiable in a free and Democratic society as prescribed  
in article 43 of the Constitution.

25 The first respondents counsel further submitted on the issue of whether  
sections 41 and 42 of the TPC Act, 2014 purport to nullify any law relating to  
privilege which includes but is not limited to, legal professional privilege?  
That it is a legal right which allows persons to resist compulsory disclosure  
of documents and information. But not all documents are sensitive or  
confidential and it is not a bar to disclosure, although privileged documents  
must be confidential. The first respondents counsel submitted that there are  
30 two types of privilege protection under the law which include protection of  
communications between the lawyer and client and documents prepared  
for litigation. He submitted that one of the cardinal principles of  
constitutional interpretation is that the entire Constitution has to be read  
together as an integral whole with no particular provision destroying the  
35 other but each sustaining the other as explained by the Supreme Court of  
Uganda in **P.K. Semogerere and Zachary Olum vs Attorney General;**



5 **Constitutional Appeal No 1 of 2002.** He submitted that the principle of harmony and completeness requires article 27 of the Constitution to be read together with article 44 so as to permit justifiable limitation on the enjoyment of the right to privacy and legal professional privilege.

10 He contended that had legislature intended to protect the legal professional privilege, it would have expressly provided for it as it did under section 14 of the Anti – Money Laundering Act, 2013 which expressly protects confidentiality of the bank, professional secrecy and communication between advocate and client.

15 The first respondents counsel suggested that it would go against the principle of parliamentary sovereignty of legislating if the judiciary legislates against what Parliament has already enacted. Further the first respondents counsel submitted that the legal professional privilege can be overridden on four grounds. These are:

- 20 i. the disclosure is under compulsion by law;
- ii. where there is a duty to the public to disclose;
- iii. where the interests of the bank require disclosure;
- iv. and where the disclosure is made by the express or implied consent of the customer.

25 Justice's counsel relied on the decision of Bankes L.J in **Tournier vs National Provisional and Union Bank of England (1924) 1 KB 461**. Counsel submitted that where the information is required by the mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. Counsel relied on **Reserve Bank of India vs Jayantilal N. Mistry** where the Supreme Court held that the financial  
30 institutions have an obligation to provide all information to the RBI and such information shared and an application/duty cannot be considered to have come under the purview of being shared in a fiduciary relationship.

In further reply, the second respondents counsel submitted that in **Okiya Omtatah Okioti vs Attorney General and another [2020] eKLR** The Kenyan  
35 constitutional and human rights court was confronted with an issue similar

5 to the one before the court where it considered sections 57, 58 (2), 59 and 99 of the Tax Procedure Act which is in *pari materia* with section 41 and 42 of the TPC Act. The court in dismissing the petition held that the right to privacy, right against self-incrimination, are not absolute and can be limited in the public interest. The court further noted that the coercive powers  
10 granted to the Kenya Revenue Authority by the challenged provisions are aimed at achieving a legitimate purpose.

Further, the second respondents counsel relied on **Foundation for Human Rights Initiative vs the Attorney General; Constitutional Petition No 20 of 2006** where L.E.M. Mukasa Kikonyogo DCJ held that it is a cardinal principle  
15 in interpretation of constitutional provisions and Acts of Parliament that the entire Constitution must be read as an integral whole and no other particular provision should destroy the other but each should sustain the other. In applying the principles, the second respondents counsel submitted that article 27 (2) of the Constitution provides for the right to privacy while  
20 article 43 of the Constitution limits it in the public interest and the limitation is acceptable in a free and Democratic society. The second respondent's counsel further make similar submissions and cited similar authorities that I do not need to refer to again.

Further, the second respondents counsel submitted that sections 41 and 42  
25 of the TPC Act, purposely enacted by Legislature of our times to serve the needs of this times and address challenges that have risen in the advent of globalisation, advancement of technology, that have facilitated tax evasion, avoidance and tax base erosion and prayed that issue 2 is answered in the negative.

30 In rejoinder, petitioner's counsel submitted on the question of whether what prevails in Uganda is a constitutional sovereignty or parliamentary sovereignty. He submitted that according to the respondents, Parliament by virtue of parliamentary sovereignty can, if it chooses, legislate to limit fundamental human rights. However, this court ought not to import foreign  
35 authorities on the question of parliamentary supremacy and should only peruse the constitutional provisions. They submitted that the doctrine of



5 parliamentary sovereignty is a unique feature of English constitutional law because England has no written constitution therefore Parliament is the ultimate lawmaking authority. By contrast, it is the Constitution of Uganda which is the supreme law and Uganda is a constitutional sovereign as confirmed by article 2 (1) which states that the Constitution is the supreme  
10 law of Uganda with a binding force on all authorities and persons throughout Uganda. He reiterated that while Parliament in Uganda has power to make laws, such laws have to be consistent with the Constitution.

Counsel submitted that in the end the sole question is whether sections 41 and 42 go beyond what is acceptable and demonstrably justifiable in a free  
15 and Democratic society. He reiterated that the information that the second respondent can collect pursuant to section 41 and 42 of the TCP Act is unlimited. The sections allow the second respondent entry into any premises and private dwellings without a warrant. In making the decision to intrude into any private dwellings or go through private information, the  
20 second respondent is beholden to no authority whether judicial or quasi-judicial. The law has no safeguards against the abuse and unwarranted intrusion into privacy. For instance, no reasonable grounds for suspicion are required to justify intrusion and it is not required that there should exist an investigation into any particular taxpayer for purposes for which the  
25 intrusion may be made. The powers are so wide and therefore grossly disproportionate to what is acceptable in a free and Democratic society.

Further, the petitioner's counsel submitted that The entry into private dwellings without a warrant or the intrusion into private information is grossly disproportionate to the objective of tax collection in a free and  
30 Democratic society. He submitted that the powers of the respondent under the provisions are excessive and reiterated submissions to that effect. He further reiterated submissions following the decision of the constitutional court of Kenya in the **Okiya Omtatah Okiiti v Attorney General** (supra) that the decision was distinguishable because the law in Kenya required a  
35 warrant before entry or having access to any premises or document provided that:

5 (1) The Commissioner or an authorised officer shall, with a warrant, have a full and free access to any building, place, property, documents or data storage device for the purpose of administering a tax law.

10 (2) The Commissioner or an authorised officer may secure the building, place, property, documents or data storage devices to which access is sought under subsection (1) before obtaining a warrant.

15 The petitioners counsel reiterated that unlike sections 41 and 42 of the TPC Act, by requiring a warrant before entry into premises and access to documentation this was a sufficient safeguard to avoid abuse of privacy. It was therefore not surprising that the Kenyan court found that this was a legitimate and justifiable limit to privacy.

On the contrary there is a decision in **Robert Ayisi v the Kenya Revenue Authority Petition No 412 of 2016** which is directly relevant to the matter before this court.

20 In the premises, the petitioner's counsel submitted that the petition be granted as prayed for.

### Issue 3:

**Whether the notice is inconsistent with and contravenes article 27 (2) of the Constitution, read together with article 43 (2) (c) of the Constitution?**

25 The petitioners counsel submitted that financial information of individuals is private information which is subject to the duty of confidentiality as between the banker and the customer (see **Tournier vs the shall Union Bank of England [1924] 1 KB 461 at pages 483 – 484**). He submitted that the notice to avail all details of bank accounts contravened article 27 (2) and 43 (2) (c)  
30 of the Constitution because it is beyond what is acceptable and demonstrably justifiable in a free and Democratic society for the reason that; The notice was issued to all bank and non-bank financial institutions in Uganda with a blanket demand in respect of each and every bank account held in Uganda whether or not it belongs to a taxpayer. The overreaching



5 nature targeted both taxpayers and non-taxpayers and takes it outside the  
realm of the tax statute pursuant to which it was purportedly issued. The  
request was an indiscriminate fishing exercise with no rational basis and  
therefore impairs the right to privacy of all bank account holders in Uganda  
protected by article 27 (2) of the Constitution in a manner that far exceeds  
10 what is necessary to accomplish the objective of tax collection.

Further and contrary to the express provisions of section 32 (1) of the TPC  
Act, the notice does not indicate any provision of any tax law that it is  
intended to administer with the benefit of the information sought from the  
petitioners. They note that section 42 (1) under which the notice was  
15 purportedly issued requires that information is sought for the purposes of  
administering any provision of any tax law. The notice does not however  
specify which tax provision is to be administered and failure to adhere to  
the subject takes the notice outside the realm of the tax statute pursuant to  
which it was purportedly issued and it also impaired the right to privacy.

20 Further that section 42 of the TPC Act under which the notice was issued  
relates to investigations yet there is no pending tax investigation in relation  
to each and every bank account holder in Uganda. Further the notice  
contravened the very provisions of the statute pursuant to which it was  
issued and is therefore unlawful. The information sought far exceeded what  
25 is necessary to accomplish the objective of tax collection and impaired the  
right of privacy of all bank account holders in Uganda as protected by article  
27 (2) of the Constitution.

In reply, the first respondents counsel submitted that the information  
required by the Commissioner is by mandate of the law for a legitimate  
30 purpose and public interest and does not nullify any law relating to privilege  
which includes but is not limited to, legal professional privilege.

In the premises, sections 41 (7) () and 42 (4) (a) of the TPC Act, 2014 to the  
extent that the purport to nullify any law relating to privilege which includes  
but is not limited to, the privilege against self-incrimination and legal  
35 professional privilege, are inconsistent with the right to privacy under

5 article 27 and fair hearing under article 28 and 44 (c) of the Constitution and the first respondents counsel submitted that the court should find for the first respondent on this issue.

In the premises, the first respondents counsel prayed that the petition is dismissed with costs.

10 In reply, the submissions of the second respondents counsel are similar to the submissions of the first respondents counsel on this issue and need not be repeated.

The second respondent's counsel submitted that for the petitioners to contend that the notice is not legally tenable is misconceived. He submitted  
15 that the bubble of secrecy between the bank and the customer can be pierced where there is a duty to the public to disclose. Public interest does not mean that which is interesting as gratifying curiosity or love for information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are  
20 affected. The expression "public interest" is not capable of precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs. The concept changes with the time and the state of the society and its needs (see **Reserve Bank of India vs Jayantilal N. Mistry** supra). Counsel invited the court to take judicial notice of the fact  
25 that the people of Uganda need delivery of services by the government. Accordingly, that public interest requires that information be disclosed to the respondent to facilitate tax collection for the good of the general public.

In the premises, the second respondents counsel submitted that the notice issued by the second respondent under section 42 (1) of the TPC Act is  
30 consistent with article 27 (2) and article 43 (2) (c) of the Constitution.

In the premises, the respondents pray that the petition is dismissed with costs.



5 **Consideration of the petition.**

I have carefully considered the petitioners petition the submissions of counsel and the law generally.

10 The petition is primarily for declaration that section 41 (7) (a) and 42 (4) (a) of the Tax Procedures Code Act, 2014 to the extent that they purport to modify any law relating to privilege which includes, but is not limited to, the privilege against self-incrimination and legal professional privilege, derogate from the right to a fair hearing enshrined in Article 28 of the Constitution, contrary to Article 44 (c) and, accordingly, null and void.

15 Secondly, the petitioners seek a declaration that section 41 of the Tax Procedures Code Act, 2014 impairs the right to privacy enshrined in Article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society, contrary to Article 43 (2) (c) of the Constitution and is accordingly, null and  
20 void.

Thirdly for declaration that section 42 of the Tax Procedures Code Act, 2014 impairs the right to privacy enshrined in article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and  
25 demonstrably justifiable in a free and Democratic society, contrary to Article 43 (2) (c) of the Constitution and is, accordingly, null and void.

30 Fourthly the petitioners seek a declaration that the notice impairs the right to privacy of all bank account holders in Uganda enshrined in article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society, contrary to Article 43 (2) (c (of the Constitution.

There are two fundamental rights which are said to be breached by section 41 and 42 of the TCP P Act 2014 and both of them relate to the right to a fair

5 hearing which is a right from which no derogation is permitted as well as  
the right to privacy which may be derogated from in the public interest. In  
other words, where this court finds that the right against self-incrimination  
and legal professional privilege are rights which are part of the right to a  
10 fair hearing, it would be sufficient to allow part of the petition because of  
article 44 (c) of the Constitution which provides that there shall be no  
derogation from the right to a fair hearing. To answer that question, it is  
necessary to establish whether sections 41 and 42 of the TCPC Act 2014 in  
any way relates to the right to a fair hearing and therefore can be taken to  
be bound by the principles enshrined under article 28 of the Constitution of  
15 the Republic of Uganda in terms of being inconsistent with it. Secondly with  
regard to the right to privacy under articles 27 (2) of the Constitution, the  
petitioners case is that the notices issued and the right of the second  
respondent to access information obtained in the provision is very wide and  
far-reaching and violates the right to privacy because it goes beyond what  
20 is reasonable and demonstrably acceptable in a free and Democratic  
society as enshrined in article 43 of the Constitution.

The Respondents' counsel inter alia submitted that there is no question as  
to interpretation of the Constitution disclosed in the petition. A question as  
to interpretation of the Constitution is a controversy about the meaning or  
25 scope of a provision of the Constitution in light of an allegation that there is  
an Act, law or anything done under the authority of any law which is  
inconsistent with the relevant provision of the Constitution sought to be  
interpreted.

The question of whether the petition discloses any question as to  
30 interpretation of the Constitution is a preliminary issue which has to be  
resolved first because its resolution determines whether this court has  
jurisdiction in the matter or not. The word "question" under article 137 (1)  
means a controversy or an "issue" for determination. The issue should be  
sufficiently controversial for there to be a doubt about the interpretation,  
35 application, scope or ambit of a provision of the constitution or whether it  
applies to a given situation disclosed in the petition.



5 Article 137 (1) and (3) of the Constitution provides that:

137. Questions as to the interpretation of the Constitution.

(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional court.

10 (2) When sitting as a constitutional court, the Court of Appeal shall consist of a bench of five members of that court.

(3) A person who alleges that—

(a) an Act of Parliament or any other law or anything in or done under the authority of any law; or

15 (b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate.

Article 137 (1) is about the jurisdiction of the constitutional court while article 137 (2) is about the composition of the court. Article 137 (1) of the Constitution deals with controversies as to interpretation of the  
20 Constitution. In **Black's Law Dictionary 8<sup>th</sup> Edition** the word interpretation was defined *inter alia* as follows:

25 There is no explanation of the distinction between interpretation and construction [in Blackstone's], nor can it be inferred from the matters dealt away under each head. The distinction is drawn in some modern works, but it is not taken in this book because it lacks an agreed basis. Some writers treat interpretation as something which is only called for when there is a dispute about the meaning of statutory words, while speaking of construction as a process to which all statutes, like all other writings, are necessarily subject when read by anyone. Others treat interpretation as something which is mainly concerned with the  
30 meaning of statutory words, while regarding construction as a process which mainly relates to the ascertainment of the intention of legislature." Rupert Cross, Statutory Interpretation 18 (1976).

In other words, interpretation is called for when there is a dispute about the meaning of statutory words. Where the words are clear and unambiguous,  
35 the provisions have to be applied by a court having jurisdiction in the matter.

5 In the circumstances of this petition, the issues raised introduce controversies about the application of the provisions of the Constitution. Issue number one is:

Whether sections 47 (7) (a) and 42 (4) (a) of the Tax Procedures Code Act, 2014, to the extent that they purport to nullify any law relating to privilege  
10 which includes, but is not limited to, the privilege against self-incrimination and legal professional privilege, is inconsistent with the right to a fair hearing enshrined in article 28 and article 44 (c) of the Constitution?

Clearly the question is whether the nullification of any law relating to privilege infringes the rights to a fair hearing enshrined under article 28  
15 from which there may be no derogation in terms of article 44 (c) of the Constitution. Prima facie, there is a question as to interpretation of the Constitution to the extent that it should be established whether the right to a fair hearing includes the rule against self-incrimination and breach of the legal professional privilege when conducting an investigation in tax  
20 matters. There is no doubt that there is a controversy relating to the interpretation of article 28 of the Constitution of the Republic of Uganda as to its scope inter alia whether it applies to proceedings before the Commissioner of tax.

Secondly, issue 2 is:

25 Whether sections 41 and 42 of the Tax Procedures Code Act, 2014 are inconsistent with and contravene article 27 (2) of the Constitution read together with articles 2, 20, and 43 (2) (c) of the Constitution.

Again I find that there is a controversy about the scope of article 27 (2) of the Constitution in light of its provision enshrining the right to privacy. It  
30 provides that no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property. It has to be determined whether the words "other property" includes bank accounts. Secondly it has to be established whether an investigation and the powers of search without a warrant was beyond what is demonstrably  
35 justifiable in a free and Democratic society. There is therefore a question as



5 to interpretation of the Constitution that would provide guidance to courts when resolved.

Thirdly, the petition raises the question of whether the notice issued by the second respondent is inconsistent with and contravenes article 27 (2) of the Constitution read together with article 43 (2) and (c) of the Constitution.

10 Whereas the first aspect is covered by the second issue, second aspect deals with whether there was a justifiable derogation from the right to privacy enshrined under article 27 (2) as far as the notice is concerned.

Without further ado, I find that there are questions as to interpretation of the Constitution that has generated sufficient controversy for debate  
15 between the parties which ought to be resolved by this court one way or the other because they are not obvious questions whose answers are straightforward.

### Principles of interpretation of the Constitution

A constitution should firstly be construed on the basis of its own language  
20 to ascertain the natural and ordinary meaning of a word or phrase that may be in controversy. It should also read in context of the other provisions of the Constitution. In **Minister of Home Affairs and another v Fisher and another [1979] 2 All E.R. 21** at 26 per Lord Wilberforce held that a constitution should firstly be construed on the basis of its own language and context  
25 rather than use principles of interpretation of other statutes:

... it would be to treat a constitutional instrument such as this as sui generis, calling for principles of interpretation of its own, suitable to its character as already described, without necessary acceptance of all the presumptions that are relevant to legislation of private law.

30 I further accept the petitioner's submission that Uganda is a constitutional democracy where the Constitution is the supreme law of the land binding on all authorities and agencies of the estate inclusive of the Parliament. This is unlike the United Kingdom where there is the doctrine of parliamentary supremacy and laws enacted by Parliament are supreme whereupon the  
35 Parliament can take away some fundamental rights and freedoms. Because

5 in Uganda, the Constitution is the supreme law of the land, any law enacted by Parliament which is inconsistent with any provision of the Constitution is null and void to the extent of the inconsistency (see article 2 of the Constitution of the Republic of Uganda).

10 In **Dow v Attorney General (of Botswana) [1992] LRC (Const.) 623** at page 632 Amissah JP of the Court of Appeal of Botswana considered the importance of the words used in the constitution in light of its role in defining powers, limits of powers, the rights of citizens and any limitations thereto:

15 A written constitution is the legislation or compact which establishes the state itself. It paints in broad strokes on a large canvas the institutions of that state; allocating powers, defining relationships between such institutions and between the institutions and the people within the jurisdiction of the state, and between the people themselves. The Constitution often provides for the protection of the rights and freedoms of the people, which rights and freedoms have thus to be  
20 respected in all future state action. The existence and powers of the institutions of state, therefore, depend on its terms. The rights and freedoms, where given by it, also depend on it. ... By nature, and definition, even when using ordinary prescriptions of statutory construction, it is impossible to consider a Constitution of this nature on the same footing as any other legislation passed by a legislature  
25 which is self-established, with powers circumscribed, by the constitution. The object it is designed to achieve evolves with the evolving development and aspiration of its people.

30 In **The Queen vs. Big M Drug Mart [1986] LRC 332** at page 364 the Supreme Court of Canada held that in interpreting the charter on rights the courts should adopt a generous rather than a legalistic approach aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charters protection. Further, both purpose and effect are relevant in determining whether a statute is unconstitutional at page 356 per Dickson J:

35 In my view, both purpose and effect are relevant in determining constitutionality; an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. This object is realised through the impact produced by the operation and



5 application of the legislation. Purpose and effect respectively, in the sense of the legislation's object and its ultimate impact, are clearly linked, if not indivisible. Intended and actual effects have often been looked to for guidance in assessing the legislations object and thus, its validity.

10 Last but not least a constitution should be read as an integral whole and in harmony as held by Odoki CJ in **National Council for Higher Education v Anifa Kawooya Bangirana Constitutional Appeal No 4 of 2011** at page 49 that:

15 It is not a question of construing one provision as against another but of giving effect to all the provisions of the Constitution. This is because each provision is an integral part of the Constitution and must be given meaning or effect in relation to others. Failure to do so will lead to an apparent conflict within the Constitution...

### Issue 1:

20 **Whether sections 41 (7) (a) and 42 (4) (a) of the Tax Procedures Code Act, 2014, to the extent that the purported to nullify any law relating to privilege which includes, but is not limited to, the privilege against self-incrimination and legal professional privilege, are inconsistent with the right to a fair hearing enshrined in article 28 and article 44 (c) of the Constitution.**

Sections 41 and 42 of the Tax Procedures Code Act 2014 is placed under the Part of the statute dealing with investigations. It provides as follows:

#### 41. Access to Premises, Records and Data Storage Devices

25 (1) For the purposes of administering any provision of a tax law, the Commissioner –

(a) shall have at all times without prior notice, full and free access to –

(i) any premises or place;

(ii) any record, including a record in electronic format; or

30 (iii) any data storage devices;

(b) may make an extract or copy from any record, including a record in electronic format, of any information relevant to a tax obligation;

5 (c) may seize any record that, in the opinion of the Commissioner, affords evidence which may be material in determining the correct tax liability of any person;

(d) may seize any data storage device that may contain data relevant to a tax obligation; and

10 (e) may retain any record or data storage devices seized under this section for as long as it is required for determining a taxpayer's tax obligation and liability, including any proceedings under this Act.

(2) the Commissioner may require a police officer present for the purposes of this section.

15 (3) The occupier of the premises or place in which an exercise of power under subsection (1) relates shall provide all reasonable assistance and facilities necessary for the effective exercise of the power including –

(a) answering questions relating to the investigation to which the exercise of power relates already or in writing; or

20 (b) providing access to decryption information necessary to decrypt the data to which access is sought under this section.

(4) A person whose records or data storage device has been seized and retained under this section may access and examine them, including making copies of extracts from them under supervision as the Commissioner may determine.

25 (5) The Commissioner shall sign for all records or data storage devices seized and retained under this section.

(6) Where any record or data storage devices seized and retained under this section is lost or destroyed while in the possession of the Commissioner, the Commissioner shall appropriately compensate the owner of the loss or  
30 destruction.

(7) This section has effect despite –

(a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property record, including in electronic format; or

35 (b) any contractual duty of confidentiality.



5 Secondly section 42 of the Act further provides that:

42. Notice to Obtain Information or Evidence

(1) The Commissioner may, for the purpose of administering any provision of a tax law, by notice in writing, whether or not liable for tax –

10 (a) to furnish, within the time specified in the notice, any information that may be stated in the notice; or

(b) to attend at the time and place designated in the notice for the purpose of being examined by the Commissioner concerning the tax affairs of that person or any other person, and for that purpose the Commissioner may require the person to produce any record, including an electronic format, in the control of the person.

15 (2) if a notice under subsection (1) is unable to be served a person with a publication in such newspaper is treated as service for the purposes of this section.

(3) The Commissioner may require the information referred to in subsection (1) to be –

20 (a) on oath and, for that purpose, the Commissioner may administer the oath; or  
(b) verified by statutory declaration or otherwise.

(4) This section has effect despite –

25 (a) any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or record, including in electronic format; or

(b) any contractual duty of confidentiality.

30 In issue number 1, what is primarily under attack is the proviso to sections 41 and 42 of the Tax Procedures Code Act to the extent that it provides that the stipulation in the sections would have effect despite any law relating to privilege or the public interest with respect to access to premises or places, or the production of any property or record, including in electronic format or any contractual duty of confidentiality. Secondly, the petitioners complain about the fact that the Commissioners of Uganda Revenue Authority have access to any premises places or require the production of any property or

5 record including in electronic format without a search warrant that would have required a judicial mind to establish whether there was a prima facie case or probable cause for such a search to be conducted.

10 There was a scanty submission on the question of professional legal privilege because it would appear that the professional legal privilege that is advanced is that between a banker and customer rather than that between an advocate and his client. In the petition itself, the petitioners averred that the second respondent issued notices dated 16<sup>th</sup> of March 2018 and 19<sup>th</sup> of March 2018 in relation to the financial institutions and non-bank financial institutions respectively for notices dated 28 and 29<sup>th</sup> of March 15 2018. The notices required all the petitioners numbers 1 to 30 to furnish to the second respondent details of all bank accounts held by the customers for a full two-year period commencing 1<sup>st</sup> January 2016 to 31 December 2017. It is notices cannot relate to privileged communication between an advocate and client as far as the gist of the petition is concerned. It relates to the 20 disclosure of information in the bank accounts of the customers of the 1<sup>st</sup> to the 30<sup>th</sup> petitioners.

25 The petitioners' counsel submitted that in effect of the sections is to override any law relating to privilege or the public interest and therefore overrides the rule against self-incrimination which forms part of the provisions of article 28 of the Constitution that guarantees the right to a fair hearing from which there may be no derogation under article 44 (c) of the Constitution. Strangely, the petitioners counsel relied on **Balabel and Another vs Air India (1988) 2 All ER 246** which case involves communication between solicitor and client in the course of a conveyancing transaction. I 30 have particularly considered the judgment of Taylor LJ and quotation highlighted by the petitioner's counsel at page 254 as follows:

35 "Although originally confined to advise regarding litigation, the privilege was extended to non-litigious business. Nevertheless, despite that extension, the purpose and scope of the privilege is still to enable legal advice to be sought and given in confidence...."



5 Clearly the authority relied on by the petitioner's concern the privilege of communication between a solicitor and his client in the course of providing legal advice. I therefore do not see how that authority will assist in the circumstances where the matter before the court concerns the powers of investigation of the Commissioner Uganda Revenue Authority.

10 I have further considered the East African authority of **Dr. Robert Ayisi v Kenya Revenue Authority and another; Petition No 412 of 2016 [2018] eKLR**. The petitioner was the acting county secretary and head of public service of the interested party and the respondent is the Kenya Revenue Authority while the second party is Nairobi City County Government. The petitioner  
15 petitioned on the basis of a letter dated 14<sup>th</sup> March 2016 by the respondent to the petitioner seeking for details of transaction between the interested party and Prof Tom Odhiambo Ojienda in respect of the period 2009 – 2016 which information required included details of fee note numbers, dates, gross amount, VAT and nature of payment. The information was sought by  
20 the respondent pursuant to section 56 of the Income Tax Act and section 48 of the VAT Act, 2013. The court considered the issue as to whether the right to privacy had been violated as provided for under article 31 (b) of the Kenyan Constitution. The court found that section 58 of the Tax Procedures Act, 2015 is a restriction of the right to privacy in article 31 (a) of the  
25 Constitution which article provides that every person has the right to privacy, which includes the right not to have their person, home, or property searched. The court found that the right to privacy is tied to the inherent right to dignity of the person and is a prerequisite right that must be accorded to be able to enjoy every other rights and freedoms of the citizen  
30 of a democratic state. Further that the sections of the Tax Procedures Act, 2015 which provides production of the afore stated documents runs contrary to section 137 of Evidence Act which deals with privileged communication between advocate and client as well as article 31 of the Constitution which protects the right to privacy. Court found that to the  
35 extent the sections purport to take away the privilege between an advocate and his client, they were general provisions which apply to all persons who are subject to the legal provisions. That whereas the said provisions may

5 occasion or run afoul of the privilege as between advocate and client, such cases must be treated on their own facts and cannot be the basis for declaring sections 59 and 60 of the Tax Procedures 2015 unconstitutional on the basis of such privilege. The court found that it is only section 54 (4) that falls foul of the privilege rule cited in the case of **Balabel and another vs Air**  
10 **India** (supra). The court found that the privilege must be seen in light of the right to access justice for sound legal advice without hindrance or deterrence.

Clearly, the court was alive to the fact that the legal client privilege between an advocate and his client had to be considered on its own merits. I  
15 therefore do not see how this authority supports the petitioners petition in any way as far as the question of professional privilege is concerned. Further I have considered several other authorities which deal with the legal professional privilege and these include **Thint (Pty) Ltd vs National Director of Public Executions & others (2008) ZACC 13** where the court  
20 considered the right to legal professional privilege was a general rule of common law and considered communications between the legal adviser and his or her client.

In **her Majesty the Queen vs Lavalee, Rackel & Heinz & Others [2002] 3.R. C. S 209** the Supreme Court of Canada dealt with the solicitor client privilege.

25 The petitioners' counsel submitted that section 59 (4) of the Kenya Statute that was considered in **Dr. Robert Ayisi vs the Kenyan Revenue Authority** (supra) is in *pari materia* with section 41 (7) (a) and 42 (4) (a) of the Uganda Tax Procedure Code Act 2014 in that they both provide for the application of the law despite any law relating to privilege or the public interest with  
30 respect to access to premises, or the production of any property, record, including in electronic format. The clear wording of the statute is that it relates to the privilege or the public interest with respect to access to premises or the production of any property, record including in electronic format and therefore that this provision includes the privilege between an  
35 advocate and client. I agree that it can include a privilege between an advocate and client communication; however, it has nothing to do with the



5 communication of the second respondent which concerns a notice to  
produce information about bank accounts. The matter may be considered  
by analogy. The petitioner's petition is not about the advocate/client  
privilege and is about the bank/customer privilege and the duty of  
10 confidentiality. The precedents relied on other than the Kenyan precedent  
immediately considered above deal with an advocate/solicitor/client  
privilege under the common law.

According to **Halsbury's Laws of England, Fourth Edition Reissue Volume 11  
(2) in paragraph 1163** it is provided as follows:

15 1163. Legal professional privilege. Confidential communications made for the  
purpose of obtaining legal advice from professional advisers are privileged from  
disclosure so long as they are not communications made with the intention of  
furthering a criminal purpose. In a criminal trial the privilege is not absolute, in  
that documents which help to establish the innocence of an accused will not be  
privileged from disclosure.

20 There is no other kind of professional privilege allowed by English law; neither  
confessions made to a minister of religion under the seal of the confessional nor  
communications to medical advisers are privileged. There is no privilege at  
common law entitling a journalist to refuse to disclose in evidence the name of  
an informant on matters which he has published in the newspaper.

25 It shows that legal professional privilege is defined as communications  
made for the purposes of obtaining legal advice from professional advisers  
such as advocates. Such communications are not absolutely privileged  
especially when they are made in the furtherance of a criminal offence and  
in such cases, the duty of confidentiality can be breached through  
30 disclosure. Other documents establishing the innocence of an accused  
person may be obtained irrespective of the legal professional privilege.  
Finally, the Petition before court is about sections 41 and 42 of the TPC Act  
and is not about legal professional privilege. It follows that I do not need to  
consider all the arguments of counsel on those premises.

35 The petitioner's counsel submitted that the privilege against self-  
incrimination has also been recognised as a fundamental tenet of the right

5 to fair hearing. In trying to link or make a connection between the said legal/professional privilege between an advocate and his client as well as the right against self-incrimination, I have considered the meaning of self-incrimination.

According to **Black's Law Dictionary Sixth Edition** the privilege against self-incrimination means:

15 "The privilege derived from the fifth amendment, US Constitution, and similar provisions in the constitutions of states. It requires the government to prove a criminal case against the defendant without the aid of the defendant as a witness against himself, though it protects only communications, not physical evidence such as writing and fingerprints. It is invoked by any witness who is called to the witness stand against his wishes whether the proceedings be a trial or grand jury hearing or a proceeding before an investigating body, but it is waived when the witness voluntarily takes the witness stand."

20 In Uganda, the right against self-incrimination is expressed specifically under article 28 (3) of the Constitution which provides inter alia that a person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.

25 In Uganda, the burden is on the state to prove an offence and this is supported by the presumption of innocence. This presumption must be weighed on tax matters where the taxpayer is under obligation to provide returns for assessment of his or her tax obligations. Such a scenario is clearly different from one involving presumptions of innocence before a court of law or tribunal established by law trying an accused for a criminal offence or sitting in a civil suit trial.

30 I have carefully considered article 28 of the Constitution and it inter alia provides for the right to a fair hearing and incorporates the principles thereof. Article 28 (1) of the Constitution provides for the right to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. From the wording of article 28 of the  
35 Constitution, one can conclude that it deals with proceedings before an independent and impartial court or tribunal established by law. Secondly



5 the principles of fair hearing under article 28 (3) clearly envisage a person  
appearing before an independent person tribunal or court of law and not  
before the Commissioner. The Commissioner for income tax or the  
Commissioner for tax makes taxation and administrative decisions which  
are subject to be reviewed by courts of law or the Tax Appeals Tribunal and  
10 particularly article 42 of the Constitution which is relevant and applicable  
to the Commissioners for tax provides that:

42. Right to just and fair treatment in administrative decisions.

Any person appearing before any administrative official or body has a right to be  
treated justly and fairly and shall have a right to apply to a court of law in respect  
15 of any administrative decision taken against him or her.

Clearly, a distinction has to be made between the advocate/client privilege  
of communication, and the right against self-incrimination when there is a  
hearing before an independent tribunal of court as stipulated under article  
28 (1) of the Constitution as well as the right to be treated justly and fairly  
20 in administrative decisions under article 42 of the Constitution. The  
Commissioner is not an independent tribunal or court established by law to  
which article 28 of the Constitution applies. Secondly, petitioner's petition is  
not about an advocate/client privilege and petition is not the kind of the  
petition where the issue can be handled. The Petition is clearly about the  
25 powers of and the exercise of the powers of the Commissioner under  
sections 41 and 42 of the Tax Procedures Code Act, 2014. In the premises I  
do not have to consider whether the right to a fair hearing can be derogated  
from in terms of article 44 (c) before making the necessary connection  
between the petition and article 28 of the Constitution. The right to a fair  
30 hearing referred to in article 44 (c) must be taken to mean a fair hearing  
under article 28 of the Constitution as submitted by the petitioners and the  
respondents counsel. The notice referred to in the petition under section 41  
and 42 of the Tax Procedures Act, were not issued within the confines of  
article 28 of the Constitution and were not part of a pre-trial investigation  
35 but were issued in the process of investigation of a tax matter before  
determining anything as to whether a crime had been committed etc. Such

5 information obtained pursuant to a notice can be subjected to challenge on  
the ground of having obtained the information in breach of article 27 where  
any criminal action is brought against anybody or any civil action is brought  
against anybody for the enforcement tax. In the circumstances of this  
petition, issue 1 of the petition as to whether sections 41 and 42 of the Tax  
10 Procedures Code Act, 2014 to the extent that it purports to nullify the law  
relating to privilege violates article 28 and 44 of the Constitution cannot be  
answered in the terms prayed for by the petitioners because the principles  
of fair hearing under article 28 do not relate to the principles for  
investigation of the tax matters as the Commissioner is not an independent  
15 tribunal or court established by law.

In the premises, I would answer issue No. 1 in the negative.

Issue 2.

**Whether section 21 and 42 of the Tax Procedures Code Act, 2014 are  
inconsistent with and contravene article 27 (2) of the Constitution read  
20 together with articles 2, 20, and 43 (2) (c) of the Constitution.**

I have carefully considered the submissions of counsel on the question of  
whether the powers of the Commissioner under section 41 and 42 of the Tax  
Procedures Code Act, pursuant to the issuance of notices and entry into the  
premises or right of access to information whether in any physical form or  
25 electronic format infringes or is inconsistent with the right to privacy  
enshrined under article 27 of the Constitution.

I have also considered the precedents advanced by the petitioners' counsel  
as well as each of the respondents' counsel on the question of the right of  
privacy. The primary question is whether the commissioners should have a  
30 right of access to such information by gaining physical entry into private  
premises, record of private accounts etc. without a warrant. I note that  
article 43 (2) (c) does not require any justification of a limitation to  
fundamental right or freedom if it is provided for in the Constitution. For  
instance, article 27 (1) prohibits unlawful search of a person, home or other



5 property, but impliedly allows lawful search of the person, home or other property of that person.

Article 27 of the Constitution provides as follows:

27. Right to privacy of person, home and other property.

(1) No person shall be subjected to –

10 (a) unlawful search of the person, home or other property of that person; or

(b) unlawful entry by others in the premises of that person.

(2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

Every constitution has to be construed on the basis of its own language and  
15 when article 27 is read in context, it provides that no person shall be subjected to unlawful search of the person, home or other property of that person or unlawful entry by others in the premises of that person. Further, no person shall be subjected to interference with the privacy of that person's phone, correspondence, communication or other property. Clearly  
20 it is not in dispute that article 41 and 42 to the extent that it allows the Commissioner, without a warrant or probable cause and for any reason whatsoever have a lawful search of the person, home or other property of that person, lawful entry in the premises of that person or interfere with the privacy of the persons property by way of getting access to the  
25 transactions on persons account and other details and correspondence related thereto, it said to violate article 27 and that the question is whether the infringement to the extent allowed by the law and not in relation to any particular facts, is justifiable in a free and Democratic society.

On the face of it, article 27 of the Constitution is concerned with unlawful  
30 search, unlawful entry particularly in article 27 (1) of the Constitution. Sections 21 and 42 of the Tax Procedures Code Act, 2014 for a lawful search the lawful entry in the manner stipulated in the law. In terms of article 43 can only be invoked to establish whether the limitation on fundamental and other human rights and freedoms is justifiable where it can be proved that

5 there was an infringement or violation of the fundamental rights and freedoms. However, article 27 (1) permits lawful searches and lawful entries in article 43 presumably cannot be relevant because it would not be an infringement carry out a search for instance which is authorised by a court as part of an investigation. In the circumstances, sections 41 and 42 the Tax  
10 Procedures Code Act, 2014 allows the Commissioner carry out such searches and entries in the premises without a warrant. Prima facie, it cannot be said that such an action would be unlawful since it is provided for in the law.

Therefore, not surprising that the petitioners rely on article 27 (2) of the  
15 Constitution which provides that:

No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

In other words, where there is search or entry authorised by the law, it cannot be considered interference with the privacy of that person's home,  
20 correspondence, communication or other property in light of article 27 (1) of the Constitution otherwise articles 7 (1) and (2) for the period in conflict with each other.

In **Robert Ayisi vs Kenya Revenue Authority and another** (supra), article 31 of the Constitution of Kenya which was quoted and it provides as follows:

- 25 Every person has the right to privacy, which includes the right not to have –  
(a) Their persons, houses or property searched.  
(b) Their possessions seized.  
(c) information relating to their family or private affairs unnecessarily required or revealed; or  
30 (d) the privacy the communication infringed.

The wording of the Kenyan constitution is different from that of article 27 of the Ugandan Constitution as it does not use the word "unlawful search or entry". Clearly the article is problematic for purposes of the petition and  
35 submissions because the law is something, it cannot be said to be unlawful



5 per se in terms of the use of the word "unlawful". When is a search or an  
entry into premises or to an electronic computer "unlawful". Should the law  
be construed purposely to guarantee the right to privacy? Before even  
advancing arguments in favour of the limitations, was there any limitation  
by proceeding under a law which permitted the action? Further, the Kenyan  
10 constitution. Implicitly and now the revealing of the family of private affairs  
where it is necessary. Because the provisions of the Kenyan constitution  
under article 31 general, then the general provisions of delegation may  
apply to it.

The Court of Appeal considered the issue of privacy under article 27 (2) of  
15 the Constitution in **Nsubuga and Another v Uganda (Criminal Appeal 223 of  
2021) [2022] UGCA 253** (14 October 2022); in that appeal, the court  
extensively considered the question of whether access to a computer or  
any electronic gadget by the Commissioner of the Uganda Revenue  
Authority without a search warrant under the Computer Misuse Act violated  
20 article 27 of the Constitution of the Republic of Uganda. Several decisions  
were received in that appeal and I would again refer to them.

In **McDonald v. United States 335 U.S. 451, 69 S.Ct.191; 93 L.Ed. 153** the  
petitioners were convicted by the District Court based on evidence obtained  
by a search made without warrant and the conviction was affirmed by the  
25 Court of Appeal. A petition for certiorari was brought seeking to nullify the  
order for inconsistency with an earlier decision in **Johnson v, United States,  
333 U.S. 10, 68 Ct. 367**. The court considered the legality of a conviction  
based on a search without a warrant. Mr. Justice Douglas who delivered the  
judgment of court said that:

30 We are not dealing with formalities. The presence of a search warrant serves a  
high function. Absent some grave emergency, the Fourth Amendment has  
interposed a magistrate between the citizen and the police. This was done not to  
shield criminals nor to make the home a safe haven for illegal activities. It was  
done so that an objective mind might weigh the need to invade privacy in order to  
35 enforce the law. The right of privacy was deemed too precious to entrust to the  
discretion of those whose job is the detection of crime and the arrest of criminals.  
Power is a heady thing; and history shows that the police acting on their own

5 cannot be trusted. And so the constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to the constitutional requirement and excuse the absence of a search warrant without showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made the course imperative.

10 Mr. Justice Jackson stated that:

Even if one were to conclude that urgent circumstances might justify a forced entry without a warrant, no such emergency was present in this case. The method of law enforcement displays a shocking lack of all sense of proportion. Whether there is a reasonable necessity for search without waiting to obtain a warrant  
15 certainly depends somewhat upon the gravity of the offence thought to be in progress as well as the hazards of the method of attempting to reach it. In this case the police had been over two months watching the defendant MacDonald. His criminal operation, while a shabby swindle that the police are quite right in suppressing, was not one which endangered life or limb or the peace and good  
20 order of the community even if it continued another day or two; neither was the racket one the defendant was likely to abandon. Conduct of the numbers racket is not a solitary vice, practised in secrecy and discoverable only by crushing into dwelling houses.

The principles gleaned from the decision are that:

- 25 a. The Constitution interposed a magistrate between a person and the carrying out of a search of a person's private property.  
b. A search without a warrant can be done where it is justifiable due to exigencies of the case such as in an emergency.  
c. The police acting alone cannot be trusted.

30 In Uganda, article 27 does not on its own interpose a magistrate between a person and the search of the person's home or private property. However, by use of the phrase "unlawful search" unless a statute clearly allows it, a search can only be lawful if conducted under a law which, for instance, provides for the obtaining of a search warrant before a search.

35 In **Kevin Fearon Vs Her Majesty the Queen [2014] 3 S.C.R.621** two armed men robbed a merchant and were arrested. The police found a cell phone in the pocket of one of the alleged robbers whereupon they searched the phone



5 within less than two hours of arrest without a warrant and found a draft  
text message which read inter alia: "*we did it where the jewellery at  
nigga...*", they also found some photos inter alia of a hand gun. About 36  
hours later, the police, after obtaining a search warrant, searched the  
10 vehicle and recovered the handgun used in the robbery which looked like  
what was depicted in the photo. The police obtained a further warrant to  
search the contents of the phone and discovered nothing new. The learned  
trial judge found that the search of the cell phone incidental to the arrest  
was not in breach of section 8 of the Charter and admitted the photos and  
text message and convicted the appellant of robbery. Section 8 of the  
15 Canadian Charter provides inter alia that "*everyone has the right to be  
secured against unreasonable search or seizure.*" The appellants appeal to  
the Court of Appeal was dismissed. On further appeal to the Supreme Court,  
the issue was whether the police have a common law power to search  
incidental to lawful arrest. Secondly, whether this power permits the search  
20 of cell phones and similar devices found on a suspect. The Supreme Court  
held that to resolve the issue, a balance must be struck between the  
demands of effective law enforcement and everyone's right to be free of  
unreasonable searches and seizures.

The Judgment of McLachlin C.J and Cromwell, Moldaver and Wagner JJ was  
25 read by Cromwell J who held inter alia that:

[51] it is well settled that the search of cell phones, like the search of computers,  
implicates important privacy interest which are different in both nature and extent  
from the search of other "places"... It is unrealistic to equate a cell phone with a  
briefcase or document found in someone's possession at the time of arrest.... And  
30 I would add cell phones – may have immense storage capacity, may generate  
information about intimate details of the user's interests, habits and identity  
without the knowledge or intent of the user, may retain information even after the  
user thinks that it has been destroyed, and may provide access to information  
that is in no meaningful sense "at" the location of the search.

35 ... [55] in this respect, a cell phone search is completely different from the seizure  
of boarding samples in the *Steel man* and the strip search in *Golden*. Such  
searches are invariably and inherently very great invasions of privacy and, in

5 addition, a significant affront to human dignity. That cannot be said of cell phone searches incidental to arrest.

[56] Second, we should bear in mind that a person who has been lawfully arrested has a lower reasonable expectation of privacy than persons not under lawful arrest: ...

10 [57] Third, the common law requirement that the search be really incidental to a lawful arrest imposes some meaningful limits on the scope of a cell phone search. The search must be linked to a valid law enforcement objective relating to the offence for which the suspect has been arrested. This requirement prevents routine browsing through a cell phone in an unfocused way.

15 [58] All of that said, the search of a cell phone has the potential to be a much more significant invasion of privacy than the typical search incident to arrest. As a result, my view is that the general common law framework for searches incident to arrest needs to be modified in the case of cell phone searches incident to arrest. In particular, the law needs to provide the suspect with further  
20 protection against the risk of wholesale invasion of privacy which may occur if the search of a cell phone is constrained only by the requirements that the arrest be lawful and that the search should be truly incidental to arrest and reasonably conducted. The case law suggests that there are three main approaches to making this sort of modification: a categorical prohibition, the introduction of a  
25 reasonable and probable grounds requirement, or a limitation of search to exigent circumstances....

[76] First, the scope of the search must be tailored to the purpose for which it may lawfully be conducted. In other words, it is not enough that the cell phone search in general terms is truly incidental to the arrest. Both the nature and  
30 extent of the search performed with the cell phone must be truly incidental to the particular arrest for the particular offence. In practice, this will mean that, generally, even when a cell phone search is permitted because it is truly incidental to the arrest, only recently sent or drafted emails, texts, photos and the call log may be examined as in most cases only those sorts of items will have the  
35 necessary link to the purpose for which prompt examination of the device is permitted. But these rules are not rules, and other searches may in some circumstances be justified. The test is whether the nature and extent of the search are tailored to the purpose for which the search may lawfully be conducted. To paraphrase Caslake the police must be able to explain, within the permitted  
40 purposes, what they searched and why.



5 Some principles can be gleaned from the above excerpts. From the very outset, I note that section 8 of the Canadian Charter is worded differently from article 27 of the Ugandan Constitution. First of all, it prohibits "unreasonable searches" while Uganda article 27 (1) prohibits "unlawful searches" and "unlawful entries". The two provisions cannot be construed  
10 in the same way as they are not in *para materia* though some common principles underlying them include the protection of the right to privacy of home, property and freedom from interference with the home. The above notwithstanding, the following principles can be gleaned from **Kevin Fearon Vs Her Majesty the Queen** (supra):

- 15 1. Search of a cell phone goes beyond search at the site as it contains a lot of other private information in the cell phone.
2. Search of a cell phone is inherently a grave invasion of privacy because the phones contain a lot of other private information not related to the offence for which the person whose cell phone is  
20 searched was arrested.
3. Arrested persons have a low expectation of privacy.
4. Incidental searches without warrant should be with meaningful limits on the scope of a cell phone search. The search must be linked to a valid law enforcement objective which is related to the offence for  
25 which the suspect is arrested.
5. Searches without warrant are permitted but there should be safeguards to avoid abuse thereof and in order to comply with section 8 of the Canadian Charter. The rules or law should provide safeguards to the suspect against wholesale invasion of privacy. The search  
30 should be limited to search in exigent circumstances.

In comparison to article 27 of the Ugandan Constitution, there is use of the word "unlawful" and therefore a search per se can be conducted under statutory provision that permits it to be done without a warrant of it may be conducted with a search warrant issued by a court of law upon satisfying  
35 the judicial officer of a prima facie case or any reasonable ground for a search to be conducted. Sections 41 and 42 of the Tax Procedures Code Act,

5 2014 do not require a search warrant. In order to balance the inherent contradiction between article 27 (1) which permits a lawful search and article 27 (2), which forbids the invasion or interference with the privacy of person's home, correspondence, communication or other property, it will be necessary to develop safeguards against arbitrary interference without  
10 probable cause in any tax related matter.

Bearing in mind that the provisions of section 41 and 42 of the Tax Procedures, 2014 are meant to empower the Commissioner in the investigation of tax related facts, the investigation should be prompted by some probable cause such as the alleged commission of any offence under  
15 the Tax Laws for which information may be obtained through investigations. Article 27 (2) provides that no person shall be subjected to interference with the privacy of the person's home, correspondence, communication or other property, the same article under 27 (1) (a) permits interference with the person, home or other property of a person and the entry by others in the  
20 premises of that person provided it is a lawful entry or interference. As to what is lawful is a matter of law. Further, the word "interference" may be distinguished from the word "search". Interference by necessary implication may be unlawful or an annoyance or nuisance. It also means interference with the right to privacy. It means any kind of interference with the right  
25 protected by article 27 (1) of the Constitution. The harmonisation of the two conflicting provisions therefore permits the creation of safeguards against arbitrary interference with the privacy of the person. In other words, a search should be based not only on reasonable grounds, but should be authorized by law.

30 I accept the petitioners' submissions that the notices issued by the second respondent were not preceded by any ongoing investigations into commission of any tax crime and there was no probable cause for the issuance of the notices to all the petitioners. In the letter dated 16<sup>th</sup> of March 2018 addressed to the petitioner banks, the information required was as  
35 follows:



5 "the details of information to be furnished must include but not limited to the following:

Account Name, Account Number, name of signatory, Type of account, taxpayer identification number (TIN) (where available), National Identification Number or/Business Registration Number (where applicable and available), total credits  
10 for each of the two years, debits for each of the two years, current balance, account holders telephone contact and email.

The said information should be furnished in soft copy in a read-only format not later than 30 March 2018 and must be accompanied by a statutory declaration duly executed by and responsible officer of the bank as provided by section 42 (3)  
15 (b) of the Tax Procedures Code.

Note that failure to comply with this notices an offence under the Tax Procedures Code Act.

Similar notices were sent to the 1<sup>st</sup> up to the 30<sup>th</sup> petitioners. Further in a letter dated 29<sup>th</sup> March 2018 more information was required where the  
20 petitioners were required to provide for each of the account holders information as detailed in the first letter and in addition:

"summary of account information:

This should be provided as a sum of all debits and credits for each of the two years and the current balance for i.e.

- 25
- i. the sum of all credits 2016
  - ii. the sum of all debits 2016
  - iii. the sum of all credits 2017
  - iv. the sum of all debits 2017
  - v. the current balance

30 The second respondent required the information specified in the notices to be given by 30<sup>th</sup> March 2018 in relation to the notice dated 16<sup>th</sup> March 2018 and another to be provided not later than 20<sup>th</sup> April 2018 in soft copy on DVD in a read-only format. It is entitled "notice to obtain information on account holders"

35 I have further considered the decision of the Supreme Court of Canada in **Thomas Reeves Vs Her Majesty the Queen [2018] 3 R.C.S 531**. The police

5 discovered child pornography on the home computer that the  
accused/appellant shared with his spouse without first obtaining a search  
warrant. The question was whether the police obtained the child  
pornography evidence in a manner that infringed privacy rights under  
section 8 of the Canadian Charter of Rights and Freedoms. The trial judge  
10 excluded the evidence on that ground and acquitted the appellant. On  
appeal, the decision was overturned and a retrial ordered on the ground  
that the evidence was admissible. On further appeal the issue was whether  
the police infringed the appellant's charter rights by entering the home  
without a warrant and by taking the shared computer without a warrant.

15 The court held that the essence of searches under section 8 of the Charter  
was the taking of an item from a person by a public authority without that  
person's consent. Where the person searched does not consent the  
question to be considered is whether the search procedure was reasonable.  
The presumption is that a search procedure is unreasonable and the burden  
20 is on the state to rebut this presumption. The Judgment of Wagner C.J. and  
Abella, Karakatsanis, Gascon, Brown, Rowe and Martin JJ were read by  
Karakatsanis J. The court held that the police detained the computer without  
a warrant for more than four months but did not search it during that time.  
They failed to report the seizure of the computer to a justice as required by  
25 the law. The police finally obtained a warrant to search the computer and  
executed it two days later:

30 [30] Here, the subject matter of the seizure was the computer, and ultimately the  
data it contained about Reeves usage, including the files he accessed, saved and  
deleted. I acknowledge that the police would not actually search the data until  
they obtained a warrant... Nevertheless, while the privacy interests engaged by a  
seizure may be different from those engaged by a search, Reeves informational  
privacy interests in the computer data were still implicated by the seizure of the  
computer. When police seized a computer, they not only deprive individuals of  
control over intimate data in which they have a reasonable expectation of privacy,  
35 they also ensure that such data remains preserved and thus subject to potential  
future state inspection.



5 ... [34] Personal computers contain highly private information. Indeed, computers  
often contain our most intimate correspondence. They contain the details of our  
financial, medical, and personal situations. They even reveal our specific  
interests, likes, and propensities.... Computers act as portals – providing access  
10 to information stored in many different locations... They "contain information that  
is automatically generated, often unbeknownst to the users" ... They retain  
information that the user may think has been deleted... By seizing the computer,  
the police deprived Reeves of control over this highly private information,  
including the opportunity to delete it. They also obtained the means through which  
15 to access this information. Indeed, these are the reasons why the police seized  
the computer.

[35] Given the unique privacy concerns associated with computers, this court has  
held that specific, prior judicial authorisation is required to such a computer....  
And that police officers cannot search cell phones incident to arrest unless  
certain conditions are met.... The unique and heightened privacy interest in  
20 personal computer data clearly warrant strong protection, such that specific,  
prior judicial authorisation is presumptively required to seize a personal  
computer from their home. This presumptive rule fosters respect for the  
underlying purpose of section 8 of the charter by encouraging the police to seek  
lawful authority, who accurately accord with the expectations of privacy  
25 Canadians attached to the use of personal computers and encourages more  
predictable policing.

The court found that no statutory or common law authority could have  
justified the computer search. Had there been a warrant to seize the  
computer, it would still require a further search warrant authorizing the  
30 police to search the computer which contained group information.

I have carefully considered the provisions of section 41 of the Tax  
Procedures Code Act, 2014 and particularly subsection (1) which provides  
that for purposes of administering any provision of tax law, the  
Commissioner shall have at all times and without prior notice full and free  
35 access to any premises or place, any record, including a record in electronic  
format and any data storage device. It also gives the commissioner of power  
to retrieve or extract any copy of any record the concluding records in  
electronic format. The Commissioner may seize any device or data storage  
device that may contain data relevant to a tax obligation. It is only

5 discretionary for the Commissioner to have a police officer present for the purposes of executing powers of search and entry. That requires the repair of the premises or place where the information may be found to give access to the Commissioner to answer questions.

10 The power is completely discretionary and it is clear that the law envisages a tax investigation and not a blanket investigation as demonstrated in the notices issued by the Commissioner to the petitioners. I am persuaded by the decision in **Kevin Fearon Vs Her Majesty the Queen (supra)** that the right underlying article 27 of the Constitution of Uganda is the need to respect the privacy and property of the person and therefore no arbitrary action can  
15 be taken which has the effect of depriving any person of the privacy of communication, their property and the privacy of their home without due process. The Commissioner must exercise those powers having in mind article 27 of the Constitution. In other words, there must be probable cause before the powers under section 41 of the Tax Procedures Code Act 2014  
20 are exercised. Further, each taxpayer is an individual and therefore the information sought should be information required of the account holder lawfully sought in tax matters rather than information required of the petitioner banks. In any case, every taxpayer is under obligation to file the appropriate returns to the Commissioner and to produce the basis of their  
25 returns which may include transactions reflected in a bank account. Where the individual with an account with any bank does not readily provide this information or is suspected of tax evasion, the Commissioner can require such information from the person who keeps it for purposes of investigating a possible breach of tax law. For instance, the Anticorruption Act 2019  
30 allows property to be traced into the hands of third parties only when there is evidence or suspicion of funds illicitly obtained having been used to purchase the property.

Similarly, section 42 of the Tax Procedures Code Act, 2014 allows the Commissioner, for the purpose of administering any provision of the tax  
35 law, to require any person by notice in writing whether or not they are liable for tax, to furnish within the time specified in the notice, any information



5 that may be stated in the notice and this is what the Commissioner did in the circumstances of this petition. Section 42 only supports section 41 of the Tax Procedures Code Act, 2014.

10 To the extent that sections 41 and 42 Tax Procedures Code Act, 2014 make provision, that can be used where there is probable cause of breach of tax laws before seizing any property or gaining access to any premises, the section itself is adequate and not unconstitutional. The Commissioner should comply with article 27 of the Constitution and only exercise the powers in accordance with the accepted principles such as when there is a real investigation of suspected tax evasion or breach of a tax law of a  
15 specified individual.

In the premises, the blanket notices issued by the Commissioner violated the rights of the account holders and were further in breach of article 27 of the Constitution of the Republic of Uganda. Though the respondents counsel submitted that the notices were withdrawn, I would declare that the notices  
20 were unconstitutional, null and void and partially allow the petition only to that extent.

### Issue No. 3

Whether the Notice is inconsistent with and contravenes Article 27 (2) of the Constitution, read together with Article 43 (2) (c) of the Constitution?

25 In the resolution of issue 2, issue 3 was resolved in that the notice issued found to be inconsistent with the rights under article 27 (2) of the Constitution because there was no probable cause, it was issued generally to 3rd parties affecting account holders without any investigation into any possible breach of the tax law any of the account holders thereby arbitrarily  
30 violating their right to privacy.

I would in the premises answer issue 3 in the affirmative and issue the declarations prayed for.

Remedies:

5 In light of the resolution of issues 1,2 and 3 I would issue the following declaration namely:

- 10 1. A declaration that the Notice impairs the right to privacy of all bank account holders of Uganda enshrined in article 27 (2) of the Constitution in a manner that far exceeds what is necessary to accomplish the objective of tax collection and is accordingly beyond what is acceptable and demonstrably justifiable in a free and Democratic society.
- 15 2. Further, though the petition concern issues of public interest, the actions of the second respondent subjected the petitioners to unnecessary costs and inconveniences. In the premises, the costs of the petition should follow the event and I would make an order awarding costs to the Petitioners as against the second respondent only. As far as the first respondent is concerned, it was not directly  
20 involved in the matter and I would make an order that the first respondent shall bear its own costs.

Dated at Kampala the 9<sup>th</sup> day of March 2023

  
**Christopher Madrama Izama**

25 **Justice Constitutional Court**



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

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

**Constitutional Petition No. 014 of 2018**

**BETWEEN**

ABC Capital Bank Ltd=====	Petitioner No.1
Bank of Africa Uganda Ltd=====	Petitioner No.2
Bank of Baroda Uganda Ltd=====	Petitioner No.3
Bank of India Uganda Ltd=====	Petitioner No.4
Barclays Bank Uganda Ltd=====	Petitioner No.5
Cairo International Bank Ltd=====	Petitioner No.6
Centenary Bank Ltd=====	Petitioner No.7
Citibank Uganda Ltd=====	Petitioner No.8
Commercial Bank of Africa Ltd=====	Petitioner No.9
DFCU Bank Ltd=====	Petitioner No.10
Diamond Trust Bank Uganda Ltd=====	Petitioner No.11
Eco Bank Uganda Ltd=====	Petitioner No.12
Equity Bank Uganda Ltd=====	Petitioner No.13
Exim Bank Uganda Ltd=====	Petitioner No.14
GT Bank Ltd=====	Petitioner No.15
Finance Trust Bank Ltd=====	Petitioner No.16
Finca Bank Ltd=====	Petitioner No.17
Housing Finance Bank Ltd=====	Petitioner No.18
KCB Bank Uganda Ltd=====	Petitioner No.19
Mercantile Credit Bank Ltd=====	Petitioner No.20
NC Bank Uganda Ltd=====	Petitioner No.21
Opportunity Bank Ltd=====	Petitioner No.22
Orient Bank Ltd=====	Petitioner No.23
Post Bank Ltd=====	Petitioner No.24
Pride Micro Finance Ltd=====	Petitioner No.25
Stanbic Bank Uganda Ltd=====	Petitioner No.26
Standard Chartered Bank Uganda Ltd=====	Petitioner No.27
Tropical Bank Ltd=====	Petitioner No.28
United Bank of Africa Uganda Ltd=====	Petitioner No.29
Uganda Development Bank Ltd=====	Petitioner No.30
Uganda Bankers Association Ltd=====	Petitioner No.31

**AND**

Attorney General=====Respondent No.1  
Commissioner General Uganda Revenue Authority=====Respondent No.2

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

- [1] I have had the opportunity to read in draft the judgment of my brother, Madrama, JCC. I agree with both the reasons for the decision and the proposed orders in the matter.
- [2] As Musoke, Mugenyi and Gashirabake, JJCC, agree, this petition is allowed in part with the orders proposed by Madrama, JCC.

Dated, signed and delivered at Kampala this 9<sup>th</sup> day of March 2023



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



**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
**CONSTITUTIONAL PETITION NO. 014 OF 2018**

- 1. ABC CAPITAL BANK LTD**
- 2. BANK OF AFRICA UGANDA LTD**
- 3. BANK OF BARODA UGANDA LTD**
- 4. BANK OF INDIA UGANDA LTD**
- 5. BARCLAYS BANK UGANDA LTD**
- 6. CAIRO INTERNATIONAL BANK LTD**
- 7. CENTENARY BANK LTD**
- 8. CITIBANK UGANDA LTD**
- 9. COMMERCIAL BANK OF AFRICA UGANDA LTD**
- 10. DFCU BANK LTD**
- 11. DIAMOND TRUST BANK UGANDA LTD**
- 12. ECOBANK UGANDA LTD**
- 13. EQUITY BANK UGANDA LTD**
- 14. EXIM BANK UGANDA LTD**
- 15. GT BANK LTD**
- 16. FINANCE TRUST BANK LTD**
- 17. FINCA BANK LTD**
- 18. HOUSING FINANCE BANK LTD**
- 19. KCB BANK UGANDA LTD**
- 20. MERCANTILE CREDIT BANK LTD**
- 21. NIC BANK UGANDA LTD**
- 22. OPPORTUNITY BANK LTD**
- 23. ORIENT BANK LTD**
- 24. POST BANK UGANDA LTD**
- 25. PRIDE MICROFINANCE LTD**
- 26. STANBIC BANK UGANDA LTD**
- 27. STANDARD CHARTERED BANK UGANDA LTD**
- 28. TROPICAL BANK LTD**
- 29. UNITED BANK OF AFRICA UGANDA LTD**





30. UGANDA DEVELOPMENT BANK LTD

31. UGANDA BANKERS' ASSOCIATION LTD:.....PETITIONERS

VERSUS

1. ATTORNEY GENERAL

2. COMMISSIONER GENERAL

UGANDA REVENUE AUTHORITY:.....RESPONDENTS

CORAM: HON. MR. JUSTICE FREDRICK EGONDA-NTENDE, JCC

HON. LADY JUSTICE ELIZABETH MUSOKE, JCC

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JCC

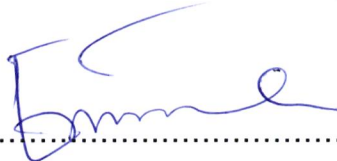
HON. LADY JUSTICE MONICA K. MUGENYI, JCC

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 Madrama, JCC, and I agree with the reasoning and conclusions contained therein. I, too, would allow the Petition only in part and make the declaration and orders that Madrama, JCC proposes.

Dated at Kampala this 9<sup>th</sup>.....day of March..... 2023.



**Elizabeth Musoke**

Justice of the Constitutional Court







THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA  
AT KAMPALA**

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

**CONSTITUTIONAL PETITION NO. 14 OF 2018**

**BETWEEN**

1. ABC CAPITAL BANK LTD
2. BANK OF AFRICA (U) LIMITED
3. BANK OF BARODA (U) LTD
4. BANK OF INDIA UGANDA LTD
5. CENTENARY BANK LTD
6. CITBANK UGANDA LTD
7. COMMERCIAL BANK OF AFRICA LTD
8. DFCU BANK LTD
9. DIAMOND TRUST BANK UGANDA LTD
10. ECO BANK UGANDA LTD
11. EQUITY BANK UGANDA LTD
12. EXIM BANK UGANDA LTD
13. GT BANK LTD
14. FINANCE TRUST BANK LTD
15. FINCA BANK LTD
16. HOUSING FINANCE BANK LTD
17. KCB BANK UGANDA LTD
18. MERCANTILE CREDIT BANK LTD
19. NC BANK UGANDA LTD
20. OPPORTUNITY BANK LTD
21. ORIENT BANK LTD
22. POST BANK LTD
23. PRIDE MICROFINANCE LTD
24. STANBIC BANK UGANDA LTD
25. STANDARD CHARTERED BANK UGANDA LTD
26. TROPICAL BANK LTD
27. UNITED BANK OF AFRICA UGANDA LTD
28. UGANDA DEVELOPMENT BANK LTD
29. UGANDA BANKERS ASSOCIATION LTD ..... 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 Christopher Madrama, JCC in respect of this Reference.
2. I agree with the findings and conclusions therein, as well as the orders issued.

Dated and delivered at Kampala this 9<sup>th</sup> day of March, 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. 014 OF 2018**

**ABC CAPITAL BANK LTD & 30 OTHERS:::::::::::::::::::::::::PETITIONERS**

**VERSUS**

**THE ATTORNEY GENERAL & URA:::::::::::::::::::::::::RESPONDENTS**

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

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

Dated at Kampala this .....<sup>9<sup>th</sup></sup> Day of .....<sup>March</sup> 2023.

.....  


Christopher Gashirabake  
**JUSTICE OF THE CONSTITUTIONAL COURT**

