THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Barishaki Cheborion, Stephen Musota, Muzamiru Kibeedi, Irene Mulyagonja & Monica Mugenyi, JJCC

CONSOLIDATED CONSTITUTIONAL PETITIONS NO. 15 OF 2017 AND NO. 001 OF 2019

1. **GWOGYOLONGA SWAIBU NSAMBA**
2. **UNWANTED WITNESS UGANDA**
3. **HUMAN RIGHTS ENFORCEMENT FOUNDATION**
4. **UGANDA LAW SOCIETY**

::::::::::::::::PETITIONERS

VERSUS

ATTORNEY GENERAL::RESPONDENT

JUDGMENT OF IRENE MULYAGONJA, JCC

The first, second and third petitioners brought Constitutional Petition (CPC) No. 15 of 2017 against the Attorney General under Articles 2(1), (2) and 137 (3) (b) of the Constitution. The 4th petitioner brought Constitutional Petition (CPC) No 001 of 2019 under Article 137 (1), (2), (3) (a) and (b) of the Constitution against the Attorney General. They each sought declarations that certain provisions of the Computer Misuse Act and the Penal Code Act contravened the rights to freedom of speech and media that are guaranteed by Articles 29 (1) (a) and 43 of the Constitution.

The petitions were set down for hearing on the same day, 14th June 2022. When CPC 001 of 2019 was called on for hearing, counsel for the 4th Petitioner

prayed that the two petitions be consolidated and heard together under rule 13 of the Constitutional Court (Petitions and References) Rules, SI 91 of 2005. He did so because similar to CPC 15 of 2017, the subject of CPC 001 of 2019 was to challenge the constitutionality of sections 24 and 25 of the Computer Misuse Act, while CPC 15 of 2017 challenged the constitutionality of section 179 of the Penal Code Act, as well. Counsel for the respondent did not object. Court thus decided to consolidate and hear CPC 15 of 2017 and CPC 001 of 2019 together.

The background to CPC No 15 of 2017 was that the 1st petitioner was charged with the offence of offensive communication contrary to section 25 of the Computer Misuse Act of 2011 and libel contrary to section 179 of the Penal Code Act, Chapter 120 of the Laws of Uganda. The 2nd petitioner was a registered non-governmental organization whose mandate was stated to be the defence of the freedom of expression on the Internet. The 3rd petitioner was also a non-governmental organization said to focus on promoting and protecting human rights through litigation.

The 4th petitioner is a body corporate established under the Advocates Act. The objectives of the 4th petitioner were stated as, among others, to protect and assist the public in Uganda on all matters touching on, ancillary or incidental to the law, promote constitutionalism, rule of law and good governance.

In CPC 15 of 2017, the petitioners raised two grounds as follows:

1. Section 25 of the Computer Misuse Act, 2011 when applied to an individual who makes critical comments on public affairs regarding a politician or a person who has assumed a public role, is inconsistent with and in contravention of Article 29 (1) (a) of the Constitution as well as regional and international human rights norms and standards.

2. Section 179 of the Penal Code Act, Cap 120, providing for criminal libel and under which the 1st petitioner was charged, is inconsistent with and in contravention of Article 29 (1) (a) of the Constitution of Uganda, as well as regional and international human rights laws and standards, which guarantee the right to freedom of speech and expression.

The petitioners then prayed that court grants declarations that:

i) Section 25 of the Computer Misuse Act of 2011 providing for offensive communication, when applied in relation to a politician or a person who has assumed a public role is unconstitutional;

ii) Section 179 of the Penal Code Act, Cap 120, providing for libel or criminal defamation in unconstitutional.

They further prayed that the proceedings against the 1st petitioner based on the impugned provisions be stayed permanently and that the respondent pays the costs of the petition.

The respondent filed an answer to CP 15 of 2017 and an affidavit in support thereof. In his answer, the respondent contends that section 25 of the Computer Misuse Act is consistent with the provisions on the right to freedom of the press and other media enshrined in Article 29 (1) (a) of the Constitution, as well as international standards on the guarantee of the right to freedom of speech and expression. Further that the right to freedom of the press and other media is not absolute.

In reply to the second ground of the petition, the respondent contends that section 179 of the Penal Code on libel is consistent with the Constitutional provisions in Article 29 (1) (a) of the Constitution, as well as regional and international standards on the guarantee of the right to freedom of speech and expression. The respondent further contended that the petition did not meet the threshold and benchmark for the issue of the declarations that were

sought and ought to be dismissed with costs. The answer was supported by the affidavit of Mr Oburu Odoi Jimmy dated 27th April 2017.

The 4th petitioner raised several grounds in CP 001 of 2019 as follows:

i) Sections 24 and 25 of the Computer Misuse Act, 2011, uses the blatantly vague and subjective terms of "cyber harassment" and "offensive communication" and they are inconsistent with Article 28 (12) of the Constitution, in so far as the language in the provisions is incapable of defining with sufficient particularity the penal offences therein intended.

ii) The impugned provisions are inconsistent with Articles 29 (1) (a) and Article 43 (2) (c) of the Constitution in so far as they restrict the freedom of speech and expression and the restrictions in the impugned sections are not demonstrably justifiable in a free and democratic society;

iii) The rights to artistic and political freedom of speech and expression are unduly restricted by the impugned sections as they demand the use of polite language in all discourse and publication done through electronic media;

iv) Allowing for impolite discourse is necessary in a free and democratic society for artistic and political freedom of expression to thrive;

v) There is no public interest protected by the human rights violation prevented by this limitation to freedom of expression as required by Article 43 of the Constitution;

vi) The legitimate application of the limitation in Article 43 requires only minimal impairment of enjoyment of the right, strictly warranted by the exceptional circumstance;

vii) The impugned sections do not constitute a minimal impairment to freedom of expression warranted by any special circumstances as required by law but are rather overly broad constituting an unnecessary violation of the rights to freedom of expression;

viii) The impugned sections are inconsistent with Uganda's obligations under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), insofar as they are not within the permitted grounds upon which freedom of expression can be limited under Article 19 (3) of the ICCPR, namely being necessary for the maintenance of respect for the rights and reputations of others, and protection of national security, public order, public health or morals;

ix) Section 24 of the Computer Misuse Act creates an offence of cyber harassment (the use of a computer in making obscene requests or threatening to inflict injury to any person or property) which is inconsistent with and in contravention of Article 29 (1) (a) of the Constitution, insofar as the legitimate exercise of freedom of expression accepted in the off-line environment (not made over the Internet) is restricted by this section in the online environment;

x) Section 25 of the Computer Misuse Act which prohibits and makes it an offence for any person to wilfully and repeatedly use electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of the person with no purpose of legitimate communication is inconsistent with and in contravention of Article 29 (1) (a) of the Constitution, insofar as the legitimate exercise of freedom of expression accepted in the off-line environment is restricted by this section in the online environment.

The 4th petitioner then prayed for the following declarations and orders:

a) A declaration that sections 24 and 25 of the Computer Misuse Act of 2011 are inconsistent with or in contravention of Article 29 (1) (a) and Article 28 (12) of the Constitution and are null and void;

b) A declaration that sections 24 and 25 of the Computer Misuse Act, 2011 are inconsistent with and in contravention of Article 19 (2) and 19 (3) of the International Convention on Civil and Political Rights;

c) That this being a matter in the public interest, no order be made as to costs.

The respondent filed an answer to the petition on 25th September 2019. An affidavit in support thereof deposed by Franklin Uwizera, State Attorney, dated 24th September 2019 was also filed.

In the answer, the respondent stated that sections 24 and 25 of the Computer Misuse Act are not in contravention of Articles 28 (12), 29 (1) (a) and 43 (2) (c) of the 1995 Constitution; they do not in any way restrict the freedom of speech and expression in a free and democratic society. Further that sections 24 and 25 of the Computer Misuse Act are not in contravention of Article 19 (2) and 19 (3) of the International Convention on Civil and Political Rights. The respondent also contended that Article 43 of the Constitution gives the general limitation on fundamental and other human rights and freedoms in the Republic of Uganda.

The respondent further states that the Parliament of Uganda in accordance with the powers granted under Article 79 of the Constitution passed the Computer Misuse Act of 2011 to make provision for the safety and security of electronic transactions and information systems; to prevent unlawful access, abuse or misuse of information systems, including computers, and to make provision for securing the conduct of electronic transactions in a trustworthy electronic environment, and provide for other related matters. That it is upon these premises that the impugned sections 24 and 25 of the Computer Misuse Act were enacted to provide for the offences of cyber harassment and offensive communication to prevent unlawful access, abuse or misuse of information systems.

The respondent went on to state that it is the position that the impugned sections of the Computer Misuse Act are consistent with Uganda's

international obligations and that they have their foundation in Articles 29 and 43 of the Constitution. That it is therefore preposterous to allege that they are in contravention of the same Constitution. Further, that the freedom of speech and expression in Article 19 (1) of ICCPR is not an absolute right and may be limited in accordance with the criteria set out under Article 19 (3) ICCPR. These criteria are that the measure be provided for by law; that the measure be adopted for the purposes of respecting the rights and the reputations of others, or protecting national security, public order, public health or public morals; and that the measure is necessary and proportionate.

The respondent then prayed that the petition be dismissed with costs.

Representation

The first to third respondents were represented by Ms Winfred Nakigudde, learned counsel. Mr Patrick Turinawe represented the 4th petitioner while the Attorney General was represented by Mr Ojambo Bichachi, Ms Jackie Amusugut and Mr Sam Tusubira.

The parties filed written arguments which they prayed that the court adopts as their submissions and their prayers were granted. The consolidated petitions were thus disposed of on the basis of written submissions only.

Preliminary issues

In their submissions, counsel for the parties on each side raised preliminary issues for the determination of the court. Counsel for the 1st to 3rd Petitioners raised the issue that the respondent failed to discharge the evidential burden to justify the continued existence of the crimes of offensive communication under section 25 of the Computer Misuse Act and criminal libel under section 179 of the Penal Code Act, in a free and democratic society. On the other

hand, counsel for the respondent raised the issue that CPC No. 001 of 2019 did not disclose any question for constitutional interpretation. I will therefore, first address these preliminary issues.

The 1st to 3rd petitioner's preliminary issue

Counsel for the 1st to the 3rd petitioners submitted that the affidavit of Oburu Odoi Jimmy contained general denials of both grounds of the petition and so fell short of the standard of justification for the validity of the impugned provisions. Further, that the affidavit did not provide any evidence to prove that the limitations imposed by the impugned provisions fall within the ambit of the provisions of Article 43 (2) (c) of the Constitution.

Counsel relied on the decision of the High Court in **Nelson Kawalya v Sebanakitta Hamis, [2021] UGHCLD 71 (13 April 2021)** where it was held that it is settled law that where a written statement of defence contains general denials to the plaintiff's allegations, it offends the provisions of Order 6 rule 8 of the Civil Procedure Rules (CPR) which require each party to deal with each allegation of fact as denied. He went on to submit that according to Article 20 of the Constitution, fundamental rights and freedoms of the individual are inherent and not granted by the State. That therefore, such rights and freedoms shall be respected and upheld and promoted by all organs and agencies of Government and by all persons.

Counsel went on to submit that since all rights are inherent, the burden lay on the respondent to justify any limitation imposed on the freedom of expression by the enactment of the impugned provisions. He referred to the decision of this court in **Charles Onyango-Obbo & Another v Attorney General, Constitutional Petition No. 2 of 2002,** in which the decision in **R v. Oaks 26 DLR, 200** was cited with approval. He laid out the dictum of the court in the latter, regarding the principles that are essential to a free and

democratic society, viz: respect of the inherent dignity of the human person, commitment to social justice and equality. He further submitted that the stated criteria impose a stringent standard of justification and the onus of proving that a limit on a right or freedom is guaranteed by a charter is reasonable or demonstrably justified in a free and democratic society rests upon the party seeking to uphold the limitation.

The respondent did not offer any submissions on the preliminary issue raised by the petitioners. However, I found it necessary to comment about it. It is clear that the issue was merely procedural and did not go to the root of the issues that are before this court for determination in CP 15 of 2017. It is also a tenet for the interpretation of the Constitution that during the process of interpreting it, the document must be viewed as a whole. And in this regard, Article 126 (2) (e) provides that substantive justice must be dispensed by the courts without undue regard to technicalities.

I note that the respondent offered submissions on all of the issues raised by the petitioners. Authorities that were necessary to resolve the issues were also cited. It is also my view that the process of interpretation of a statute is not a matter that always requires evidence to enable this court to understand the impugned provisions. Evidence is only provided in some petitions to demonstrate the negative or even positive effects of a particular provision that is the subject of interpretation. Although rule 6 (5) of the Constitutional Court (Petitions and Reference) Rules requires the answer filed by the respondent to be accompanied by an affidavit stating the facts upon which the respondent relied in support of his or her answer, there may be no relevant facts to state. It has therefore become the misguided practice, in my view, that affidavits in support are filed even where there is no evidence in them to support the assertions in the petition or answer.

As is the case in the petitions now before court, the affidavits in support do not disclose material facts; they simply reiterate what has been stated in the petitions and the answers. For those reasons, and in the interests of justice, the petitioner's preliminary point is not sufficient to move this court to decline to address the issues that have been placed before it for determination in CPS 15 of 2017. It is therefore overruled.

Respondent's preliminary issue

While the respondent in CPS 001 of 2019 pleaded that the petition did not raise any question for constitutional interpretation, counsel who appeared in court did not address the objection at all. I therefore came to the conclusion that the preliminary point was abandoned. I will therefore now proceed to address the substantive issues that were raised in both petitions.

Counsel for the 1st to 3rd petitioners addressed two issues in her submissions as follows:

1. Whether section 25 of the Computer Misuse Act, 2011 which provides for the offence of offensive communication when applied in relation to politicians or persons who have assumed public office is unconstitutional and inconsistent with Article 29 (1) (a) of the Constitution.
2. Whether section 179 of the Penal Code Act which provides for criminal libel or defamation and under which the 1st petitioner was charged is unconstitutional and inconsistent with Article 29 (1) (a) of the Constitution.

Counsel for the 4th petitioner addressed two issues in his submissions in CPC 001 of 2019 as follows:

1. Whether sections 24 and 25 of the Computer Misuse Act No.)2 of 2011 is unconstitutional and contrary to Articles 28 (12), 29 (1) (a) and 43 (2) (c) of the Constitution of the Republic of Uganda.
2. Whether section 24 and 25 of the Computer Misuse Act of 2011 are restrictions permitted under Article 43 (2) (c) of the Constitution as being demonstrably justifiable in a free and democratic society.

From the summary of the issues above, it is apparent that this court has three issues to address in the consolidated petitions as follows:

1. Whether section 25 of the Computer Misuse Act contravenes Article 29 (1) (a), 28 (12) and 43 (2) (c) of the Constitution.
2. Whether sections 24 of the Computer Misuse Act contravenes Articles 29 (1) (a), 28 (12) and 43 (2) (c) of the Constitution.
3. Whether section 179 of the Penal Code Act contravenes Article 29 (1) (a) of the Constitution.

Submissions of Counsel for the 1st to 3rd petitioners

Counsel for the three petitioners first referred court to the principles or techniques used by courts to evaluate the constitutional validity of legislation that were laid down by Lord Dickson, CJ, in **R v Oaks (1986) 1 SCR 103, 69-70.** She submitted that the court identified two principles: i) that the objective to be served by the measures limiting enjoyment of a constitutional right is reasonably justifiable in a free and democratic society; ii) the measure must be proportional to the mischief that it is intended to cure, and this has three factors.

With regard to the issue whether section 25 of the Computer Misuse Act is unconstitutional and inconsistent with Article 29 (1) (a) of the Constitution, the gist of the submissions of counsel was that the impugned provision does not pass the test of a limitation provided by law. That the wording of the

provision is vague, ambiguous and allowing significant levels of subjective interpretation, while leaving limitless discretion in the hands of those who implement it. That as a result the provision easily lends itself to abuse and injustice, and thus effectively denies citizens of advance notice to order their conduct.

Counsel further submitted that the impugned provision fails the test of constitutional validity on the criteria that for a limitation to be acceptable, it must serve a legitimate objective or purpose. He referred to the decision of the Supreme Court in **Attorney General v Salavatori Abuki, Constitutional Appeal No.1 of 1998,** where the Court laid down the principle for determining constitutionality of legislation, its purpose and effect. Counsel further submitted that the impugned provision fails the test that requires that the means used to impair the right to freedom of expression should be no more than is necessary to accomplish the objective. She referred to the decision in **R v Oaks (1986) 1 SCR 103, 69-70,** that there must be proportionality between the effects of the measures which are responsible for limiting the right or freedom and the objective.

Counsel finally submitted that the harmful and undesirable consequences of the impugned provision, with the possibility of arrest, detention and imprisonment for one year are manifestly excessive. That they would be stifling and have a chilling effect on members of the public who would want to engage in electronic communication regarding the conduct of public interest. Further that the corollary to self-censorship is to refrain from or minimise their involvement in public discourse and participation in matters of public interest.

With regard to the issue whether section 179 of the Penal Code Act is unconstitutional and inconsistent with Article 29 (1) (a) of the Constitution, counsel submitted that the impugned provision does not meet the standard

of what is acceptable and demonstrably justifiable under Article 43 of the Constitution.

Submissions of counsel for the 4th petitioner

Counsel for the 4th petitioner emphasised that increasing online interaction today is one of the most important individualistic forums for freedom of expression. He pointed out that it can be accessed and used by anyone in any language and probably at a low cost. That in fact, it is a threat to the traditional forms of media platforms like print media, radio and television. Further that the traditional media platforms have had to use the Internet or online interaction platforms on social media as a tool of communication in order to remain relevant. That in addition, government agencies, departments and public officials have also resorted to using the Internet and online communication for official use and some jurisdictions have described social media platforms as a "*public forum.*"

Counsel explained that it is against this background that the Computer Misuse Act, No. 2 of 2011 was enacted. That however sections 24 and 25 of the Act have far-reaching consequences on the restriction or limitation of the freedoms and rights of speech and expression provided for under the Constitution. That the provisions that are being challenged in this petition are symbolic for shrinking the space of freedom of expression in Uganda and cyberspace and this petition gives hope that online freedom of expression will prevail in Uganda.

With regard to the issue whether sections 24 and 25 of the Computer Misuse Act are unconstitutional and contrary to Articles 28 (12), 29 (1) (a) and Article 43 (2) (c) of the Constitution of the Republic of Uganda, counsel descibed the offences that are created by sections 24 and 25 of the Computer Misuse Act, "cyber harassment" and "offensive communication". He drew our attention to

the principles of constitutional interpretation as they were laid down in the case of **David Wesley Tusingwire v Attorney General, Constitutional Appeal No. 4 of 2016**. Of particular importance was the principle that a constitutional provision containing fundamental human rights is a permanent provision intended to cater for all times to come and therefore should be given dynamic, progressive and liberal and flexible interpretation, keeping in view the ideals of the people, their social economic and political values, so as to extend the benefit of the same to the maximum possible. Counsel referred to the cases of **Okello John Livingstone & 6 Others v Attorney General & Another, Constitutional Petition No 1 of 2005** and **South Dakota v South Carolina, 192, USA 268, 1940.**

With regard to the issue whether section 24 (2) (a) and section 25 of the Computer Misuse Act use blatantly vague and subjective in terms and are inconsistent with Article 28 (12) of the Constitution, counsel submitted that the language used in the provisions is insufficient to provide particularity of the penal offences. He emphasised that Article 28 (12) of the Constitution requires an offence to be clearly defined. That undefined descriptive terms in the impugned provisions like *"obscene, lewd, lascivious or indecent"* and *"disturb peace, quiet"* are subjective and contrary to Article 28 (12). Further, that the nebulous nature and imprecision of the provisions is contrary to the principle of legality, which requires the law, especially one that limits a fundamental right or freedom, to be clear and precise enough to cover only activities connected to the purpose of the law. Counsel drew examples from the cases of **Godfrey Andare v Attorney General, Constitutional Petition No 149 of 2015 (K)** and **Charles Onyango Obbo & Another v Attorney General, Constitutional Appeal No. 2 of 2002,** where the courts found that the provisions that were challenged defied consistent interpretation by the courts and led to an abuse of constitutional rights of the accused persons concerned.

He prayed that this court finds that the language used in sections 24 and 25 of the Computer Misuse Act is vague, subjective and offends the principle of legality. Most importantly that the two provisions are contrary to Article 28 (12) of the Constitution and should be declared so.

Counsel further submitted that the impugned provisions restrict freedom of speech and expression and that the restrictions are not demonstrably justifiable in a free and democratic society contrary to Articles 29 (1) (a) and Article 43 (2) (c) of the Constitution of Uganda. He explained that Article 43 provides for the general limitation of the freedom and rights to freedom of expression inclusive. That it is therefore not in contention that freedom of expression can be restricted. The limitation of this freedom is acceptable were exercising the right would prejudice the rights of others or prejudice public interest and whether such limitations are demonstrably justifiable in a free and democratic society. That the onus is on the respondent to prove that such imitation is demonstrably justifiable in a free and democratic society.

Counsel went on to submit that the right to freedom of expression being a constitutional right can only be limited in accordance with the Constitution itself and where it is limited by statute, such as the Computer Misuse Act, the impugned provisions must meet the constitutional test of reasonableness and should be justifiable. That it is this test that was used in the case of **Charles Onyango Obbo & Another v Attorney General, Constitutional Appeal No. 2 of 2002,** where it was held that where there is limitation, only minimal impairment of the right, strictly warranted by the exceptional circumstance is permissible. He emphasized that what the impugned provisions show is at most a reflection of an undifferentiated fear or apprehension of disturbance, which is not enough to overcome the right to freedom of expression.

Counsel went on to refer to the United Nations Special Rapporteur's Report, 2011 on The Promotion and Protection of the Right to Freedom of Opinion and Expression, ***A/66/290 of 10 August, 2011***. He explained that in that Report the UN Special Rapporteur identified four special circumstances in which States are required to prohibit expression under international law as: child pornography, direct public incitement to genocide, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and incitement to terrorism. He prayed that this court finds that the restricted freedoms of expression are not demonstrably justifiable in a free and democratic society and they are therefore contrary to Articles 29 (1) (a) and Article 43 (2) (a) of the Constitution of the Republic of Uganda.

Counsel added that the impugned provisions demand for the use of polite language in all discourse and publication done through electronic media, which unduly restricts the right of artistic and political freedom of speech. He asserted that the impugned provisions legislated modes or styles of expression of what may be considered polite. That there may be difficulty to create or compose criticism in a polite fashion when speaking about truth to power, condemning abuses and criminality, or any form of expression with actions or inactions by the State. He asserted that demanding all communication made online to be polite is an unjustifiable restriction of freedom of speech. He explained that words are chosen as much for the emotive as well as their cognitive force and that should not be hindered in online communication.

Counsel drew the attention of court to the case of **Andrew Mujuni Mwenda & Another v Attorney General, Constitutional Petition No. 12 of 2005 (2010) UGSC 5 (25 August 2010),** in which this court observed that the people in this country express their thoughts differently depending on the environment, their upbringing and education. Counsel also cited the decision

of the Kenyan court in **Robert Alai v Attorney General & Another [2017] eKLR,** in which the court cited with approval the decision of the Malawian Court in **R v Harry Mkandawire & Another, Criminal Case No 5 of 2010,** where it was observed that the freedom of expression should not be restricted to speaking about only those things that delight the powers that be but must extend to the freedom to speak about those things that have the capacity to displease, indeed to annoy. That therefore persons should not be barred from expressing themselves on any issue merely because doing so will cause discomfort in certain quarters. That those whose rights are violated should not be barred from expression and the pursuit of their rights.

Counsel further referred court to the decision in **Derbyshire County Council v Times Newspaper [1992]2 All ER 66, at 94,** where it was observed that that there should be profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open and that it may well include, caustic and sometimes unpleasantly sharp attacks on government and public officers. He demonstrated that it is common that the language employed may be artistic and creative and such should not be restricted. He cited the example of the re-known poet and writer Okot p'Bitek's creativity and use of language in some of his writings and other similar African writers. He also referred to the use of innuendo in some expressions in Ugandan languages that employ graphic use of expressions that may be considered unsuitable, including the mention of the anal and sexual orifices, parts of the body that are considered unmentionable in public discourse. He submitted that such expression leads to the one conclusion that they can be interpreted in many ways. That artistic and creative poetry and prose is language that could be hindered because of the limitation of use of racy language on online platforms, so hindering the freedom of expression. He added that African languages are filled with wisdom crafted in lewd statements and can be targeted to offend the impugned provisions. He

concluded that sections 24 and 25 of the Computer Misuse Act are couched in terms that are broad, vague and unrealistically demand polite online expression.

The 4th respondent further contends that sections 24 and 25 of the Computer Misuse Act are inconsistent with Article 29 (1) (a) in that the legitimate exercise of freedom of expression accepted in the off-line environment is restricted by these sections in the online environment. That the impugned provisions illustrate the online–offline dichotomy or contradiction. He explained that there is no law or regulation of the acts in sections 24 and 25 of the Computer Misuse Act that regulate the off-line equivalent. That the import of this is that if the same communication, that is obscene, lewd, lascivious or indecent or offensive were made off-line, for instance at a public rally, conference or in a meeting there would be no offence committed. That in 2012 the UN General Assembly Human Rights Council at the 20th Session made a resolution that the same rights that people have off-line must also be protected online, in particular the freedom of expression which is applicable regardless of frontiers and through any media of one's choice.

Counsel went on to submit that the closest offence that once existed on the statutes in this country is the offence of sedition contrary to section 40 (1) (b) of the Penal Code Act. Seditious intention was defined as an intention to bring into hatred or contempt or to excite disaffection against the person of the President. He invited us to follow the decision of this court in the case of **Andrew Mujuni Mwenda (supra)** where it was held that the provisions creating that offence were unconstitutional. He added that the Internet and its communication tools are transforming the traditional political and social landscape by shifting all controls on information, who consumes it and how that information is distributed. And that this court and the Supreme Court have affirmed the significance of freedom of expression. He prayed that this

court follows the same decision to declare that sections 24 and 25 of the Computer Misuse Act are unconstitutional.

Counsel went on to submit that the impugned provisions are inconsistent with Uganda's obligations under international treaties. He cited The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. He prayed that this court finds that sections 24 and 25 of the Computer Misuse Act of 2011 are contrary to Articles 28 (12), 29 (1) (a) and Article 43 (2) (c) of the Constitution of Uganda and they are therefore null and void.

Submissions of the respondent

In respect of CPC 15 of 2017, counsel for the respondent submitted that section 25 of the Computer Misuse Act is not in violation of the Constitution when applied to a politician, or any individual who makes critical comments on public affairs with regard to a politician, or a person who has assumed a political role. He defined the meaning of the word "wilful" as it is stated in Webster's Universal English Dictionary and submitted that a person who stubbornly and intentionally uses communication over and over again is said to disturb or attempt to disturb the peace, quiet or right of privacy of any person, especially where there is no purpose of legitimate communication.

With regard to the submission that the restriction in a statute must serve a legitimate purpose or aim that is important for society, counsel submitted that the Computer Misuse Act was enacted to deal with crimes that arise from the misuse of computer systems and it defines what a computer is. Further that the purpose and aim is important to society and not limited to application to politicians and public figures in the course of political discourse, as alleged by the petitioners.

With regard to the submission that the law must be rationally connected to those objectives and limit the freedom as little as possible, counsel for the respondent submitted that the use of the sanctions such as those contained in section 25 of the Computer Misuse Act is proportional to the injury suffered by an individual as a result of reckless or wilful publication of defamatory material. He added that the victim may be forever demeaned and diminished in the eyes of his or her community. That it is therefore imperative that the perpetrators of such acts be punished and deterred from causing such damage and that the criminal sanctions laid out in the Act do exactly that. That the sanctions also serve to deter those that may wish to engage in irresponsible defamatory and reckless online publications and communication.

Counsel went on to submit that there are other jurisdictions that have similar provisions to section 25 of the Computer Misuse Act. He referred to the Communications Act of 2003 of the United Kingdom in which section 127 (1) (a) provides that a person is guilty of an offence if he sends by means of a public electronic communications network a message or other matter that is grossly offensive or indecent, obscene or menacing in character. Counsel also referred to the Malicious Communications Act of 1984 of the United Kingdom, which provides, under section 1 thereof, that a person is guilty of an offence if they send an electronic communication of any description which is grossly offensive and if their purpose in sending it is that it should cause distress or anxiety to the recipient.

He further submitted that Tanzania also has similar laws, one of which is the Cybercrimes Act of 2015, which too provides for offences related to computer systems and information communication technologies. That the Act has provisions that are comparable to the offensive communications provisions of the legislation in Uganda, the United Kingdom and India. That in addition, section 18 of the Act prohibits offences related to computer system on the

basis of race, colour, descent, nationality or religion and the offence is punishable with a fine or imprisonment of not less than one year. Further, that the right to freedom of expression in Article 29 (1) (a) of the Constitution is not absolute and does not fall under the non-derogable rights provided for in Article 44 thereof. He also referred to the limitations in Article 43 of the Constitution and concluded that the sanctions in section 25 of the Computer Misuse Act are justifiable in a free and democratic society.

With regard to the wording of section 25 of the Act, counsel submitted that it is very clear and not arbitrary, ambiguous or based on irrational considerations. That citizens of Uganda participating in matters of governance can render accountable public affairs, officers or figures, as well as politicians under the law without violating it and within the confines of the Constitution of the Republic of Uganda.

In reply to the submissions in respect of section 25 of the Computer Misuse Act in CPC No 001 of 2019, counsel repeated the submissions in CPC 15 of 2015. With regard to the slant given to the complaint that section 25 of the impugned Act forces persons to use polite language in order to avoid the consequences of the provision, so limiting their freedom of expression and speech, counsel contended that *"impolite discourse"* is not the subject of section 24 of the Computer Misuse Act. That instead, the Act targets persons whose actions wilfully and repeatedly and with malice are intended to disturb the peace, quiet or privacy of others.

Counsel then submitted that the intent of section 25 is legitimate and demonstrably justifiable in a free and democratic society. That the provision affirms the protections accorded to the general public under Article 43 of the Constitution. He reiterated his prayers in CPC 15 of 2017.

With regard to the question whether section 24 of the Computer Misuse Act is inconsistent with Articles 28 (12), 29 (1) (a) and 43 (2) (c) of the Constitution, counsel for the respondent submitted that the impugned provision clearly defines the offence of Cyber Harassment in simple plain and clear language. That it goes even further to categorically define the scope of the offence, in compliance with Article 28 (12) of the Constitution.

Further, that the purpose of section 24 of the Act, as deduced from the language therein, is to protect the public from menacing, intimidating, indecent and immoral communications and speech, and preserve the public sense of well-being and public interest. That the commonality of the three categories of speech criminalised under section 24 of the Act is that the speech is targeted to victimise the recipient of the communication and so she/he becomes the complainant. The respondent further submitted that the complaint about the categorisation of the offence of cyber harassment under section 24 (2) of the Act eliminates the possibility of abuse and unwarranted prosecution by eliminating generalisations and vague language. That unwarranted prosecution is further checked by Article 43 (2) (a) of the Constitution. That there is therefore no doubt that any person charged with and subject to prosecution would clearly know, appreciate and understand the nature of the charge.

Counsel further submitted that section 24 of the Act is necessitated by the fixation to computerised communications as the standard *modus operandi* of the modern age and confounded in the age where offenders presume to direct menacing, intimidating, indecent and immoral communications to random and or targeted persons using the anonymity of the Internet and the cloak of *pseudo* names. That it is therefore frivolous and absurd for the petitioner to suggest that such character of victimising speech is protected under Article 29 (1) (a) of the Constitution and by extension, that limiting such speech is limited by Article 44 of the Constitution.

Counsel went on to state that contrary to the petitioner's purported trivialisation of the matter by referring to *"impolite discourse"* in respect of section 24 of the Act, impolite conversation was not the subject of the provision but only the communications specified in language stated therein. That it is frivolous and absurd for the petitioner to contend that such restrictions are not demonstrably justifiable in a free and democratic society. That section 24 of the Act therefore affirms the protections accorded to the general public under Article 43 of the Constitution.

In reply to the submissions on the question whether section 179 of the Penal Code Act, which provides for criminal libel or defamation, is unconstitutional and inconsistent with Article 29 (1) (a) of the Constitution, counsel for the respondent submitted that this issue was exhaustively interrogated and determined in **Constitutional Reference No. 1 of 2008, Joachim Buwembo & 3 Others v Attorney General**. That this court then held that section 179 of the Penal Code Act was not inconsistent with Article 29 (1) (a) of the Constitution.

Counsel went on to submit that this court has also previously held that where the issues raised in a matter before it, are similar to those raised in previous cases, the inter its legal effect is not limited to the parties concerned in the case in which the interpretation was made. That such issues in a subsequent case would be *res judicata*. He referred us to the decision of this court in **Constitutional Petition/Reference No. 24 of 2011, Uganda v Geoffrey Onegi Obel,** to support his submissions.

Analysis

I will now proceed to address the questions that were raised in the two petitions, but before I do so, I note that the interpretation of section 25 of the Computer Misuse Act and section 179 of the Penal Code Act have previously

been subjected to interpretation by this court. I will therefore first of all consider whether it is still necessary to address the questions related to the two provisions. This is based on the decision of this court in **Uganda v Geoffrey Onegi Obel** (supra), among others, which was referred to by counsel for the respondent during his submissions in respect of section 179 of the Penal Code Act.

In **Onegi Obel's case** (supra) this court held that:

> *"We see no difference between the current case and those two cases mentioned above. The issues raised in this case are similar to those raised in the two cases. We agree with learned Counsel for the state that interpretation by this Court of any legal provision vis-à-vis the Constitution and its legal effect is not limited to the parties concerned in the case in which the interpretation is made. It constitutes a binding pronouncement of the law, subject to appeal to the Supreme Court. This Court cannot therefore hear and determine the same substantial and legal issues more than once. Accordingly, it is our judgment that issues numbers 1 and 2 are res judicata, having been adjudicated upon in the two cases quoted above. The two issues cannot therefore constitute a reference to this Court. They are therefore dismissed."*

In my opinion, it is debatable whether the previous decision on a question as to the interpretation of a provision of the Constitution, where there are different parties in the previous petition would amount to *res judicata*, given the definition of the concept in section 7 of the Civil Procedure Act. Nonetheless, I agree with the conclusion that this court need not consider the same question as to the interpretation of a particular provision of the constitution more than once. I will therefore first consider whether the decisions in the cases that were referred to by counsel for the respondent with regard to section 25 of the Computer Misuse Act and section 179 of the Penal Code Act resolved the questions that were set before this court for interpretation in CPC 15 of 2017 and CPC 001 of 2019.

Principles of constitutional interpretation

The tenets of constitutional interpretation are myriad. They have been laid down by this court, as well as the Supreme Court in diverse decisions. However, the Supreme Court in **David Wesley Tusingiwire v Attorney General [2017] UGSC 11** (per Mwondha, JSC) summarised the principles as they have been laid down by the courts in this and other jurisdictions as follows:

(i) The Constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of its inconsistency. Sec Article 2 (2) of the Constitution. Also see **Presidential Election Petition No. 2 of the 2006 (SC) Rtd Dr. Col. Kiiza Besigye v. Y. K. Museveni.**

(ii) In determining the constitutionality of legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining the constitutionality of either effect animated by the object that the legislation intends to achieve. See **Attorney General v S. Abuki Constitutional Appeal No. 1988** (SC)

(iii) The entire Constitution has to be read together as an integral whole with no particular provision destroying the other but each sustaining the other. This is the rule of harmony, the rule of completeness and exhaustiveness (see **P. K. Ssemwogere and Another v. Attorney General Constitution Appeal No 1 of 2002** (SC) and the **Attorney General of Tanzania v. Rev Christopher Mtikila (2010) EA 13**)

(iv) A Constitutional provision containing a fundamental human right is a permanent provision intended to cater for all times to come and therefore should be given dynamic, progressive, liberal and flexible interpretation keeping in view the ideals of the people, their social economic and political cultural values so as to extend the benefit of

the same to the maximum possible. See **Okello Okello John Livingstone & 6 Others v. The Attorney General and Another Constitutional Petition No 1 of2005, South Dakota v. South Carolina 192, USA 268. 1940**.

(v) Where words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural Page 14 of 24 meaning. The language used must be construed in its natural and ordinary sense.

(vi) Where the language of the Constitution or a statute sought to be interpreted is imprecise or ambiguous a liberal, general or purposeful interpretation should be given to it. (See **Attorney General v Major David Tinyefunza Constitutional Appeal No. 1 of 1997 (SC)**

(vii) The history of the country and the legislative history of the Constitution is also relevant and useful guide to Constitutional Interpretation. See **Okello John Livingstone & 6 Others v. Attorney General and Another (Supra)**.

(viii) The National Objectives and Directive Principles of State Policy are also a guide in the interpretation of the Constitution. Article 8A of the Constitution is instructive for applicability of the objectives.

I will be guided by these principles in the disposal of the petitions.

Whether section 25 of the Computer Misuse Act contravenes Articles 29 (1) (a), 28 (12) and 43 (2) (c) of the Constitution.

This court in **Andrew Karamagi & Robert Shaka v Attorney General, Constitutional Petition No 005 of 2016**, considered the question whether section 25 of the Computer Misuse Act, 2011 is inconsistent with and in contravention of Article 29 (1) (a) of the Constitution. The petitioners therein complained that the impugned provision is an insidious form of censorship which restricts the free flow of opinions and ideas essential to sustain the

collective life of the citizenry in the digital age; it is vague and overly broad; and there is no evidence that Government could not achieve the intended purpose with less drastic measures. The petitioners sought the following declarations and orders:

a) A declaration that section 25 of the Computer Misuse Act, No. 2 of 2011 is inconsistent with or in contravention of Article 29 (1) (a) of the Constitution and is to that extent null and void.

b) An order of redress directing the DPP to stay the prosecution of all and any citizens currently on trial for violating the rule, an order staying the enforcement of section 25 of the impugned Act or similar provisions of the law which disproportionately curtail enjoyment of the freedom of expression and speech by citizens.

The petitioners in CPC No. 005 of 2016, similar to the petitioners in the two petitions now before this court, argued that the provision was overly broad and vague because the terms therein such as *"disturbing the peace quiet and privacy of anyone"* and *"with no purpose of legitimate communication"* were not defined in the Act. This court, at page 12 of the lead judgement (per Kakuru, JA/JCC) held and the other justices all agreed with him, that:

> *"... The words used under section 25 are vague and ambiguous. What constitutes an offence is unpredictable and gives the law enforcer the discretion to pick and choose what qualifies as offensive. It gives the law enforcement unfettered discretion to punish unpopular persons or critical protected expression.*
>
> ...
>
> *Article 28 (12) is clear. It requires that an offence must be defined. That definition in my view must be clear enough to enable a citizen to distinguish between the prohibited conduct and the permissible one. Any vague interpretation will not satisfy the requirement of article 28 (12). See:* ***Charles Onyango Obbo & Another v Attorney General, Constitutional Petition No. 15 of 1997*** *and* ***Olara Otunu v Attorney General, Constitutional Petition No.12 of 2010."***

With regard to the question whether the impugned provision is justifiable in a free and democratic society as is provided for under Article 43 (2) of the Constitution, the court associated itself with the decision in ***Charles Onyango Obbo (supra),*** an excerpt of which was quoted in the judgement *in extenso* at pages 14-15 thereof. Kakuru, JCC then stated at page 15 of his judgement as follows:

> *"I associate myself with the above reasoning and finding. In a democratic and free society, prosecuting people for the content of their communication is a violation of what falls within guarantees of freedom of expression in a democratic society.*
>
> ...
>
> *I find that the impugned section is unjustifiable as it curtails the freedom of speech in a free democratic society. Secondly section 25 of the Computer Misuse Act No 2 of 2011 does not specify what conduct constitutes offensive communication. To that extent it does not afford sufficient guidance for legal debate. Thirdly it is vague, overly broad and ambiguous. Therefore, I find that the impugned section is inconsistent with and/or in contravention of Article 29 (1) of the Constitution, Article 19 (2) of the International Covenant on Civil and Political Rights and Article 9 (2) of the African Charter on Human and Peoples Rights."*

The only difference in the arguments that were presented before the court in **CPC No 5 of 2016** and the petitions now before court is that in **CPC 001 of 2019**, the petitioner contends that there is no similar provision of the law that criminalizes similar communications off-line. However, the petitioner hastened to add that there were provisions in the Penal Code Act that did so, sedition, which was proscribed by sections 39 and 40 the Penal Code Act. That however, the same were held to be unconstitutional in **Andrew Mujuni Mwenda** (supra).

Section 39 and 40 of the Penal Code provided for the offence of seditious intent and seditious offences, respectively. Although the offences specifically targeted statements, whether published or spoken, that were intended to criticise acts of the President of Uganda and government, only, this court

found that both provisions were in contravention of Article 29 (1) (a) of the Constitution and that they fell outside the ambit of the limitations specified in Article 43 thereof. The court therefore declared them unconstitutional and that they were *"struck out of the Penal Code."*

I therefore do accept the submissions of the 4th petitioner that maintaining on our statute books an offence online whose equivalent does not exist offline goes against the spirit and intent of Articles 29 (1) (a) and 43 (2) of the Constitution.

In conclusion, there is no need for this court to render another interpretation of section 25 of the Computer Misuse Act *vis-à-vis* Articles 29 (1) (a), 28 (12) and 43 (2) (c) of the Constitution, since it was already concluded in the case of **Andrew Karamagi (supra).** To that extent therefore, CPC 15 of 2017 ought to be dismissed.

Whether section 179 of the Penal Code Act contravenes Article 29 (1) (a) of the Constitution.

I have carefully considered the submissions of both counsel on this question. Briefly in this regard, counsel for the respondent argued that this court already rendered an interpretation of Article 29 (1) (a) of the Constitution vis-à-vis section 179 of the Penal Code Act (PCA) in **Joachim Buwembo & Others** (supra). I have also carefully reviewed the decision of this court in that case.

The matter came to this court as a reference from the Magistrates Court where the applicants were being prosecuted for the publication, in the Monitor Newspaper, articles that were said to be prejudicial to the reputation and character of then Inspector General of Government. The three applicants sought for a declaration that section 179 of the PCA under which they were being prosecuted, which provided for the definition of libel was in

contravention of Articles 29 (1) (a) and 43 (2) of the Constitution. The same provision which is challenged in this petition provides as follows:

> **179. Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits the misdemeanour termed libel.**

The reference was unsuccessful and it was dismissed with an order that the trial should continue. This court found and held that:

> *"Most certainly therefore defamatory libel is far from the core values of freedom of expression, press and other media. It would trivialize and demean the magnificence of the rights guaranteed by the Constitution if individual members of the public are exposed to hatred, ridicule and contempt without any protection. In fact, the press would be doing a disservice to the public by publishing defamatory libels.*
>
> *The applicants in this case cannot say that they are being tried under an unconstitutional law. The applicants' complaint and defence should not, therefore, be that section 179 of the Penal Code Act is bad law. The freedom of expression in Uganda should be enjoyed within the restrictions imposed by section 179 of Penal Code Act. Holding that section 179 is unconstitutional would mean that the right of freedom of expression is unlimited and thus this would contravene Article 43 of the Constitution. It serves the purpose achieved by the Canadian Criminal Code.*
>
> *In summary, Section 179 of the Penal Cope Act (Cap 120) is not inconsistent with Article 29(1)(a) of the Constitution. Sections 180 to 186 of the Penal Code Act are, therefore, not redundant. Section 179 of the Penal Code Act is a restriction permitted under Article 43 of the Constitution as being demonstrably justifiable in a free and democratic society."*

In coming to this decision the court had recourse to the decision of the Canadian Court in **Hill v. Church of Scientology of Toronto, [1995] 2 S.C.R. 1130,** cited in **R v. Lucas, [1998] 7 S.C.R. 439** (Canadian Court of Appeal), where it was stated that defamatory statements are very tenuously related to the core values and are inimical to the search for truth. Further, that false and injurious statements cannot enhance self-development, nor

can it ever be said that they lead to healthy participation in the affairs of the community. That, indeed, they are detrimental to the advancement of these values and harmful to the interests of a free and democratic society.

I see no reason to depart from the previous decision of this Court in **Joachim Buwembo (supra)**. Since the question that was raised in CPC 15 of 2017 regarding the constitutionality of section 179 of the Penal Code Act was already conclusively determined by this court, I would dismiss that aspect of the petition as well.

Whether sections 24 of the Computer Misuse Act contravenes Articles 29 (1) (a), 28 (12) and 43 (2) (c) of the Constitution.

Counsel for the 4th petitioner addressed sections 24 and 25 of the Computer Misuse Act together though, in my view, the mischiefs that the two provisions were meant to target can clearly be distinguished from each other. While section 24 provides for the offence of *"cyber harassment,"* section 25 attempted to limit the dissemination of *"offensive communication"* online. It is my view that cyber harassment may be viewed as only a sub-set of offensive communication, and therefore not its equivalent.

The offence of *"cyber harassment"* then becomes more distinct than the offence that had been proscribed in Uganda as *"offensive communication"* and which this court has declared to be overbroad and vague. It is now befitting, for this court to examine whether the offence of *"cyber harassment,"* as it is described in section 24 of the Computer Misuse Act, contravenes the stated provisions of the Constitution of the Republic of Uganda. I will address the provision as it relates to each of the provisions of the Constitution alleged to have been contravened by the impugned provision of the Computer Misuse Act. But first, it is necessary to set down section 24 of the Computer Misuse Act in full. It provides as follows:

24. Cyber harassment.

(1) A person who commits cyber harassment is liable on conviction to a fine not exceeding seventy-two currency points or imprisonment not exceeding three years or both.

(2) For purposes of this section cyber harassment is the use of a computer for any of the following purposes—

(a) making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent;

(b) threatening to inflict injury or physical harm to the person or property of any person; or

(c) knowingly permits any electronic communications device to be used for any of the purposes mentioned in this section.

Counsel for the 4th petitioner first of all argues that this provision is *"blatantly broad, vague and subjective in its terms"* and therefore inconsistent with Article 28 (12) of the Constitution, because it is insufficient in providing particularity of the penal offences. In effect, that it contravenes the principle of legality. It must therefore first be determined whether the offence or offences are properly defined in section 24 of the Act.

Article 28 (12) of the Constitution provides that:

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

The established standard in this regard is that it is essential for an offence to be defined and for it to be ascertainable from its definition in the statute. However, that does not mean that every word stating the particulars of the offence must be defined in the statute. The basic tenet for the interpretation of statutes, including the Constitution, is that where words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural meaning. The language used must be construed in its natural and ordinary sense. Therefore, in **Salvatori Abuki** (supra), in determining whether

the term *"practicing witchcraft"* had been sufficiently defined in the Witchcraft Act, Tsekoko JSC (as he then was) stated thus:

> *"We know for example that every Statute must be interpreted on the basis of its own language since words derive their own colour and content from the context and we know that the object of the Statue is (of) paramount consideration. See* ***Lall vs. Jeypee Investment (1972) E.A. 512 and Attorney-General vs. Prince Ernest of Hanover (1957) A.C. 436****. Subject to constitutional requirements, in construing a statute, it is the duty of the Court to give full effect to the apparent intention of the legislature in so far as it is possible without straining the natural meaning of the words used:* ***R. vs, Makusud Ali (1942) E.A.C.A 76.*** *It is not proper to treat statutory provisions as void for mere uncertainty, unless the uncertainty cannot be resolved and the provision can be given no sensible or ascertainable meaning and must therefore be regarded as meaningless.* ***Fawcett Properties vs. Buckingham Country Council (1960) 3 All E.R. H.L at page 507; Salmon vs. Dancombe (1886), 11 App. Cas. 627 P. C. at page 634****."*

This court in **Centre for Domestic Violence Prevention & 8 Others v Attorney General, Constitutional Petition No 13 of 2014 [UGCC] 20**, had recourse to the decision of the Supreme Court of Illinois in **Grayned v City of Rockford, 408 U.S 1004 (1972**) on vagueness in the law, where the latter court stated thus:

> *"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First because we assume that man is free to steer between lawful and unlawful conduct we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms' it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone" ... "than if the boundaries of the forbidden areas were clearly marked."*

I propose to adopt the same standard in determining whether section 24 of the Computer Misuse Act is overbroad or vague.

The 4th petitioner's complaint is specifically about section 24 (2) (a) which describes cyber harassment as "making any request, suggestion or proposal which is *obscene, lewd, lascivious or indecent.*" Counsel for the 4th petitioner asserts that the provision leaves it open for diverse interpretations by any prosecutors, judicial officers or the public. He then questions what the standard is for ascertaining what it means to "make any request or suggestion" or what constitutes a "proposal that is obscene, lewd, lascivious or indecent." He then opines that the provision is vague and subjective.

In **Connally v General Construction Co. 269 US 385 (1926)** the United States Supreme Court held that a criminal statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application lacks the essential of due process of law.

The Computer Misuse Act has not been the subject of interpretation by this court before. Criminal prosecutions with regard to harassment brought in the lower courts have been few and far between, except those that are related to the civil and political rights of individuals, the subject of the petitioners' complaints in the matter now before us. However, I observed that there are statutes in other jurisdictions that have similar provisions that aim to curb cyber harassment.

In the United Kingdom, the Protection from Harassment Act (1997) and the Protection of Freedoms Act (2012) are used to prosecute perpetrators of cyber harassment. In both statutes, harassment of another or others is generally prohibited, and the incidence of such harassment defined.

Marwick & Miller,[1] report that thirty-seven states in the United States of America have laws governing cyber harassment in various ways, while forty-one states have laws governing cyberstalking. Further that cyberstalking laws generally require that the victim fear for his or her personal safety, the safety of a family member, or the destruction of property, while cyber harassment laws are generally broader in scope and cover a range of behaviour, which does not necessarily include a credible threat against another person.

Marwick & Miller further note, that while there is significant variation in the language and conduct covered by cyber harassment laws, there are several recurring themes throughout the various statutes. First, fourteen State statutes in the whole or in part require that the communication have no legitimate purpose. This language attempts to avoid unconstitutionally limiting protected speech. Other states avoided infringing on protected speech with other language, such as *"[t]his section does not apply to constitutionally protected speech or activity or to any other activity authorized by law."* Similar to the Computer Misuse Act, several other States have also avoided creating unconstitutional limits on free speech by limiting their cyber harassment laws to only apply to speech that falls within defined categories of unprotected speech, such as obscenity or true threats. In spite of this, the laws have not been free from criticism on the basis of infringing First Amendment rights.

Going back to the instant case, with regard to the submission of counsel for the 4th petitioner that there is no standard for determining what constitutes a *"proposal that is obscene, lewd, lascivious or indecent,"* it is my view that the interpretation need not be national or static. What is obscene, lewd, lascivious

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[1] Marwick, Alice E. and Miller, Ross W., Online Harassment, Defamation, and Hateful Speech: A Primer of the Legal Landscape (June 10, 2014). Fordham Centre on Law and Information Policy Report. Retrieved on 27th January 2023 from http://ir.lawnet.fordham.edu

or indecent depends not only on the culture or community in which the statute is being interpreted, but also on the ethos at the time of interpretation.

In **Miller v. California, 413 U.S. 15 (1973)** the appellant was convicted of mailing unsolicited sexually explicit material in violation of a California statute that approximately incorporated the obscenity test formulated in the majority opinion in **Memoirs v. Massachusetts, 383 U.S 413, U.S 418,** that an obscene work must be *"utterly without redeeming social value."* The trial court instructed the jury to evaluate the materials according to the contemporary community standards of California. The appellant's conviction was affirmed on appeal. But instead of the obscenity criteria enunciated in the **Memoirs case**, it was held that:

> *"Obscene material is not protected by the First Amendment. Roth v. United States, 354 U. S. 476, reaffirmed. A work may be subject to state regulation where that work, taken as a whole, appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and, taken as a whole, does not have serious literary, artistic, political, or scientific value."*

The court went on to set a 3-tier standard for determining what amounts to *"obscene material"* as follows:

> *"The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, Roth, supra, at 354 U. S. 489, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state obscenity law is thus limited, First Amendment values are adequately protected by ultimate independent appellate review of constitutional claims when necessary. (pp 413 U. S. 24-25).*
>
> *The jury may measure the essentially factual issues of prurient appeal and patent offensiveness by the standard that prevails in the forum community, and need not employ a 'national standard.'"*

An example may also be drawn from the Code of Virginia, Article 7.1, Computer Crimes, section 18.2-152.7.1, which provides for the penalty for *"Harassment by computer"* as follows:

> **If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate *obscene, vulgar, profane, lewd, lascivious, or indecent language*, or make any *suggestion or proposal of an obscene nature*, or threaten any illegal or immoral act, he is guilty of a Class 1 misdemeanor.**
>
> *{Emphasis added}*

I observed that the descriptive words used in the Virginia provision are similar to those used in section 24 of the impugned Computer Misuse Act, though extended. Further, that the provision merges the descriptions in clauses (a) and (b) of subsection 2 of the impugned Act.

The key to the interpretation of the provision was adverted to in **United States v. 12 200-Ft. Reels of Film, 413 U.S. 123 (1973),** where the issue directly presented was whether the United States may constitutionally prohibit the importation of *"obscene material"* which the importer claimed was for private, personal use and possession only. Section 1462 of The United States Code prohibits importation of, and interstate or foreign transportation of, ***"any obscene, lewd, lascivious, or filthy"*** printed matter, film, or sound recording, ***"or other matter of indecent character."*** With regard to the possibility of challenging the constitutionality of that provision on the basis of the vagueness of the language used, the Supreme Court, per Burger CJ delivering the majority decision of the court, noted that:

> *... while we must leave to state courts the construction of state legislation, we do have a duty to authoritatively construe federal statutes where "a serious doubt of constitutionality is raised'" and "a construction of the statute is fairly possible by which the question may be avoided.'" ... If and when such a "serious doubt" is raised as to the vagueness of the words "obscene," "lewd," "lascivious," "filthy," "indecent," or "immoral" as used to describe regulated*

material in 19 U.S.C. § 1305(a) and 18 U.S.C. § 1462, ... we are prepared to construe such terms as limiting regulated material to patently offensive representations or descriptions of that specific "hard core" sexual conduct given as examples in ***Miller v. California, ante at 413 U. S. 25****. ... Of course, Congress could always define other specific "hard core" conduct.*

I am persuaded that this is a correct and useful exposition of the interpretation of provisions that are challenged for obscenity, and I will adopt it.

It is my view that the key word to be used in interpreting section 24 of the Computer Misuse Act is *"harassment."* The word of necessity cannot have any positive connotations. For the avoidance of doubt, Blacks' Law Dictionary, 9th Edition by West, defines the word *"harassment"* to mean

> *"... conduct or action (usually repeated or persistent) that being directed at a specific person, annoys alarms or causes substantial emotional distress in that person and serves no legitimate purpose."*

An article in the University of California Law Review, *Cyber Harassment and the Scope of Freedom of Speech*[2], introduces cyber harassment as follows:

> *"Cyber harassment is now commonly recognized as socially pervasive and often severe in its harmful effects.* ***Cyber harassment is sometimes referred to by the relevant statues without any further description beyond the listed elements of the offense.*** *But cyber harassment, as addressed herein, also encompasses what the law refers to, more specifically, as cyberbullying, 'revenge porn,' some instances of cyber invasion of privacy and 'sextortion,' cyberstalking, and to 'true threats' in the cyber realm."*

{Emphasis added}

In my opinion, the four words in section 24 of the impugned Act that the 4th petitioner complains about are merely descriptive of the objective of the

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[2] Retrieved on 28th January 2023 from: https://lawreview.law.ucdavis.edu/online/53/files/53-online-Wright.pdf

prohibition that was intended by the legislature. Simply stated *"cyber harassment"* is harassment of an individual or a group of persons that is perpetrated using the internet. Paragraph 2 (c) of the impugned provision elucidates this when it explains that the offence is constituted where one knowingly permits any electronic communications device to be used for any of the purposes mentioned in section 24 of the Act. It would be a sad day if this court found that the repeated harassment of any person, whether online or offline, is a lawful form of expression.

Therefore, I would find that section 24 (2) (a) of the Computer Misuse Act is not in contravention of Article 28(12) of the Constitution. It provides sufficient explanation of what is prohibited and so does not go against the principle of legality guaranteed by the Constitution.

Whether section 24 of the Computer Misuse Act contravenes Article 29 (1) (a) and 43 (2) (c) of the Constitution

Article 29 (1) (a) of the Constitution provides as follows:

> **(1) Every person shall have the right to—**
>
> **(a) freedom of speech and expression which shall include freedom of the press and other media;**

The 4th petitioner asserts that section 24 of the Computer Misuse Act limits the enjoyment of the freedoms guaranteed by Article 29 (1) (a) when it prohibits the use of a computer to harass any person by making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; threatening to inflict injury or physical harm to the person or property of any person; or knowingly permitting any electronic communications device to be used for any of the purposes mentioned. He advances his argument with the contention that by enacting this provision, the legislature prescribed modes or styles of communication that must be polite, but it is difficult to create or

compose criticism in a polite fashion when speaking to power. On the other hand, counsel for the respondent opines that section 24 of the Computer Misuse Act is necessary where offenders use the anonymity of the internet to repeatedly direct threatening, intrusive communications to targeted persons. Further that victimising speech is not protected by Articles 29 (1) (a) and 44 of the Constitution.

The enjoyment of rights guaranteed in the Constitution may be limited under the provisions of Article 43 thereof, which provides as follows:

> **43. General limitation on fundamental and other human rights and freedoms.**
>
> **(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.**
>
> **(2) Public interest under this article shall not permit—**
>
> **(a) political persecution;**
>
> **(b) detention without trial;**
>
> **(c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.**

In **Charles Onyango Obbo (supra),** Mulenga, JSC (as he then was) explained the import of Article 43 of the Constitution at page 12 of the judgment as follows:

> *"The provision in clause (1) is couched as a prohibition of expressions that "prejudice" rights and freedoms of others and public interest. This translates into a restriction on the enjoyment of one's rights and freedoms in order to protect the enjoyment by "others", of their own rights and freedoms, as well as to protect the public interest. In other words, by virtue of the provision in clause (1), the constitutional protection of one's enjoyment of rights and freedoms does not extend to two scenarios, namely: (a) where the exercise of one's right or freedom "prejudices" the human right of another person; and (b) where such exercise "prejudices" the public interest. It follows therefore, that subject to*

clause (2), any law that derogates from any human right in order to prevent prejudice to the rights or freedoms of others or the public interest, is not inconsistent with the Constitution. However, the limitation provided for in clause (1) is qualified by clause (2), which in effect introduces "a limitation upon the limitation". ... The yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. This is what I have referred to as "a limitation upon the limitation". The limitation on the enjoyment of a protected right in defence of public interest is in turn limited to the measure of that yardstick. In other words, such limitation, however otherwise rationalised, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society."

There are therefore two important criteria upon which a limitation may be analysed under Article 43 (1) of the Constitution: (i) prejudice to the fundamental or other human rights and freedoms of others; and (ii) the public interest. It is upon those two criteria that I will analyse the provisions of section 24 of the Computer Misuse Act.

With regard to the public interest in Article 43, Counsel for the 4th petitioner singles out political persecution. His main argument is founded on that possibility, and it is the only one that he advances against the provision. He in fact attacks the provision as being the result of *"an undifferentiated fear or apprehension of disturbance"* which is not enough to overcome the right to freedom of expression.

While it is true that there may be persecution arising from the implementation of section 24 of the impugned Act against a person who makes political statements, the political statements targeted under the provision cannot be *in rem*. They must be targeted at a particular person and of the nature described in subsections 2 (a) and (b) thereof; they must be requests, suggestions or proposals to the target that are *obscene, lewd, lascivious or indecent* to that person, or threats of injury or harm to him or her or other persons.

However, it is my view that it is difficult to imagine a political proposal that falls under the category of acts described in clause (a) of subsection 2 of the Act. The acts targeted by clause (b) would be more plausible within the context of cyber harassment and have been the subject of interpretation under the First Amendment in the United States. [See: **Virginia v. Black, 538 U.S. 343, 359 (2003)** and **Watts v. United States (1969)**] Nonetheless, in **Virginia v Black** (supra) the Supreme Court of the United States found that cross-burning[3] may amount to intimidation. The Court upheld a Virginia statute making it illegal to burn a cross in public with the intent to intimidate others. And in **Watts** (supra) the same Court held that the First Amendment does not protect true threats. The Court also explained that political hyperbole does not qualify as such a threat.

It is therefore my well-considered opinion that each prosecution that is brought under section 24 (2) (b) of the Computer Misuse Act requires the trial court to carry out strict construction of the statute to establish whether the accused person's right to freedom of expression and media under Article 29 (1) (a) has been infringed or not. And that is not necessarily a question for interpretation of the Constitution, so the trial court can make the determination.

Counsel for the 4th petitioner further contended that the prohibitions in section 24 of the impugned Act introduce a dichotomy between online and offline conduct. That while the conduct offline prescribed by section 24 of the impugned Act is not proscribed, similar conduct online is proscribed by the Computer Misuse Act. The respondent's Advocates did not respond to this argument but it is an issue that needs to be addressed because if the

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[3] The image of the burning cross is one of the most potent hate symbols in the United States, popularized as a terror image by the Ku Klux Klan since the early 1900s. It has been used as a form of intimidation against African Americans and Jews.

assertion were true, it would mean that internet aided crime is given undue prominence by the legislature over similar crime offline. That therefore, persons that have access to computers and the internet are disproportionately victimised by legislation that does not apply to persons that have no internet or computer access, contrary to Article 21 (1) and (2) of the Constitution, which provide as follows:

> **21. Equality and freedom from discrimination.**
>
> **(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.**
>
> **(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.**

Section 24 of the Computer Misuse Act would as a result be unconstitutional to the extent that it contravenes Article 21 of the Constitution. However, this provision is not the only law in Uganda that proscribes the dissemination of messages in the terms of section 24 of the impugned Act. There are myriad provisions that proscribe the offline conduct that is defined in section 24 of the Act. Starting with the Press and Journalist Act, Chapter 105, section 8 prohibits journalist and editors from *"publishing obscene material"* including writings, drawings, prints, paintings, posters, emblems, photographs, cinematograph films or any other obscene objects or any other object tending to corrupt morals. Obscenity is given its ordinary meaning by the provision.

The Penal Code Act prohibits *"Trafficking in Obscene Publications"* in section 166. The conduct that is prohibited is contained in subsection (1) thereof as having in one's possession for the purpose of distribution or public exhibition, making or producing, "one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, or any other object tending

to corrupt morals." The offence is classified as a misdemeanour and conviction results in a sentence of imprisonment for two years or a fine of two thousand shillings, only.

Counsel for the 4th petitioner went on to contend that the limitation of speech in section 24 of the impugned Act has the effect of prohibiting the online publication or adverting to African proverbs that use sexually explicit and racy language. He gives several examples of proverbs that are couched using the functions of the sexual and anal orifices and oratory by African writers such as Chinua Achebe. He then asserts that inhibiting the use of such imagery in language, impliedly by section 2 (a) of the impugned Act, hinders the development of the arts and is contrary to the public interest that is protected by Article 29 (1) (a) of the Constitution.

It has already been found that the key word to be used in interpreting section 24 of the Computer Misuse Act is *"harassment."* The impugned provision does not prohibit the description of any part of the human body or its functions in literary works of art, for as long as such are not shown to have been published with the intention to harass or threaten a particular person or group of persons. The three pronged obscenity test that was established by the U.S Supreme Court in **Miller v. California** (supra) is instructive and I would adopt it in such a situation. In summary, the three prongs are:

"Whether the average person, applying contemporary community standards, would find that the work taken as a whole, appeals to the prurient interest; whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; ***and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value***.

{My Emphasis}

I am also of the view that the test would apply even where the communication does not apply to sexual conduct. The 3rd prong of the test specifically targets works that may be literary, artistic, political or of scientific value, such as

those that counsel for the 4th petitioner dwelt upon and ably described in his submissions. Therefore, in my view, in such cases the proof of the pudding would be in the eating. A trial court would have to strictly analyse the offending communication or publication that is alleged to be contrary to section 24 (2) (a) of the Act *(a request or proposal that is obscene, lewd, lascivious or indecent)* in order to establish whether the rights of the accused person that are protected by Article 29 (1) (a) have been infringed by the State.

In conclusion, I find that harassment, whether online or offline, is never justified speech. Though without evidence to support it, counsel for the respondent correctly, in my view, submitted that cyber harassment prejudices the fundamental human rights of others and the public interest by victimising persons through menacing, intimidating, indecent and immoral communication. I would therefore find that the limitation on the freedom of expression imposed by section 24 of the Computer Misuse Act is demonstrably justifiable in a free and democratic society.

With regard to the submission that section 24 of the Act is contrary to international standards set in treaties to which Uganda is a signatory, I do accept the submission that international treaties are justiciable, especially where there are no reservations expressed by the State on signature thereof. Counsel for the petitioner thus cited Article 19 of the Universal Declaration of Human Rights, Article 19 (2) of the International Covenant on Civil and Political Rights, Article 9 of the African Charter on Human and Peoples Rights and Article 25 (3) of the African Union Convention of Cyber Security and Personal Data Protection.

I have perused all of the provisions above but I have not found any that supports the online or offline harassment of individuals or groups of people. Harassing messages are not information; neither are they ideas. They are

therefore not within the ambit of the protections accorded by the international and regional human rights instruments, and I so find.

Remedies

The petitioners prayed for various declarations and orders in relations to sections 24 and 25 of the Computer Misuse Act and section 179 of the Penal Code Act. It has been established that this court already found that section 25 of the Computer Misuse Act is in contravention of Article 29 (1) and 28 (12) and 43 of the Constitution (**Andrew Karamgi v Attorney General,** supra). Further that section 179 of the Penal Code Act is in contravention of Article 29 (1) (a) of the Constitution (**Joachim Buwembo & Others**, supra). And that consequently, the charges that were brought against the 1st petitioner in respect thereof ought to be stayed permanently.

I would find that the proceedings against the 1st petitioner in which he was charged with offensive communication contrary to section 25 of the Computer Misuse Act ought to be dismissed for the reason that the offence contravenes Article 29 (1) (a) of the Constitution. However, section 179 of the Penal Code Act is not unconstitutional. The proceedings that were brought against the 1st petitioner therefore ought to continue against him.

As to whether the 1st to 3rd petitioners ought to have the costs of this petition, I am of the view that though the petitioners have been partially successful in the petition in that charges brought against the 1st petitioner under section 25 of the Computer Misuse Act should be dropped, the petition was in the main one that was brought in the public interest. I therefore see no reason to award costs to the petitioners.

With regard to the question whether section 24 of the Computer Misuse Act contravenes Articles 29 (1) (a) and 43 (2) (c) of the Constitution, it has been

established that it does not. That aspect of the petition therefore ought to be dismissed, with no order as to costs.

In the end result, I would make the following declarations and orders:

a) The question in Constitutional Petition No. 15 of 2017 and 001 of 2019 is not deserving of any declarations since it was already decided by this court to the effect that section 25 of the Computer Misuse Act contravenes Article 29 (1) (a), 28 (12) and 43 of the Constitution.

b) Section 24 of the Computer Misuse Act is not in contravention of or inconsistent with Articles 29 (1) (a), 28 (12) and 43 of the Constitution.

c) It is ordered that the proceedings against the 1st petitioner in the Magistrates Court under section 25 of the Computer Misuse Act should be dismissed.

d) There shall be no order as to costs.

Dated at Kampala this 17th day of March 2023.

Irene Mulyagonja

JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Cheborion Barishaki, Stephen Musota, Muzamiru Kibeedi, Irene Mulyagonja & Monica Mugenyi, JJCC)

CONSOLIDATED CONSTITUTIONAL PETITIONS NO.15 OF 2017 AND NO.001 OF 2019

1. GWOGYOLONGA SWAIBU NSAMBA
2. UNWANTED WITNESS UGANDA
3. HUMAN RIGHTS ENFORCEMENT FOUNDATION
4. UGANDA LAW SOCIETY

::::::::::::::::::PETITIONERS

VERSUS

ATTORNEY GENERAL::RESPONDENT

JUDGMENT OF CHEBORION BARISHAKI, JCC

I have had the benefit of reading in draft the judgment prepared by my learned sister Lady Justice Irene Mulyagonja, JCC and I agree with the analysis she makes and the conclusion reached that this Petition should succeed only in part. I also agree with the declarations and the orders she proposes.

Since Stephen Musota, Muzamiru Kibeedi and Monica Mugenyi, JJCC also agree, the Petition partly succeeds with the following declarations and orders;

a) The questions in Constitutional Petitions No.15 of 2017 and No.001 of 2019 were decided by this Court to the effect that Section 25 of the Computer Misuse Act contravene Articles 29(1) (a), 28 (12) and 43 of the Constitution.

b) Section 24 of the Computer Misuse Act does not contravene Articles 29(1) (a), 28(12) and 43 of the Constitution.

c) The Proceedings against the 1st Petitioner in the Magistrates Court under Section 25 of the Computer Misuse Act should be dismissed.

d) There is no order as to costs.

Dated at Kampala this 17th day of March 2023

Cheborion Barishaki

JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA
CONSOLIDATED CONSTITUTIONAL PETITIONS NO. 415 OF 2017 AND NO. 001 OF 2019

1. **GWOGYOLONGA SWAIBU NSAMBA**
2. **UNWANTED WITNESS UGANDA**
3. **HUMAN RIGHTS ENFORMENT FOUNDATION**
4. **UGANDA LAW SOCIETY :::::::::::::::::::::::: PETITIONERS**

VERSUS

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

CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA/JCC
HON. JUSTICE STEPHEN MUSOTA, JA/JCC
HON JUSTICE MUZAMIRU KIBEEDI, JA/JCC
HON. JUSTICE IRENE MULYAGONJA, JA/JCC
HON. JUSTICE MONICA MUGENYI, JA/JCC

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA/JCC

I have the benefit of reading in draft the judgment by my sister Hon. Justice Irene Mulyagonja, JA/JCC.

I agree with her analysis, conclusions and the orders she has proposed.

Dated this 17th day of March 2023

Stephen Musota
JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Barishaki Cheborion, Stephen Musota, Muzamiru M. Kibeedi, Irene Mulyagonja & Monica Mugenyi, JJCC)

CONSOLIDATED CONSTITUTIONAL PETITIONS NO. 15 OF 2017 AND NO. 001 OF 2019

1. **GWOGYOLONGA SWAIBU NSAMBA**
2. **UNWANTED WITNESS UGANDA**
3. **HUMAN RIGHTS ENFORCEMENT FOUNDATION**
4. **UGANDA LAW SOCIETY**

::::::::::::::::::::::::PETITIONERS

VERSUS

ATTORNEY GENERAL::RESPONDENT

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JCC

I have had the benefit of reading in draft the judgment prepared by my learned sister, Mulyagonja, JCC. I agree with the declarations and orders proposed based on the analysis and reasons she has comprehensively set out. I have nothing useful to add.

Signed, dated and delivered at Kampala this 17th day March 2023

MUZAMIRU MUTANGULA KIBEEDI

JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Cheborion, Musota, Kibeedi, Mulyagonja & Mugenyi, JJCC)

CONSOLIDATED CONSTITUTIONAL PETITIONS NO. 15 OF 2017 & NO. 1 OF 2019

BETWEEN

1. **GWOGYOLONGA SWAIB NSAMBA**
2. **UNWANTED WITNESS UGANDA**
3. **HUMAN RIGHTS ENFORCEMENT FOUNDATION**
4. **UGANDA LAW SOCIETY ..... 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 sister, Lady Justice Irene Mulyagonja, JCC in respect of this Reference.

2. I agree with the findings therein, conclusions arrived at, and the orders proposed.

Dated and delivered at Kampala this 17th **day of** March **, 2023.**

Monica K. Mugenyi
Justice of the Constitutional Court