

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

CONSTITUTIONAL PETITION NO.3 OF 1999

CORAM: HON. MR. JUSTICE C.M. KATO, JA.
HON. LADY JUSTICE A.E.N. MPAGI-BAHIGEINE, JA.
HON. MR. JUSTICE J.P. BERKO, JA.
HON. MR. JUSTICE S.G. ENGWAU, JA.
HON. MR. JUSTICE A. TWINOMUJUNI, JA.

1. PAUL K. SSEMWOGERERE]
2. ZACHARY OLUM].....PETITIONERS

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

JUDGMENT OF C.M. KATO, JA.

I have had the benefit of reading the judgment of my Lord Twinomujuni, J.A. in its draft form. I agree with his findings on all the issues raised in this petition. I have however, a few comments to make.

There is one point which I feel I should deal with at the very start in order to put the record straight. That point concerns a brief history of this petition. When this matter came before this court in 1999 it was dismissed after preliminary objections had been raised by the Attorney General and upheld by the court. The petitioners appealed to the Supreme Court against the dismissal. The appeal was allowed and the dismissal order was set aside with an order that the petition be heard on its merits.

The real issue in this matter has been whether or not there was quorum when the Referendum and Other Provisions Act 2 of 1999 was passed on the afternoon of 1/7/99. It has been the petitioners' case that there was no quorum and the respondent has been quite adamant that the Act was passed when there was the required quorum. It is therefore question of which side is to be believed. Each of the two sides supported its contention with affidavits.

It is trite law that the burden of proof lies on he who wishes the court to believe that a particular fact exists (see section 102 of the Evidence Act). In the present case the law places the burden on the petitioners who want the court to believe that there was no quorum. The burden would then shift to the respondent after a prima facie case has been made out by the petitioners in their favour. In order to prove their case the petitioners called in the evidence of Hon. Kaire and Hon. Olum who swore affidavits that on that day they counted members present and that the number was less than 50. The respondent relied heavily on the affidavit of the Speaker Mr. Ayume who swore that he ascertained that there was a quorum when the Act was passed. His affidavit was supported by two affidavits sworn by Hon. Kadaga, eleven sworn by individual MPs and one jointly sworn by 81 MPs. My brother Twinomujuni, J.A. has extensively and sufficiently dealt with these affidavits in his judgment. Here I only have to point out a serious contradiction between what Hon. Ayume said in Parliament on the day in question and what he told the court when under cross-examination. Page 12 of the Hansard, which was tendered in court by the petitioners as annexure P2 to supplementary affidavit of Zachary Olum quotes Hon. Ayume as having said:

"These are the figures I have ascertained from the two Registers. In one Register, 105 MPs registered as being present in this Parliament, and in the second Register, there are 52 MPs giving a total of 157 MPs. This is for the day, for both morning and afternoon. Now, hon. Members, I take it that the people who have Registered are within the precincts of Parliament and some of them are within the lobby. So, we shall proceed."
(Emphasis mine)

While in court he said that members in the precincts and lobby were not regarded as being in the parliamentary hall. His statement was of course made on oath and I believe it to be truthful. What disturbs me is why did he then include those people whom he now says were not in Parliament when determining the quorum? Or can it be said that there was an error at the time the quorum was being determined? Whatever the reason for the contradiction, I strongly feel that the act of the chairman of the committee of the House in including the members who were outside the chamber of Parliament as being part of the quorum was highly improper and contrary to Article 89(2) of the Constitution. That act alone rendered the procedure adopted by the Speaker on that afternoon incurably irregular and capable of vitiating the proceedings of the House,

I have no doubt that the petitioners through the affidavits of Hon. Olum and Kafire have effectively discharged the burden placed upon them by law and the respondent has totally failed to rebut the case as presented by the petitioners. The respondent did not adduce evidence to show that after Lukyamuzi's objection the situation regarding quorum improved. It has been argued that other members should have raised the

issue of quorum after the ruling of the Speaker when they perceived that the quorum was not present. In my view, as the Speaker had used Attendance Registers to determine that there was quorum, further objections on the same issue would have been exercise in futility. The Speaker would have made the same ruling since the figures in the registers would not have changed.

It was also argued that those members who were not satisfied with the Speaker's ruling should have challenged it by a substantive motion on notice under Rule 66 of the Rules of Parliament. In my considered opinion this was not possible because of time factor; even motion to abridge time under Rule 8 of the Rules of Parliament could not have been possible as there was no quorum in the house at the time to entertain that motion.

Apart from being inconsistent with Provisions of Article 89(2) of the Constitution, I find Rule 76 of the Rules of Procedure of Parliament of Uganda to be oppressive and insensitive to some members of the House. The Rule reads as follows:

"76. When the question has been put by the Speaker or the Chairperson, the votes, shall be taken by voices of "Aye" and "No" and the result shall be declared by the Speaker or the Chairperson."

This provision is totally archaic and does not take into account the fact that ^{some} ladies have small voices which may be swallowed up by the strong and loud voices of very few vocal men; it does not also take into

account that some members of Parliament may be impaired in their vocal systems or organs.

At the end of his submission, Mr. Cheborion Barishaki Commissioner for Civil Litigation who led the team of 3 counsel who represented the respondent, submitted in the alternative that if the court found that there was no quorum at the time the Act was passed such finding should be limited only to Clause 13(6)(b) which was being debated at the time the issue of quorum was raised. With due respect to the learned counsel, this argument cannot be sustained because the petitioners' complaint is against the manner in which the whole Act was passed. There is no way the court can sever one section of the Act from other sections. The position would have been different if the petitioners were only attacking a particular section or sections of the Act. My understanding of this petition is that the Act must stand or collapse as a whole not in parts.

Considering all the circumstances of this petition I hold that there was no quorum when the Act was passed. I would grant the petition with costs to the petitioners with certificate for 2 counsel. I would also grant the declarations sought except declaration 3(a)(iii) which was abandoned.

From the judgments of their Lordships, the unanimous decision of this court is as follows:

1. That the petition succeeds.
2. It is declared:
 - (i) That the Referendum and Other Provisions Act of 1999 was passed in a manner inconsistent with

Articles 88 and 89 of the Constitution, and as a result it is null and void.

- (ii) That costs of the petition be awarded to the petitioners with a certificate for two counsel.

It is so ordered.

Dated at Kampala this 10th day of August 2000.


C.M. Kato
Justice of Appeal

THE REPUBLIC OF UGANDA

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CORAM:

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1. PAUL K. SSEMWOGGERERE]

2. ZACHARY OLUM] PETITIONERS

VERSUS

20 THE ATTORNEY GENERAL RESPONDENT

JUDGMENT OF A.E.N. MPAGI-BAHIGEINE, JA.

I have read in draft the Judgment of Twinomujuni, J.A.
I entirely agree with his findings of fact and interpretation of
Articles 79, 88 and 89. I have only a very brief comment on
Rules 17 and 76 of the Rules of Procedure of Parliament.

It is noteworthy that the rules of procedure of the legislature are formulated and adopted by Parliament itself. However it is clear that a legislature may not adopt rules which conflict with the provisions of the Constitution. See *Articles 2 and 94 of the Constitution*.

Rule 17 provides:

"17 (1) The quorum of Parliament shall be one third of all Members of Parliament.

(2) If at the time of sitting a Member takes notice or objection that the Members present in the House are less than one-third of the number of all the members of Parliament, the Speaker shall, on ascertaining it to be true, suspend the proceedings of the House for an interval of fifteen minutes during which a bell shall be rung.

(3) If on the resumption of proceedings after expiry of fifteen minutes, the number of Members present is still less than one third of all members of Parliament the Speaker shall suspend the sitting or adjourn the House without question put.

(4) If at any time it appears to the Chairperson in a Committee of the whole House or if objection is taken by a Member that there are present less than one-third of members of the House, the House shall be

resumed, and the Speaker shall thereupon act in accordance with the procedure set out in subrules (2) and (3) of this rule.

The pivotal issue in this petition is quorum, that is to say whether Act No. 2/99, the Referendum and other Provisions Act was passed by Parliament without a quorum. Rule 17 clearly prohibits transaction of any business in the House without a quorum at any time as prescribed by Articles 88 and 89.

A quorum of the legislature is that number of the body which when assembled in their proper place will enable them to transact their proper business. It was clearly established by the Hon. Speaker viva voce that "**proper place**" does not include "**precincts**" or "**lobby**" of the House. "Proper place" therefore means the chamber of the House. The above articles specifically state that a third of the House present and voting constitutes a quorum for a valid decision to be taken. The House membership is 279. Therefore 93 members present and voting constitutes the quorum. Most significant for this purpose is the recognition that this is a question of numbers and that some members present might be non-voting members. The language of the articles is perfectly unambiguous in this respect.

While Rule 17 is strictly compliant with the articles, Rule 76 gives the Hon. Speaker a wide latitude or flexibility in declaring the decisions of the House. It reads:-

"76 when the question has been put by the Speaker or Chairperson, the votes shall be taken by voices of "Aye" and "No" and the result shall be declared by the Speaker or the Chairperson".

It is of paramount importance to recognise that the constitutional provisions relating to the manner of enactment of Laws or rules of procedure of Parliament are remedial. They guard against recognised evils arising from loose and dangerous methods of enacting legislation or application of those rules of procedure. The Constitutional provisions are therefore mandatory, so that there must be complete compliance therewith without discretion or invocation of "*wisdom*" on the part of the legislature. While Rule 17 conforms to the Articles, Rule 76 manifestly confounds their strictly precise terms. When the Hon. Speaker takes a decision depending on "*eyes*" or "*noes*", this should be followed by a list of those voting in the affirmative being recorded, and those voting in the negative or abstaining should similarly be recorded. The provisions of articles 88 and 89 are not merely directory, they are mandatory and non-compliance with them renders the statute invalid.

The Court was told by Members of Parliament including the Hon. Speaker that he had the power under the Rules to use "**Visual observation**" of the Chamber, Attendance Registers and "**wisdom**" to determine or ascertain that there was a quorum in the House. The Hon. Speaker explained that there is implicit flexibility in the Rules so as to expedite proceedings. However, "**Visual observation**" was demonstrated in Court to be irrefutably inaccurate when the Hon. Speaker could only hazard an approximation and not the exact number of people in Court that morning. Furthermore, regarding the Attendance Registers he used to determine the quorum in the afternoon of 1st July 1999, the Clerk to the Assembly declared that it was the first time he had seen Registers being used to ascertain a quorum in the twenty years he had served as a Clerk to the Assembly. It does not take much imagination therefore to see through this exercise. Hon. Members do sign registers but keep on moving in and out. For instance the second day of the hearing of this Petition the House was adjourned due to lack of a quorum despite the fact that 187 Hon. Members had signed the Registers.

It can hardly be emphasised that whether or not an alleged law/statute has been regularly enacted in conformity with the fundamental law is a judicial question to be determined by the court. The court must enforce a Constitutional provision which declares that certain steps or forms are

indispensable in the passage of laws. An act will be held void where it appears that constitutional requirements were not observed. It is null and void where it is passed without a quorum at any stage.

This brings me to Ex P1, the Hansard of the 1st July 1999. I found this to be lacking in relevant entries. This should have been the most authentic source of information as to the adoption of the Act. It is desirable that where the Constitution requires that certain steps in the passage of laws shall be taken, they should be entered in the Hansard. The Hansard should show all relevant entries that the Act was passed in the mode prescribed by the Constitution. It is hardly sufficient to say "*question put and agreed to*" as is reflected in Ex P1. Definiteness in the record is essential for establishing either complete rejection or failure to accord approval by a constitutional majority. I think this is the purpose of keeping this record. A lot of time would have been saved if the Hansard was clearer.

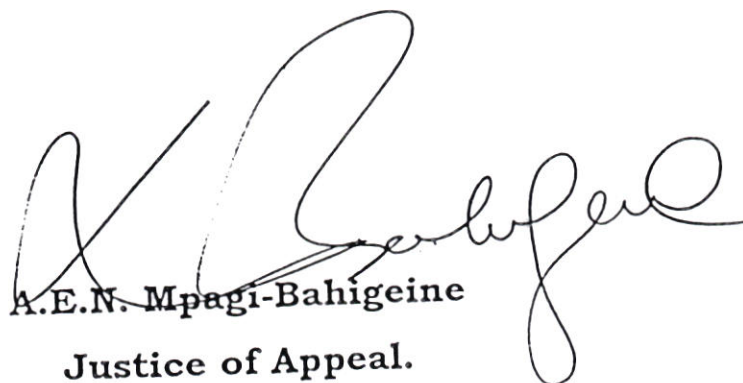
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With respect most if not all the affidavits in support of the answer to the petition were not worth the paper they were written on, for reason already given by my brother Twinomujuni, J.A.

The question whether a quorum was present should have been conclusively settled by a Hansard entry in regard thereto, bearing in mind that this is a constitutional

though even in the latter case, Parliamentary records would be resorted to, to resolve such crucial issues - See - Stockdale v Hansard, (1839), 9 Ad. & El and generally see Erskine May's Parliamentary Practice 17th Edn - Sir Barnett Cocks.

I would therefore allow the petition, declare the Act No.2/99, the Referendum and Other Provisions Act, null and void and grant all the declarations sought therein with costs.


A.E.N. Mpagi-Bahigeine
Justice of Appeal.

~~30/7/2000.~~

10/8/2000

THE REPUBLIC OF UGANDA

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CORAM: HON. MR. JUSTICE C.M. KATO, JA.
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HON. MR. JUSTICE J.P. BERKO, JA.
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HON. MR. JUSTICE A. TWINOMUJUNI, JA.

1. PAUL K. SSEMWOGERERE]
2. ZACHARY OLUM].....PETITIONERS

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

JUDGMENT OF HON. J.P. BERKO, JA.

My Lords, I have had the advantage of reading, in draft, the judgment prepared by my learned friend Twinomujuni in which he sets out the facts and discusses fully the question which arise in this petition. I will therefore not weary your Lordships by repeating them. I agree with him that the petition should succeed. I wish, however, to comment on a few aspects of the petition.

The first relates to the supplementary affidavit of Hon. Rebecca Kadaga sworn to on 12/6/2000 and filed in this Court on the same day. The relevant part of the affidavit reads:-

- "(2) That on 6th June 2000, I swore an affidavit in support of the Attorney General's answer to the petition.*
- (3) That in the said affidavit, I stated that I was present in Parliament and there was quorum.*
- (4) That I can remember most of the members of Parliament who were present in the House on that day and particularly in the afternoon when the Referendum and Other Provisions Act 1999 was passed.*
- (5)*
- (6) That I have talked to the following and they have confirmed that they were present."*

20 This was followed by the names of some 102 members of Parliament including the names of Hon. Apollo Nsibambi, the Prime Minister of the Country. The affidavit continues:-

- "7. That it is clear that there was quorum in the House when the said act was debated and passed on 1/7/1999.*
- 8. That what is stated herein above is true and correct to the best of my knowledge and belief save for paragraph 6 which is from information the source*

whereof is therein disclosed and which information I verily believe to be true".

The law with regard to the contents of affidavit is contained in Order 17(3) the Civil Procedure Rules. The marginal note reads: "*Matters to which affidavits shall be confined*". The rule provides:

10 "*3(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided the grounds thereof are stated.*"

It is clear from the above that except in purely interlocutory matters affidavits must be restricted to matters within the personal knowledge of the deponent. They must not be based on information or be expression of opinion. Affidavits should be strictly confined to such facts as the deponent is able of his own knowledge to prove. Affidavits by persons having no personal knowledge of the facts and merely echoing the statement of claim cannot be used at the hearing. It is only in interlocutory applications that statement as to belief are permitted. This is clearly illustrated by the two authorities referred to by Mr. Cheborion Barishaki, the leading Counsel for the respondent. The case of *Nassanand & Sons (Uganda) Ltd v East African Records Ltd (1959) EA 360* concerned an application for leave to serve summons outside the jurisdiction of the court. That was obviously an interlocutory application. The case of *Standard*

Goods Corporation Ltd v Harakhachand Nathu & Co. (1950) 17 E A 99 relied upon in *Nassanand & Sons (Uganda) Ltd (supra)* was an interlocutory application for security of costs. The case of *Aristella Kabwinukya v John Kasiggwa, (1978) HCB* was about an application for leave to appeal out of time. That was also an interlocutory application. A constitutional petition is not an interlocutory application. Therefore an affidavit in support of it must be restricted to facts the deponent is able of his own knowledge to prove and not facts based on information and belief. The rule is so strict that even evidence on information and belief is not admissible on a proceeding which, though interlocutory in form, finally decides the rights of the parties (*See Gilbert v Endean 9 Ch. 259* cited at page 1404 in Sarkar's Law of Evidence 13th Edition.) As the supplementary affidavit of Hon. Rebecca Kadaga was based on information given to her by some members of Parliament, it is hearsay and inadmissible to support the petition.

The second point relates to the affidavit which has been described as "*Omnibus Affidavit*". The affidavit starts with the word "*We*". This is followed by the names of the alleged deponents. It then continues: "*do hereby solemnly swear and state as follows:*"

(1) *That we are adult citizens of Uganda.*

(2) *That we are Members of the 6th Parliament of Uganda.*

- (3) *That we attended Parliament on the 1st July 1999 in the afternoon and participated in the proceedings relating to the enactment of the Referendum and Other Provisions Act 1999.*
- (4) *That when the Referendum and Other Provisions Act was passed, there was quorum.*
- (5) *That therefore what is stated in the affidavits of Hon. Zachary Olum, Omara Atubo and Reiner Kafiire is not true".*

The list of the alleged deponents was attached. It is not disputed that two or more persons may join in an affidavit. The commencement of the affidavit shows that the deponents joined in the affidavit. But a close look at the list of the alleged deponents attached reveals a rather disturbing situation. Since the deponents joined in the affidavit one would have expected the list to follow a chronological order. That was not so in this case. What we have is that some names have been erased. The erasures have not been authenticated by the initials of the officer who commissioned the affidavits. If the erasures were made before the commissioning, then the Commissioner for Oaths ought to have authenticated them by his initials. As he did not do so, the affidavit cannot be used in court. On the other hand, if the erasures were made after the affidavit was commissioned, it cannot be used as the alterations have not been so authenticated.

Apart from the form of the affidavit, the impression one gets, when one looks at the affidavit, is that it was prepared by somebody and commissioned. A list of possible deponents was typed and taken round. Those who were available and were willing ^{and} ready to sign did so. Those who were not available, or were available but unwilling to sign refused to append their signatures. The names of those who did not sign were then erased. The affidavit therefore leaves a lot to be desired and cannot be regarded as a document coming from Honourable members of Parliament of Uganda. It was a futile attempt to defend what was indefensible. That attempt failed miserably as the reality of the situation, as revealed in the Hansard, could never be changed irrespective of the "*wisdom*" brought to bear on it.

I find it unnecessary to go into the merits of the petition as they have been handled ably by my Lords. I would grant the declarations and remedies sought in the petition. The petitioners will have costs of the petition with a certificate for two advocates.

20 Dated at Kampala this.....10th.....day ofAug.....2000.


J.P. Berka
Justice of Appeal.

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

**CORAM: HON. MR. JUSTICE C.M. KATO, JA.
HON. LADY JUSTICE A.E.N. MPAGI-BAHIGEINE, JA.
HON. JUSTICE J.P. BERKO, JA.
HON. JUSTICE S.G. ENGWAU, JA.
HON. JUSTICE A. TWINOMUJUNI, JA.**

CONSTITUTIONAL PETITION NO. 3 OF 1999.

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2. ZACHARY OLUM] ::::::::::::::::::::::::::: PETITIONERS

VERSUS

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

JUDGEMENT OF ENGWAU, JA.

I have read, in draft form, the judgement of Twinomujuni, JA and I entirely agree with him on all the issues raised in this petition. The main issue in this petition is whether or not there was a quorum at all stages when the Bill was being debated in the Committee of the whole House until the Referendum and Other Provisions Act No. 2 of 1999 was passed by a plenary session of the House in the afternoon of 1.7.99.

It is not in dispute that in the morning of 1.7.99, Hon. Francis Ayume, the Chairman of the Committee of the whole House suspended debates on the Bill due to lack of quorum when Hon. Omara Atubo raised the issue. The procedure adopted was based

on Rule 17 of the Rules of Procedure of the Parliament of Uganda which provides:

" 17. (1) The quorum of Parliament shall be one third of all Members of Parliament.

(2) If at the time of sitting a Member takes notice or objection that the Members present in the House are less than one-third of the number of all the members of Parliament, the Speaker shall, on ascertaining it to be true, suspend the proceedings of the House for an interval of fifteen minutes during which a bell shall be rung.

(3) If on the resumption of proceedings after the expiry of fifteen minutes, the number of Members present is still less than one-third of all members of Parliament the Speaker shall suspend the sittings or adjourn the House without question put.

(4) If at any time it appears to the Chairperson in a Committee of the whole House or if objection is taken by a Member that there are present less than one-third of members of the House, the House shall be resumed, and the Speaker shall thereupon act in accordance with the procedure set out in subrules (2) and (3) of this rule."

In the present Parliament, there are 279 members. One-third of this number constitutes a quorum of 93 members present. This quorum should be maintained at all stages during deliberations in the House in accordance with the provision of article 88 of the Constitution of Uganda, 1995. To ascertain a quorum, in my view, requires an accurate and precise mathematical system to be applied.

In practical terms this would require head counting of all members present in the House. It would appear to me that the Chairperson of the Committee of the whole House on 1.7.99, before adjourning the House until the afternoon of the same day, followed the procedure laid down under Rule 17 of the Procedure of the Parliament of Uganda and article 88 of the constitution. Before the House was adjourned until 2.00 p.m. the Speaker, Hon. Francis Ayume, according to Hansard, was recorded as having said:

" THE SPEAKER: HON. Members, we have failed to raise a quorum and before I adjourn the House. I would like to remind you that if we proceed this way, we are likely to have a serious constitutional problem with regards to this law and I will leave it to your conscious and judgement. The House is adjourned until 2.00 O'clock. I will endeavour to be here in time."

The Hon. Speaker, in my view, was alive to the issue of a quorum. That was the reason why he urged members to be present in the afternoon so as to raise the necessary quorum to pass the Act so as to avert a constitutional problem. The House resumed in the afternoon and commenced to debate clause 13(6) (b) of the Bill. During the debates Hon. Lukyamuzi raised the issue of quorum. According to the Hansard he was reported to have said:

" MR. LUKYAMUZI: Point of order. Thank you, Mr. Chairman. Without prejudice, we are discussing one of the most important Bills in this country, and with reference to our Rules of Procedure (17), even if I do not read it verbatim, I find it difficult for us as

representatives of the people to proceed when we lack quorum. Is it in order for us to go ahead discussing this important Bill without a quorum?"

The response from the Chairman to the above point of order was as follows:

" THE CHAIRMAN: I have to rule on that one first. He has raised a point of order. I have to rule on it. Now, our Rules of Procedure prescribe a quorum - I think that one is well known. Before I rule on that, I would like to look at the Registers and find out how many people have registered that they are here within Parliament, before I make my ruling. May I have the Registers here please?

(The Attendance Registers were brought).

" THE CHAIRMAN: These are the figures I have ascertained from the two Registers. In one Register, 105 MPs registered as being present in this Parliament, and in the second Register, there are 52 MPs giving a total of 157 MPs. This is for the day, for both morning and afternoon. Now, hon. Members, I take it that the people who have registered are within the precincts of Parliament and some of them are within the lobby. So, we shall proceed."

Clearly, the procedure followed by the Chairman in the afternoon of 1.7.99 was a departure from the procedure followed in the morning of the same day when the issue of quorum was raised. The explanation given by the Hon. Speaker was that Rules of Procedure in the Parliament of Uganda are flexible and give him room to make decisions of the House on the procedure to be followed

on a matter of quorum. He testified that in the afternoon of 1.7.99, he used his "visual observation" and enriched it with the Attendance Registers and "wisdom" to ascertain that there was a quorum in the House. The Clerk to the Assembly was very positive that in his twenty years of service to the Assembly, that was the first time he had seen Registers being used to ascertain the quorum. Visual observation, in my view, does not give a precise and accurate number of members present in Parliament.

In his testimony, the Hon. Speaker also stated that Members of Parliament keep on moving in and out of the Chamber where the debates are being conducted and that those members within the precincts of Parliament or in the lobby are not considered as members present and voting. This being the case, visual observation and use of Attendance Registers would not, in my view, ascertain precisely the quorum in the House. That certainly would make it difficult to exclude those members who were within the precincts of Parliament and in the lobby.

The conduct of the Speaker of Parliament being complained about is the manner in which he ruled that there was a quorum in the House and the procedure followed during voting when the Referendum and Other Provisions Act No. 2 of 1999 was passed. I have already stated that reference to Attendance Registers and the wisdom of the Hon. Speaker by use of visual observation, did not give an accurate number of the members present in the afternoon of 1st July 1999. I would agree with Twinomujuni, J.A that the conduct of

the Hon. Speaker on the afternoon of 1st July 1999 offended articles 88 and 89 of the Constitution.

The affidavit evidence of Hon. Zachary Olum and Hon. Reiner Kafire is believable in that they took trouble to have head count when Hon. Lukyamuzi raised the issue of quorum. They found those members present and voting was less than fifty (50). In the circumstances, the Referendum and Other Provisions Act was debated and passed without quorum. As a result this was not an Act of Parliament and it has no force of law in the Republic of Uganda.

In the result, I would therefore allow the petition, declare the Referendum and Other Provisions Act, No. 2 of 1999 null and void and grant the declarations being sought with costs to the petitioners.

Dated at Kampala this 10th day of August 2000.


S.G.ENGWAU

JUSTICE OF APPEAL.

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HON. A. TWINOMUJUNI,JA

CONSTITUTIONAL PETITION NO.3 OF 1999

1 PAUL KAWANGA SEMOGEREE}
2 ZACHARY OLUM } ::::::::::: PETITIONERS

VERSUS

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

JUDGMENT OF TWINOMUJUNI, JA

The petitioners filed this petition under article 137 (3) of the Constitution seeking the following declarations:

- (i) that the decision the Speaker (of Parliament) took to ascertain the quorum by examining the attendance register or record of that day's attendance, instead of taking a physical head count of the members of Parliament there and then sitting in the House and voting, was inconsistent with rules No.17 and No.150 of the Rules of Procedure of Parliament of Uganda made under article 94 (1) and in the result, led to contravention of articles 79, 88 and 89 of the Constitution;
- (ii) that the Referendum and Other Provisions Act No.2 of 1999 is void because it did not obtain the constitutional majority at the stages of its final deliberations and of its passing;
- (iii) that the Referendum and Other Provisions Act No.2 of 1999 purported to have been passed by Parliament is void for being enacted in contravention of article 271 (2) of the Constitution;
- (iv) that for reasons aforesaid the Act must be struck down as void being in contravention of articles 79, 88 and 89 of the Constitution;
- (v) that costs of this petition be met out of public funds and be paid to the petitioners.

The petition was accompanied by the affidavits sworn by the two petitioners sworn on 30th July 1999 and two other affidavits sworn by Hon Juliet Rainer Kafiire and Hon Daniel Omara-Atubo sworn on 30th

July 1999. There was also a supplementary affidavit sworn by Hon Olum annexing a copy of the Hansard of that date.

The respondent filed an answer to the petition on 9th August 1999 which was supported by the affidavit of Hon Francis Ayume, the Speaker of Parliament, sworn on 7th August 1999. Before this trial commenced in June, 2000, fourteen other affidavits sworn by over ninety members of Parliament were filed in support of the answer to the petition.

Brief facts which gave rise to this petition are as follows: In April 1999, the Minister of Justice and Constitutional Affairs presented to Parliament a Bill for an Act entitled "*The Referendum and Other Provisions Act, 1999.*"

The purpose of the Act was stated to be:-

"to make provision for the holding of referenda in pursuance of the provisions of articles 74 and 76 of the Constitution; give effect to articles 255, 259 and 271 of the Constitution; to cater for any other referendum required to determine any matter; to cater for a change in the political system by petition of district councils and a resolution of Parliament under clause (2) of article 74 of the Constitution; to repeal and replace the Referendum Statute, 1994 and to provide for

other matters connected with or incidental to the foregoing.”

This bill was debated and passed into an Act of Parliament on 1st July 1999 and was assented to by the President on 3rd July 1999. During the debate in the afternoon of the 1st July, Hon Lukyamuzi raised a point of order which appears on page eleven of the HANSARD as follows:-

“MR LUKYAMUZI: Point of order. Thank you Mr Chairman. Without prejudice, we are discussing one of the most important Bills in this country, and reference to our Rule of Procedure (17), even if I do not read it verbatim, I find it difficult for us as representatives of the people to proceed when we lack quorum. Is it in order for us to go ahead discussing this important Bill without quorum?”

Hon Francis Ayume who presided as Chairman of the Committee of the whole House which was debating the bill is reported on the same page of the same Hansard to have reacted as follows:

“THE CHAIRMAN: I have to rule on that one first. He has raised a point of order. I have to rule on it. Now our Rules of Procedure prescribe a quorum – I think that one is well known. Before I rule on that, I would like to look at the Registers and find out how many people have registered, that they are here within Parliament, before I

make my ruling. May I have the Registers here please?"

(The Attendance Registers were brought).

THE CHAIRMAN: These are the figures I have ascertained from the two Registers. In one Register, 105 MPs registered as being present in this Parliament, and in the second Register, there are 52 MPs giving a total of 157 MPs. This is for the day, both the morning and afternoon. Now, honourable members, I take it that the people who have registered are within the precincts of Parliament and some of them are within the lobby. So we shall proceed."

After this ruling the debate went ahead in the committee of the whole House which eventually became a plenary session of the House and passed the bill into ^{an} Act that afternoon. It was not possible to tell how many members of Parliament were present when the bill was passed because the Speaker of Parliament used the method of voting prescribed by Rule 76 of the Rules and Procedure of the Parliament of Uganda, 1996 which states:-

"when the question has been put by the Speaker or the Chairperson, the votes shall be taken by voices of "Aye" and "No" and the result will be declared by the Speaker or the Chairperson."

It is the contention of the petitioners that the above conduct of the Speaker and Chairperson contravened articles 79, 88 and 89 of the Constitution.

The respondent's answer to the petition is that at all times in the afternoon of 1st July 1999, the Chairperson of the Committee of the whole House and the Speaker of Parliament guided the House in accordance with the Rules and Procedure of Parliament and their conduct did not and could not contravene articles 79, 88 and 89 of the Constitution. He contends that at all times that afternoon, there was a quorum in the committee of the whole House and in the House.

THE ISSUES

At the trial, learned counsel for both parties agreed to and framed the following issues:

- (a) whether or not there was a quorum in the Committee of the whole House when the bill was being debated;
- (b) whether or not there was a quorum at the time of passing of the Referendum and Other Provisions Act, 1999;
- (c) whether or not the decision and the method or procedure adopted by the chairman of the whole house in the afternoon of 1st July 1999 in ascertaining the quorum of the House led to contravention of articles 79, 88 and 89 of the Constitution;
- (d) whether or not lack of quorum at any stage if any would invalidate the Referendum and Other Provisions Act No.2 of 1999;
- (e) whether or not the Referendum and Other Provisions Act,

1999 contravenes article 271 (2) of the Constitution;

- (f) whether or not the petitioners should get relief prayed for.

Issue (e) above was abandoned by the petitioners because, according to their counsel, it ~~was~~ overtaken by events. In my opinion, however, the rest of the above issues can be reduced to two, namely:-

- (a) whether the Speaker (or the Chairperson) of Parliament conducted the proceedings of the House on the afternoon of 1st July 1999 in a manner consistent with articles 79, 88 and 89 of the Constitution,
- (b) whether there was a quorum or not at the time Hon Ken Lukyamuzi raised the issue of the quorum.

The question of validity of the Referendum and Other Provisions Act and the relief prayed for by petitioners will depend on how the above two issues ~~were~~ ^{are} decided.

THE BURDEN OF PROOF.

The law relating to this subject is clearly stated in sections 100, 101 and 102 of the Evidence Act.

Section 101 states:

“The burden of proof in a suit or proceedings lies on that

person who would fail if no evidence at all were given on either side."

Section 102 states:

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of the fact shall be on any particular person."

In my view, it follows that the burden is on the petitioners to prove that the Speaker of Parliament, on the relevant afternoon, conducted proceedings of the House in a manner not consistent with the Constitution and that when Hon Lukyamuzi raised the issue of the quorum, there was no quorum in the House. Once the petitioners produce sufficient evidence to give rise to that prima facie presumption in their favour, then the burden shifts to the respondent to prove that the Speaker did no wrong. In the instant case, the allegations being made by the petitioners are in the negative. They must therefore prove the two negatives asserted in the two issues I have framed above. The law as to the burden of proving negatives is that:

"where a claim or defence rests upon a negative allegation, the one asserting such claim or defence is not relieved of the onus probandi by reason of the form of allegation or the inconvenience of proving a negative. But in such cases, a less amount of proof than is usually required may avail. Such evidence as

renders the existence of a negative probable, may change the burden to the other party.... When a negative fact has to be proved, a plaintiff can be expected to do nothing more than to substantiate his allegation prima facie."

See SARKER ON EVIDENCE 12TH EDITION page 870.

THE EVIDENCE:

(a) Evidence of the Petitioners

The petition is supported by the affidavits evidence of the two petitioners and two other members of Parliament namely Hon Rainer Kafiire and Hon Daniel Omara-Atubo. The first petitioner who describes himself as the current leader of the Democratic Party (D.P) and a registered voter deponed that he had long experience in government and as a Member of Parliament. I shall not dwell on his affidavit evidence because what he stated in respect of the events of the afternoon of 1st July 1999 is what he was told by Hon Olum and Hon Kafiire who attended the session. Suffice it to say that this witness was cross examined on oath by counsel for the respondent and his testimony regarding his experience in parliamentary procedures and what he was told by the co-petitioner and Hon Kafiire of the events of 1st July 1999 remained unshaken.

The most important evidence of the petitioners is contained in the affidavits of the 2nd petitioner and Hon Reiner Kafiire. Both are members of Parliament and both stated that they attended Parliament both in the morning and in the afternoon. Their evidence is almost identical. They both testify

that the morning session had to be adjourned because there was no quorum in Parliament. That as soon as the afternoon session began, Hon Lukyamuzi raised the issue of the quorum whereby Hon. Ayume who was then the Chairman of the Committee of the whole House followed an unusual procedure of ascertaining the quorum by looking at the Registers of attendance whereas the majority of those who signed were not present in the chamber of Parliament where the debate was taking place. Hon Zachary Oluo in a supplementary affidavit tendered a copy of Hansard containing the proceedings of that day, the relevant point of order and the ruling therein which have already been quoted above. Both MPs testified that when the Speaker overruled the point of order, the two made a quick head count and ascertained that there were less than 50 members of Parliament in the chamber. That thereafter the debate continued without quorum until the Referendum and Other Provisions Act was passed. In their view, the Speaker of Parliament did not follow the procedures prescribed by the Rules of Parliament and therefore contravened the Constitution.

Counsel for the respondent elected to cross-examine only Hon Reiner Kafiire: She repeated her affidavit evidence and was quite an impressive witness whose evidence was not shaken at all. Hon Zachary Oluo was not cross-examined despite the fact that he had deposed in paragraph two of his affidavit that:

"I am a female Uganda of sound mind residing at Naguru Hill Kampala."

It is common knowledge that Hon Olum passes himself off as a male and his counsel explained from the bar that the mix up was a result of typing error. Counsel for the respondent did not challenge that and the fact that he chose not to cross-examine him on that issue appears to confirm this. Therefore Hon Olum's evidence also passed unchallenged.

Hon Omara Atubo's evidence does not add much to the evidence of the other two parliamentarians. It is common ground that he did not attend the afternoon session on 1/7/1999. In my view, the petitioners' evidence was credible as it largely passed unchallenged and unshaken.

(b) The evidence of the respondent:

The affidavit evidence of the respondent can be categorised as follows:

- (i) Evidence of Hon Francis Ayume, Speaker of Parliament, Deponed to on 7th August 1999.
- (ii) The affidavit of Hon Rebecca Kadaga, Minister of Parliamentary Affairs deponed to on 6th June 2000 And a supplementary one sworn on 12th June 2000.
- (iii) The "Omnibus" affidavit signed by 81 MPs led by the Hon. Prime Minister deponed to on 12th June 2000, before Sam Bitangaro Esq. Commissioner for Oaths.
- (iv) Eleven other affidavits of individual M.Ps deponed to before Kulumba Kiingi Advocate and Commissioner

for Oaths on 12th and 13th of June 2000.

All these honourables made the same categorical statement in their affidavits to the effect that they were present in Parliament on the afternoon of 1st July 1999. But a few of them, namely the Prime Minister, Hon Kadaga, Hon Kajura, Hon Asanasio Kayizi, Hon Wandyaka Nsubuga, Hon Balingira

Abdu Nakendo and Hon Akwero Odwong-Jane, who were cross-examined on oath were not so categorical. They all stated that it was not their duty to ascertain whether there is a quorum in the House or not. They all stated that it was the duty of the Speaker or Chairman "in his wisdom" to ascertain and declare whether there was a quorum or not. That on 1st July 1999 when the question of quorum was raised, the Speaker of Parliament ascertained that there was a quorum and told them so. That on their part they looked around and found no cause to question the wisdom of the Speaker.

On his part, Hon Ayume stated that when the issue of the quorum was raised, he ascertained whether there was a quorum or not by looking around the chamber and then supplemented his findings by looking at the attendance Registers. He was satisfied that there was a quorum and ordered the debate to proceed. However, the assertion that he first looked around the chamber is not borne out by the Hansard or the video recording of the proceedings of that afternoon both of which show clearly that Hon Ayume relied entirely on Attendance Registers to determine whether there was a quorum or not. He admitted however that members of Parliament who are in the lobby or precincts of Parliament are not regarded as being in the chamber of Parliament. Yet he ruled that there was quorum by including MPs whom he thought were in the lobby or precincts of Parliament!

There were other disturbing aspects of the respondent's evidence that rendered it uncreditworthy and in some cases worthless. The following are a few random examples:-

- (i) The supplementary affidavit of Hon Kadaga which contains a list of over 100 MPs whom she claimed told her that they attended Parliament is worthless as that evidence is hearsay and contravenes Order 17 rule 3 of the Civil Procedure Rules. She was also generally an evasive witness.
- (ii) The Omnibus affidavit of 81 MPs was sworn in a highly questionable manner. The MPs never met to form a consensus of what they deposed to. Each one signed the affidavit separately and the affidavit does not disclose how each one of them could remember that the other 80 MPs were present in the house a year after the event. In fact the Hon Prime Minister who is on the list could not remember more than four people who were in the House! A number of MPs who appear on the list did not sign it and some who do not appear on the list signed it!
- (iii) Hon Muganwa Kajura who also gave oral testimony was so evasive and at times displayed an incredible loss of memory rendering his evidence worthless.

- (iv) The witness, Hon Asanasio Kayizi appeared shaky and uncertain of the contents of the affidavit he was alleged to have sworn. He appeared to be a coached witness and frequently consulted prepared notes, examination of which revealed that he might have been coached by someone who had given evidence in this case before him.
- (v) The witness, Hon Wandyaka Nsubuga Moses, after telling court on oath that he had sworn and signed the omnibus affidavit before a commission of oath could not find his name among the listed MPs who swore the affidavit. He could not explain the anomaly.
- (vi) Hon Balingirira Abdu Nakendo gave evidence which was totally worthless. He claimed to have a Diploma in Business Administration but he could not remember when he got it or the location of the institution where he got the diploma from. He stated that he did not use that Diploma to qualify for Parliament but he used a Certificate he obtained from Nsambya Police when he was a police constable. The rest of his evidence was so contradictory that I would not rely on it at all.

On the whole I found the evidence adduced by the respondent devoid of truth and therefore unbelievable. The impression given by most witnesses who were called in court was as if they were simply called to sign documents which had been pre- prepared by the Attorney General's

chambers without instructions from deponents because some saw them for the first time before the Commissioner for Oaths and others did not even know the contents of the affidavits allegedly sworn by them.

(c) Evidence adduced at the Court's instance:

Two witnesses gave evidence at the instance of the court. Mr A. Tandekwire is the Clerk to the National Assembly. He has been a Deputy Clerk and Clerk for over twenty years. The gist of his evidence was that among his many duties, he advises the Speaker on rules of procedure. He does not normally attend Parliament but he watches the proceedings on TV from his office. The members' attendance Registers are kept by him but to the best of his recollection, he had never seen them being used for determining quorum except on 1st July 1999. They are mainly used for paying members. He tendered in evidence the Registers used on that day and two tapes of the video recording of the proceedings of Parliament covering the 1st July 1999.

The second court witness was Richard Ogwang who is a recording technician with the National Assembly. He was the one who tape recorded the proceedings on 1st July 1999. On the morning of 27th June 2000, he screened for court (the bench, counsel and the parties) the last part of the proceedings of the morning session and the first part of the afternoon session. Although what we saw was instructive, it was inconclusive on the issue of quorum.

EVALUATION OF THE EVIDENCE

From the foregoing, I find the evidence adduced by the petitioners to be credible. I especially refer to the evidence of the two members of Parliament, Hon Zachary Olum and Hon Reinert Kafiire which remained unchallenged and which I believe to be true. They were in Parliament on 1st July 1999. They attended the afternoon session until the Referendum and Other Provisions Act was passed. I accept their version of what transpired in Parliament that afternoon. Their account of events is supported by the official record of Parliament, the Hansard and partly the evidence of the Clerk to the National Assembly Mr A. Tandekwire. The little we saw of the video recording of the proceedings of that day also supports their version of what transpired.

On the other hand, apart from the evidence of Hon Francis Ayume, it appears to me as if the rest of the respondent's evidence was assembled in haste and apparently as an afterthought. The evidence of Hon Francis Ayume, as I have already indicated above, contained very serious contradictions. In the result I accept the evidence adduced by the petitioners as true and reject the evidence of the respondent which was discredited and largely proved false.

DETERMINATIONS OF ISSUES

Issue No.1:

This issue is whether the conduct of the Speaker of Parliament on the afternoon of 1st July 1999 contravened articles 79, 88 and 89 of the Constitution. The conduct of the Speaker complained of is the manner in which he ruled that there was a quorum in the House and the voting

procedure followed before the Referendum and Other Provisions Act was passed.

I wish to state at the outset that I have considered all the evidence and submissions of counsel. I am not persuaded that the events of the afternoon of 1st July 1999 in any way affected or contravened the powers and functions of Parliament conferred by article 79 of the Constitution. That article provides:

- “79(1) Subject to the provisions of this Constitution Parliament shall have power to make law on any matter for peace, order, development and good governance of Uganda.
- (2) Except as provided in this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament.
- (3) Parliament shall protect this Constitution and promote the democratic governance of Uganda.”

Learned counsel for the petitioners did not make any attempts to show how the conduct of the Speaker contravened this article and I decline to speculate on the matter. In the circumstances I hold that the

conduct of the Speaker did not contravene article 79 of the Constitution.

Regarding the contravention of article 88 of the Constitution, the article provides:

“The quorum of Parliament shall be one third of all members of Parliament.”

It was common ground at the trial that there are 279 members of Parliament and that there must be at least 93 members present in Parliament to constitute a quorum. Rule 17 of the Rules and Procedures of the Parliament of Uganda provides:

- “17(1) The quorum of Parliament shall be one third of all members of Parliament.
- (2) If at time of sitting a member takes notice or objection that the members present in the House are less than one third of the number of all the members of Parliament, the Speaker shall, on ascertaining it to be true, suspend the proceedings of the House for an interval of fifteen minutes during which a bell shall be rang.
- (3) If on the resumption of proceedings after the expiry of fifteen minutes, the number of members present is

still less than one third of all members of Parliament the Speaker shall suspend the sitting or adjourn the House without question put.”

It was common ground at the trial that when in the morning of 1st July 1999, Hon Omara Atubo raised the issue of the quorum, the above prescribed procedure was followed as a result of which the proceedings were adjourned to the afternoon due to lack of quorum. The issue here is whether this procedure was followed in the afternoon when Hon Lukyamuzi raised a similar objection. According to key witnesses of the petitioners, the Speaker did not follow the prescribed procedure and instead looked at the attendance Registers to determine whether there was a quorum or not. According to the Speaker, he ‘ascertained’ that there was a quorum first by looking around the chamber and supplemented this by looking at the attendance Registers of members. I have already observed that this part of evidence of the Speaker is not borne out by the Hansard, the video recording of the proceedings or the evidence that I have accepted. However even if it was accepted that it was exactly what he did, did he comply with article 88 of the Constitution?

The requirement of 1/3 of all members puts the number at a figure of 93.

One person less would deprive the House of the quorum. I do not think it is humanly possible to just look around and ascertain with arithmetical precision that at least 93 members are present. The word “ascertain” is defined in Webster New World Dictionary (2nd Edition) as:

- (a) to find out with certainty,
- (b) to make certain or definite.

In my judgment this cannot be done by simply looking around. It must be achieved by physical counting. If the Speaker looked around as he stated, then his findings were not certain or definite and that explains why he had to resort to Registers which according to his own admission are much more uncertain, because many people who sign them are not necessarily always in the House. Some may be in the lobby and others in the precincts of the House, which places, according to Hon Ayume himself, are not part of the House. In my view the failure by Hon Ayume to comply with Rule 17 of Rules and Procedures of the House was a serious omission that led him to fail to comply with article 88 of the Constitution. The procedure he adopted was mere guess work. As the constitution requires a definite figure, it cannot be ascertained by mere estimation.

Regarding the alleged contravention of article 89 of the Constitution, that article provides:-

“89(1) Except as otherwise prescribed by this Constitution or any law consistent with this Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of members present and voting. *[emphasis mine]*.

(2) The person presiding in Parliament shall have neither an original nor a casting vote and if on any question before Parliament the votes are equally divided, the motion shall be lost.”

Did the Hon Speaker follow the constitutional requirement contained Article 89 (1) of the Constitution when the Referendum and Other Provisions Act was being debated or passed? From his own evidence in court, he complied with the constitutional requirement by following Rule 76 of the Rules of Procedures of Parliament which states:-

“when the question has been put by the Speaker or Chairperson, the votes shall be taken by voices of “Aye” and “No” and the result shall be declared by the Speaker or the Chairperson.”

The question is whether one can comply with the constitutional Requirement that decisions be determined by “a majority of votes of members present and voting” [*emphasis mine*] by asking members to shout “Aye” or “No”. The constitutional requirements is mandatory. It does not give the Speaker any discretion at all. For the House to take a decision he must be satisfied that more than half of the members present and voting have supported the decision. How can this be reflected through the “Aye” and “No” vote? Rule 75 of the Rules of Procedure of Parliament provides:-

“A Vice-President or a Minister who, by virtue of article 78 of the Constitution, is an ex-officio Member of Parliament, shall not vote; and accordingly, the Speaker shall take all necessary steps to ensure that any such person does not vote on any issue requiring voting.” [*emphasis mine.*]

How can the Speaker ensure that ex-officio members have not voted if the shouting method of voting is used?

Hon Ayume testified that Rule 76 of the Rules of Parliament was enacted to provide for flexibility in procedures of Parliament. I agree that there may well be good reasons for that. I understand this is the procedure followed in the "Mother of Parliaments" the British Parliament. But article 89 of our Constitution is very clear. The British do not have it. For us in Uganda each decision of Parliament must be taken by the majority of members present and Voting. In my humble opinion, nothing short of physical counting can comply with this requirement. The records should be able to show the number of members who supported the decision, the number of those who opposed it, the number of those who abstained. The total number of members present and voting in the House should be able to show that at the time of voting there was a quorum. In my view, the phrase "the votes shall be taken by voices of "Aye" and "No"" in Rule 76 of the Rules of Parliament conflicts with and contravenes the requirement of article 89 (1) that decisions should be determined by a majority of votes of members present and voting." Rule 76 of the Rules of Parliament is therefore null and void to that extent.

I am aware of the existence of Rule 77 of the Rules of Procedure of Parliament which provides in part:-

"77 (1) The Speaker may in his or her discretion, order for a division;

(2) where after the Speaker or the Chairperson has announced the results of the voting under rule 76, immediately, forty or more members stand in their places signifying their disapproval of the out come of the vote, the Speaker or the Chairperson shall order for division."

In my view, this rule gives a discretion to the Speaker on the mode of voting which conflicts with the mandatory requirement of article 89 of the Constitution. It seems to me that under that article, division or any other method that would accurately reflect that the majority of members present and voting supported the matter being decided upon is compulsory. If I am right, then Rule 77(1) and (2) are also null and void to that extent.

An examination of the Hansard exhibited in this petition shows that the Referendum and Other Provisions Act No.2/99 was passed using the so called consensus method of voting of "question put and agreed to" which cannot reflect how many members were present and how many of them supported the passage of the Act. In my opinion the procedure followed offended article 89 of the Constitution. In our Constitution, each vote counts separately. The Speaker of Parliament has no vote. Ex-officio members of Parliament have no vote. Only a transparent method of voting which ensures that only those entitled to vote have voted must prevail. That is

what article 89 (1) of the Constitution puts in place. Omnibus voting is unconstitutional

Issue No.2

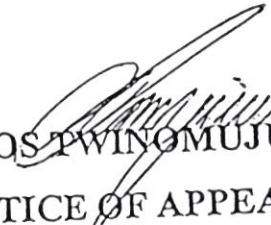
This issue is whether, in fact, there was no quorum, at any stage of the proceedings in Parliament on the afternoon of 1st July 1999. This is a question of fact to be determined on the evidence which was adduced before us. I have already, indicated at length that I believe the evidence of Hon Zachary Oluo and Hon Reiner Kafiire. I have discussed at length why I prefer that evidence to that of the respondent. That evidence, once believed as I have, establishes that there was no quorum in the House from the moment Hon Lukyamuzi raised the issue of the quorum at about 2.20 p.m. till the Referendum and Other Provisions Act was passed. What was enacted on that day therefore was not an Act of Parliament of Uganda and never had any force of law in Uganda

CONCLUSION

I would hold that the conduct of the Speaker (Chairperson) of Parliament of Uganda during the debate on the Referendum and Other Provisions Act contravened articles 88 and 89 of the Constitution. I would further hold that the Referendum and Other Provisions Act No.2 of 1999 was debated and passed without quorum. As a result it never became an Act of the Parliament of the Republic of Uganda and has no force of law in Uganda. I would therefore grant the petitioners the remedies prayed for and the costs of this petition with a certificate for two counsel.

Before we take leave of this case, we wish to acknowledge the invaluable assistance we received from counsel who represented both parties. Mr Joseph Balikuddembe and Mr Paul Sebalu S.C. represented the petitioners. The respondent was represented by State Attorneys led by Deus Byamugisha, Acting Director of Civil Litigation, Mr Chebarion Banshaki, Commissioner for Civil Litigation, Mrs Monica Mugenyi, Senior State Attorney and Mr Joseph Matsiko, Senior State Attorney. Their assistance in guiding the witnesses through their evidence, in cross-examination and presentation of well researched submissions made our work a lot easier. We record our appreciation and gratitude to all of them.

Dated at Kampala this^{10th}..... Day of^{Aug}..... 2000.


AMOS TWINOMUJUNI
JUSTICE OF APPEAL