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THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 07 OF 2014

HON. MR. JUSTICE JOSEPH MURANGIRA.....PETITIONER

VERSUS

10 THE ATTORNEY GENERAL..... RESPONDENT

(Arising from the adoption by Parliament of the report of the Public Accounts Committee on 14.11.2013)

CORAM: S.B.K Kavuma, DCJ (E), Richard Buteera, JA, Geoffrey Kiryabwire, JA, Hellen Obura, JA, and Paul K. Mugamba, JA

15

JUDGMENT OF THE COURT

This is a Petition against the decision of Parliament to adopt a report by the Public Accounts Committee, (PAC) on 14/11/2013 and the observations and recommendations therein into resolutions of Parliament. This Petition seeks
20 for orders, among others, to declare the said report and its adoption by Parliament null and void and for orders for compensatory and constitutional damages.

Background Facts

The background facts are that the petitioner heard and determined **Civil Suit
25 No. 003 of 2009, Beachside Development Services Ltd versus National Forestry Authority** in his capacity as a Judge of the High Court of Uganda.

When the suit came up for hearing on the 5th of September, 2009, counsel for the plaintiff, Mr. Barata Enock and counsel for the defendants Ms. Molly

5 Kyepaaka Karuhanga agreed to have the matter settled. The petitioner recorded the agreed facts and upon those facts he proceeded to enter judgment in the terms and orders agreed upon by the parties. He also assessed damages of US \$ 1,612,171 in favor of the plaintiff with costs and interest as agreed upon by the parties in their consent judgment made on
10 the 16th of September, 2009. The defendants appealed to this Court against the award of damages but the Appeal was dismissed. They further appealed to the Supreme Court against the judgment of this Court but the parties settled out of court and withdrew the Appeal.

The Minister of Water and Environment was satisfied with the consent
15 Judgment and forwarded a copy of it to the Attorney General seeking for guidance to the defendant's board and management in the smooth implementation of the consent judgment. Subsequently, the petitioner was invited to appear before PAC on the 7th of September, 2012 which invitation he declined. PAC went ahead and made a report against him. The report
20 was adopted by Parliament on 12/11/2003 and the observations and recommendations therein became resolutions of Parliament with minor amendments. Item 29 of the report stated as follows;

25 *"The Judge, Justice Murangira, made no ruling on the cause of action and adjourned the case to 28th May, 2009. When the suit came up for hearing before Justice Murangira on 5th June, 2009, court records indicate that counsel for the plaintiff, Mr. Barata Enock and counsel for the defendant, Mrs. Molly Kyepaaka Karuhanga agreed to have the matter settled as follows:*

- I. *The defendant (NFA) to issue a licence in Kyewaga Central Forest*



5 Reserve for the land measuring 2.6 hectares, in accordance with the NFA Eco-Tourism Guidelines, with access to lake Victoria shoreline within two months.

II. NFA to hand-over vacant possession of the said land to the plaintiff as soon as the licence is issued.

10 III. Damages to be awarded to the plaintiff and to be assessed by court.

IV. The plaintiff drops its claim of prospective profits and loss of business which was stated at US \$8,559,250.

V. Each party to bear its own costs.”

15 Subsequently, the petitioner was aggrieved by the above item in the report as being inconsistent with the Constitution of the Republic of Uganda and he has petitioned this Court contending that:

20 “1. The adoption/passing by Parliament of the impugned report of the Public Accounts Committee of Parliament on 12/11/2013 and the observations and recommendations therein into resolutions of Parliament was done in contravention of and is inconsistent with Articles 2, 28 (1), 42,44(c), 79 (3), 92,119,128 (1), (2), (3) & (4) of the Constitution.

25 2. The observations and recommendations of the impugned report of the Public Accounts Committee of Parliament are inconsistent with and were made in contravention of Articles 2, 28(1) (3) (c) & (g), 42, 44 (c), 79 (3), 92,94 and 128 (1), (2), (3) & (4) of the constitution.

30 3. The Public Accounts Committee of Parliament and Parliament by their observation, recommendations and resolutions purported to ~~void~~ the judgment of the High Court in **Civil Suit No. 003 of 2009, Beachside Development Services Ltd versus National Forestry Authority,**

5 *and the Court of Appeal of Uganda in **Court of Appeal Civil Appeal No. 80 of 2009, National Forestry Authority versus Beachside Development Services Ltd**, contrary to Articles 2,79,92,119 and 128 of the Constitution, are ultra vires and an attempt by Parliament to usurp powers of the Judiciary contrary to the doctrines of separation of*
10 *powers, the independence of the Judiciary and the finality of Court judgments.”*

The petitioner then prayed that this Court should grant the following declarations and orders:

15 *“a. A declaration that the adoption/passing by Parliament of the impugned report of the Public Accounts Committee on 14/11/2013 and the observations and recommendations affecting your humble petitioner therein into resolutions of Parliament was done in contravention of and is inconsistent with Articles 2, 28 (1), 42,44 (c), 79 (3), 92,119,128 (1), (2),*
20 *(3) & (4) of the Constitution, and is ipso facto null and void;*

b. A declaration that the observations and recommendations affecting your humble petitioner therein of the impugned report of the Public Accounts Committee of Parliament are inconsistent with and were made in contravention of Articles 2, 28 (1), 3 (c) & (g), 42,44(c), 79 (3),
25 *92, 94 and 128 (1), (2), (3) & (4) of the Constitution, and is ipso facto null and void;*

c. A declaration that your humble petitioner, Hon. Mr. Justice Joseph Murangira was denied a right and a fair hearing prior to the passing of the impugned resolutions in contravention of “audi alteram partem”

- 5 *principle enshrined in Articles 28 and 42 of the Constitution and the*
impugned report is ipso facto null and void;
- d. *A declaration that the Public Accounts Committee's failure to observe*
rules of natural justice by taking a decision against your humble
petitioner, Hon. Mr. Justice Joseph Murangira without evidence was
10 *inconsistent with and or in contravention of Articles 20, 28 (1) and (6)*
and 42 of the Constitution and is ipso facto null and void;
- e. *A declaration that the Public Accounts Committee of Parliament and*
Parliament by their observation, recommendations and resolutions
*purported to veto the judgments of the High Court in **Civil Suit No. 003***
15 *of 2009, **Beachside Development Services Ltd versus National***
*Forestry Authority, and the Court of Appeal of Uganda in **Court of***
*Appeal Civil Appeal No. 80 of 2009, **National Forestry Authority***
*versus **Beachside Development Services Ltd**, contrary to Articles*
2,92, and 128 of the Constitution, are ultra vires and an attempt by
20 *Parliament to usurp powers of the Judiciary contrary to the doctrines*
of separation of powers, independence of the Judiciary and finality of
court judgments and those acts are ipso facto unconstitutional, null and
void.
- f. *An order expunging the impugned report from the Public records of*
25 *Parliament and the Republic of Uganda and the resolutions of*
Parliament arising therefrom.
- g. *An order for enhanced compensatory and constitutional damages,*
payable pursuant to the provisions of Article 126 (2) (c), your humble
petitioner; Hon. Mr. Justice Joseph Murangira.
- 30 h. *An order for costs of this petition." (Sic)*

5 The Petition was supported by an Affidavit of the petitioner and other
accompanying documents which include: the consent judgment in High
Court Civil Suit No. 003 of 2009, the judgment on damages in High Court
Civil Suit No. 003 of 2009, judgment of Court of Appeal in Civil Appeal No.
80 of 2009, the impugned report of PAC, the Hansard of Parliamentary
10 proceedings of 14/11/2013, the resolution of Parliament adopting the
impugned report of PAC of Parliament, the consent judgment between the
parties in the Court of Appeal, the memo of the Attorney General of 23rd
December, 2010, media publications, and all annexures to the Affidavit in
Support.

15 The respondent first filed an Answer to the Petition on 26th March 2014
supported by an Affidavit sworn by Mr. Jeffrey Atwine, a Senior State
Attorney in the respondent's chambers. In a nutshell, in that response, the
respondent denied contravention of any of the impugned articles of the
Constitution by PAC and Parliament. However, on 8th July 2015 the
20 respondent again filed another answer to the Petition supported by the
Affidavit of Mr. George Kallemera sworn on 8th July 2015. In that subsequent
answer to the Petition, the respondent contended that;

2. *There was no contravention or inconsistency with Articles 28, 42, 44
(c) and 79 (3) of the Constitution as alleged or at all.*

25 4. *The Public Accounts Committee is a committee of Parliament created
under Article 90 of the Constitution and is clothed with powers as set
out in Article 90 (3) (a) and Rules 147, 148, 162 and 197 of the Rules
of Procedure of Parliament.*



- 5 5. *In exercising their powers under Article 90 (3) of the Constitution, the Public Accounts Committee must ensure that the principles of natural justice are adhered to and it is not in dispute that the petitioner was summoned.*
- 10 6. *The office of the Auditor General is set up by Article 163 of the Constitution and is empowered to audit and report on public accounts of Uganda and all public offices, including the courts, the Central and Local Governments Administrations, universities and public institutions.*
- 15 7. *This power in relation to the courts is only limited to audit of their performance in the use of public funds and does not in any way extend to investigating court judgments and proceedings as was done in the instant case.*
- 20 8. *The respondent joins issue with the petitioner concerning issues raised in paragraphs 4 of the petition and contends as hereunder:*
- a. *That the adoption and passing of the recommendations and observations made in the report of Parliament dated 12th November, 2013, which were subsequently passed as resolutions of Parliament were done in contravention of Article 128 (1) (2) and (4) of the Constitution.*
- 25 b. *That in light of paragraph 4 (a) above, the observations and recommendations of the report sought to be impugned should be declared ultra vires.*

5 c. *That the respondent agrees with the contents of paragraph 4.3 of the petition. The respondent contends that the doctrine of separation of powers must be exercised by each arm of Government and the independence of the judiciary must not be undermined.*

10 9. *The prayer for general damages would be dealt with through the High Court.*

For the foregoing reasons, the respondent prayed for declarations that;

15 a. *The adoption and the passing of the recommendations and observations made in the report of Parliament dated 12th November, 2013, which were subsequently passed as resolutions of Parliament were done in contravention of Article 128 (1) (2) and (4) of the Constitution.*

b. *The report of 12th November, 2013 is null and void. (Sic).*

20 The petitioner filed an Affidavit in Rejoinder on 22nd July 2015. The gist of the petitioner's averments is that the respondent made general denials to some of the allegations in the Petition and the supporting affidavit which were negated by the respondent's admission as contained in paragraphs 8 & 9 of his answer to the Petition and paragraphs 9 & 14 of the Affidavit in Support of the Answer. He further averred that it was not lawful for him to
25 appear before PAC and maintained that he has a genuine claim in terms of general damages as pleaded in the Petition and the respondent has no defence to the same.

5 At the scheduling conference, which was done in the absence of the respondent, the following issues raised by the petitioner in his conferencing notes were adopted for determination by this Court;

1) *Whether the petition discloses questions for Constitutional interpretation.*

10 2) *Whether the adoption/passing by Parliament of item (29) of the impugned report of the Public Accounts Committee of Parliament on 12/11/2013 and the observations and recommendations therein into resolutions of Parliament was done in contravention of and is inconsistent with Articles 2, 28 (1), 42, 44 (c), 79 (3), 92, 119, 128 (1),*
15 *(2), (3) & (4) of the Constitution.*

3) *Whether the observations and recommendations of item (29) of the impugned report of the Public Accounts Committee of Parliament was inconsistent with Articles 2, 28 (1), (3) (c) & (g), 42, 44(c), 79 (3), 92, 94 and 128 (1), (2), (3) & (4) of the Constitution.*

20 4) *Whether the Public Accounts Committee of Parliament and Parliament by their observation, recommendations and resolutions purported to veto the judgment of the High Court in **Civil Suit No. 003 of 2009, Beachside Development Services Ltd versus National Forestry Authority, and Civil Appeal No. 80 of 2009, National Forestry Authority versus Beachside Development Services Ltd,** contrary*
25 *to Articles 2, 79, 92, 119 and 128 of the Constitution, are ultra vires and an attempt by Parliament to usurp powers of the Judiciary contrary to the doctrines of separation of powers, independence of the Judiciary*

5 *and finality of court judgments.*

5) *Whether the petitioner is entitled to the remedies sought.*

Representation

During the hearing of this Petition, Mr. Arthur Mpeirwe and Mrs. Vennie Murangira Kasande appeared for the petitioner. Mr. Mpeirwe informed Court
10 that he was handling the matter jointly with Mr. Blaze Babigumira who was indisposed. Mr. Richard Adrole Senior State Attorney appeared for the respondent.

Petitioner's Case

Counsel confirmed that the above 5 issues were those that were adopted at
15 the Scheduling Conference for determination by this Court. He relied on the evidence contained in the Affidavit in Support and in Rejoinder and submitted that by and large, the respondent conceded that indeed there was a contravention of the Constitution by Parliament passing the resolution. He referred this Court to paragraphs 7 and 8 of the Answer to the Petition.

20 He further submitted that **Article 50 (4) (c)** of the Constitution allows parties to claim for compensation as a redress. He argued that the petitioner raises particulars of general damages as pleaded in the Petition and he made reference to ***Gailey & Gailey on Pleadings and General Damages*** which gives what court should consider in awarding general damages. These
25 include; the nature of the story, how the story attracted public attention, the status and position of the petitioner. Counsel submitted that in this case the petitioner is a Judge of 30 years standing in judicial work. He contended that

5 there is no mathematical formula for calculating the damages, however, the opportunity of promotion to a higher court was calculated at a sum of Shs. 2 million per month which implies a total of Shs. 240 million for a period of 10 years.

10 Counsel later withdrew his submission on general injury and left it to this Court to determine the commensurate rate for an injured person of the petitioner's status. He prayed that this Court handles the matter of redress and damages. He also prayed for costs.

Respondent's Case

15 Counsel prayed that the respondent's Answer to the Petition filed on 26th March 2014 be expunged from the court record because it was filed before the respondent obtained an extension of time to file the same. He informed this Court that he would rely on the answer to the Petition filed on 8th July 2017.

20 Counsel submitted that as stated in paragraph 8 (a)-(c) of the Reply to the Petition, none of the acts complained of in paragraph 4 of the petition contravene **Article 2** of the Constitution. He argued that the respondent has not infringed **Article 28** in as far as the acts complained of are concerned. He submitted that the petitioner was invited to PAC and he declined to appear before it and rightfully so in view of **Article 128 (1)** of the Constitution.

25 In regard to **Articles 42, 44, 79 (3), 92, 94, 119, 126 (2)**, counsel submitted that none of them was contravened. He however made concession regarding **Article 128 (1), (2), (3) & (4)**.

5 Counsel further submitted that none of the relevant provisions of the rules of procedure allows Parliament to act in the manner complained of in view of **Article 128 (1)-(4)**. He stated that they were aware of the oversight role of PAC but that this did not include investigating the conduct of judicial duties.

He also submitted that the doctrine of separation of powers must be
10 exercised by each arm of government. He cited the case of **Gordon Sentiba and 2 ors vs Inspectorate of Government, Supreme Court Civil Appeal No. 06 of 2008** and argued that Parliament cannot investigate, review or interfere with a matter that is completed or pending before court. It was counsel's submission that the statement by Tsekooko JSC in the case of
15 **Sentiba and 2 ors vs Inspectorate of Government** (supra) applies to PAC.

Counsel also referred to the case of **Ocip Moses and ors vs Attorney General and anor, High Court Misc. Application No. 060/2013 (arising from Civil Suit No. 16/2009)** where it was stated that Parliament cannot be
20 allowed to interfere with the judicial independence of court while performing its core functions.

Counsel conceded that the adoption and passing of item 29 of the report which was adopted as a resolution of Parliament be declared to be in contravention of and inconsistent with **Article 128 (1), (2), (3) & (4)**. He pointed out that, save for the foregoing concession, the respondent opposes
25 the rest of the Petition.

Regarding the damages sought by the petitioner, counsel submitted that there was no proof of any grudge against the petitioner and therefore this was too remote to attract general damages. He further submitted that the

5 Attorney General cannot be held liable for the publication by independent
newspapers and opined that the petitioner should proceed against those
newspapers. He also submitted that the allegation of missed promotion is
speculative. According to counsel, the matter needs to be interrogated by the
High Court and under **Article 137 (4) (b)** of the Constitution, this Court can
10 refer the matter there for redress.

Petitioner's Rejoinder

Counsel for the petitioner submitted that since the Attorney General
conceded to contravention of **Article 128 (1), (2), (3) & (4)** of the Constitution
that is enough to have the report expunged. He further submitted that the act
15 of contravention entitled the petitioner to damages since the report was
published. He prayed that the report be declared null and void and that it be
expunged.

Counsel added that **Article 79 (3)** prescribes the powers of Parliament which
it exceeded in this case. It was his contention that the publication by media
20 was based on what Parliament had published so the Attorney General is
liable and responsible to pay damages for the consequential injury suffered.

In conclusion, counsel reiterated his prayers for the declarations listed in the
Petition including an order for costs.

Court's Findings

25 We have carefully studied the court record and considered the submissions
of counsel and the authorities cited to us. We now proceed to resolve the
issues in the order they were framed.

Issue No. 1: Whether the Petition discloses questions for Constitutional interpretation.

This Petition is brought under **Article 137 (3)** of the Constitution which allows an individual to petition this Court where there is contravention of a constitutional provision. It is the submission of counsel for the petitioner that the passing by Parliament of the impugned report of PAC on 14/11/2013 and the observations and recommendations affecting the petitioner into resolutions of Parliament was done in contravention of and is inconsistent with **Articles 2, 28 (1), 42, 44(c), 79 (3), 92, 119, 128 (1), (2), (3) & (4)** of the Constitution. Counsel for the respondent conceded that the above acts by Parliament contravened **Article 128 (1), (2), (3) & (4)** of the Constitution. He however contended that there was no contravention or inconsistency with **Articles 28, 42, 44 (c) and 79 (3)** of the Constitution as alleged or at all.

This Court is mandated under **Article 137 (1)** to determine any question as to the interpretation of the Constitution. The foregoing submissions relate to Constitutional provisions alleged to have been contravened and a denial of some of the allegations contained in the Petition. It is therefore the duty of this Court to interpret the impugned articles of the Constitution. By so doing, the Court will be addressing the question as to whether the impugned provisions were contravened or not. We are satisfied that the petition discloses questions for Constitutional interpretation and we so find. This answers issue 1 in the affirmative.

Issue No. 2: Whether the adoption/passing by Parliament of item (29) of the impugned report of the Public Account

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Committee of Parliament on 12/11/2013 and the observations and recommendations therein into resolutions of Parliament was done in contravention of and is inconsistent with Articles 2, 28 (1), 42, 44 (c), 79 (3), 92, 119, 128 (1), (2), (3) & (4) of the Constitution.

10 Counsel for the petitioner submitted that the adoption and passing of item (29) of the impugned report of PAC and the observations and recommendations therein into resolutions of Parliament was done in contravention of and is inconsistent with **Articles 2, 28 (1), 42, 44(c), 79 (3), 92, 119, 128 (1), (2), (3) & (4)** of the Constitution. Counsel for the respondent
15 supported that submission and urged this Court to find that act by Parliament unconstitutional and declare it inconsistent with and in contravention of **Article 128 (1), (2), (3) & (4)** of the Constitution.

However, counsel denied the fact that the resolution contravened **Articles 28, 42, 44 (c) and 79 (3)** of the Constitution. It is necessary to reproduce
20 these impugned Articles for a proper analysis and appreciation of counsel's arguments.

"2. Supremacy of the Constitution.

(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

25 ***(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void."***

"28 (1). Right to a fair hearing.

30 ***(1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing***

5 ***before an independent and impartial court or tribunal established by law.***

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

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

“44 (c). Prohibition of derogation from particular human rights and freedoms.

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

(c) The right to fair hearing;”

“79 (3). Functions of Parliament.

(3) Parliament shall protect this Constitution and promote the democratic governance of Uganda.”

20 ***“92. Restriction on retrospective legislation.***

Parliament shall not pass any law to alter the decision or judgment of any court as between the parties to the decision or judgment.”

Article 119 which was also listed as one of the articles contravened by the impugned act by Parliament provides for the office of the Attorney General, qualification for appointment and the functions. We have not bothered to reproduce that Article here because clearly it does not have any relevance to the allegations contained in the Petition.

“128. Independence of the Judiciary

30 ***(1) In the exercise of judicial power, the courts shall be independent and***

5 ***shall not be subject to the control or direction of any person or authority.***

(2) No person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions.

10 ***(3) All organs and agencies of the state shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts.***

(4) A person exercising judicial power shall not be liable to any action or suit for any act or omission by that person in the exercise of judicial power.”

15 It is conceded by the respondent that Parliament by adopting and passing item (29) of the impugned report of PAC and the observations and recommendations therein into resolutions of Parliament did contravene **Article 128 (1), (2), (3) & (4)** of the Constitution and that act is inconsistent with the provisions of those Articles and it is unconstitutional. It is indeed
20 clear from the provisions of **Article 128 (1), (2), (3) & (4)** of the Constitution that the independence of the judiciary is guaranteed and no person or authority is permitted to control, direct or interfere with the courts or judicial officers in the exercise of their judicial functions.

25 More specifically, under **Article 128 (3)** of the Constitution, Parliament as an organ of the State, has a duty to accord to the courts such assistance as may be required to ensure the effectiveness of the courts. That assistance does not include control or direction and, or interference with the work of the courts or of a judicial officer. This Court is clothed with a constitutional
30 mandate to correctly interpret the Constitution with a view of ensuring that its letter and spirit are not contravened by any person, authority or organ.

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Upon perusal of all the pleadings and listening to the submissions of both counsel, we find that **Article 128** of the Constitution was contravened by Parliament when it adopted and passed item (29) of the impugned report of PAC and the observations and recommendations therein into resolutions of Parliament and when it summoned the petitioner to appear before PAC in respect of a decision he made in the exercise of judicial power.

On the alleged denial of the petitioner's right to a fair hearing in contravention of **Articles 28 (1)** and the related **Articles 42 and 44 (c)** of the Constitution, it is the petitioners evidence as contained in paragraphs 10-13 of his affidavit in support of the Petition that he was invited to appear before PAC on 'the 7th September, 2012 which he declined to do basing himself on **Article 128 (1), (2) & (4)** of the Constitution. It is the petitioner's case that PAC went ahead in his absence and made a report against him personally and that the report was adopted by Parliament. The observations and recommendations therein became resolutions of Parliament. He faults Parliament for contravening his right to a fair hearing.

We find that the stand the petitioner took not to appear before PAC was right and consistent with the Constitution. He, in our view, acted in resistance to the demands that he be subjected to proceedings that were unconstitutional. Consequently, the proceedings that took place in his absence and the resolutions and recommendations made therein are null and void for being unconstitutional.

It also follows that by PAC proceeding *ex parte* and making a report

5 that affected the petitioner in an unconstitutional proceedings, and by
Parliament adopting that report and passing the recommendations and
recommendations made therein into its resolutions, the petitioner's
right to a fair hearing as enshrined in Articles 28 (1) and the related
Articles 42 and 44 (c) was contravened.

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As regards **Article 2** of the Constitution, we find that it is basically about the
supremacy of the Constitution and its binding force on all authorities and
persons throughout Uganda. Any act done in contravention of the provision
of the Constitution tantamounts to undermining its supremacy. It is therefore
15 our view that by Parliament adopting and passing a resolution that
contravenes **Article 128** of the Constitution as discussed above, it in effect
also contravened **Article 2** of the Constitution.

On the alleged contravention of **Article 79 (3)** of the Constitution, it is our
20 finding that Parliament has a mandate under that Article to protect the
Constitution and promote the democratic governance of Uganda. Parliament
acted contrary to this constitutional mandate when it adopted and passed
item (29) of the report of PAC and the observations and recommendations
therein into its resolutions. By so doing, Parliament contravened the very
25 fundamental principles that underpin democratic governance, namely; the
doctrines of separation of powers and the independence of the judiciary. In
that regard, we accept that **Article 79 (3)** of the Constitution was
contravened by the impugned action of Parliament.

30 Lastly, on the alleged contravention of **Article 92**, we do not see its relevance
to the petitioner's case as the same restricts/prohibits the passing of

5 retrospective legislation which seeks to alter the decision or judgment of any
court as between the parties to the decision or the judgment. The petitioner
is complaining about resolutions and recommendations of Parliament which
are clearly not retrospective legislation which seeks to alter the petitioner's
decision or judgment in **Civil Suit No. 003 of 2009, Beachside**
10 **Development Services Ltd versus National Forestry Authority**. It is
therefore our finding that **Article 92** of the Constitution was not contravened
and the actions of Parliament were not inconsistent with it.

On the whole as regards issue 2, it is our finding that the actions by
15 Parliament to adopt and pass item 29 of the impugned report of PAC and the
observations and recommendations therein into resolutions of Parliament
was done in contravention of and is inconsistent with **Articles 2, 79 (3) and**
128 (1), (2), (3) & (4) of the Constitution and it is thus null and void. We do
not find any contravention of **Articles 28 (1), 42, 44 (c), 92 and 119** of the
20 Constitution. This answers issue 2 partly in the affirmative. This issue
therefore succeeds in part.

Issue No.3: Whether the observations and recommendations of
item (29) of the impugned report of the Public
25 **Accounts Committee of Parliament was inconsistent**
with Articles 2, 28 (1), (3) (c) & (g), 42, 44(c), 79 (3), 92,
94 and 128 (1), (2), (3) & (4) of the Constitution.

Under issue 2 we reproduced all the above Articles except 94 for a proper
30 analysis and appreciation of counsel's arguments. As we already stated
under that issue, it is clear from **Article 128** of the Constitution that the

5 independence of the Judiciary is guaranteed and no person or authority is
permitted to control, direct or interfere with the courts or judicial officers in
the exercise of their judicial functions. PAC is not an exception. It is therefore
our finding that PAC's purported observations and recommendations that
sought to question how a Judicial Officer arrived at his decision was an
10 attempt to control, direct and interfere with the independence of a Judicial
Officer in the exercise of his Judicial function. We therefore find that action
of PAC and Parliament inconsistent with **Articles 2, 79 (3) and 128 (1), (2),
(3) & (4)** of the Constitution.

15 In the result, issue 3 is answered in the affirmative as regards **Articles 2, 79
(3) and 128 (1), (2), (3) & (4)**.

**Issue No. 4: Whether the Public Accounts Committee of
Parliament and Parliament by their observation,
20 recommendations and resolutions purported to veto
the judgment of the High Court in Civil Suit No. 003 of
2009, Beachside Development Services Ltd versus
National Forestry Authority, and Civil Appeal No. 80 of
2009, National Forestry Authority versus Beachside
Development Services Ltd, contrary to Articles
2,79,92,119 and 128 of the Constitution, are ultra vires
and an attempt by Parliament to usurp powers of the
Judiciary contrary to the doctrines of separation of
powers, independence of the Judiciary and finality of
30 court judgments (Sic).**

5 The petitioner in paragraphs 17 of his Affidavit in Support of the Petition
stated that PAC and Parliament by their observation, recommendations and
resolutions purported to veto the judgment of the High Court in **Civil Suit No.**
003 of 2009, Beachside Development Services Ltd versus National
10 **Forestry Authority, and Civil Appeal No. 80 of 2009, National Forestry**
Authority versus Beachside Development Services Ltd which acts are
contrary to **Articles 2, 79, 92, 119 and 128** of the Constitution, are ultra vires
and an attempt by Parliament to usurp powers of the Judiciary contrary to
the doctrines of separation of powers, the independence of the Judiciary and
the finality of court judgments.

15 The respondent in his Answer to the Petition stated in paragraphs 5, 6, 7 &
8 that the power of the Auditor General in relation to the courts is only limited
to the auditing of their performance in the use of public funds and does not
in any way extend to investigating court judgments and proceedings as was
done in this case. Furthermore, that the adoption and passing of the
20 recommendations and observations made in the report of Parliament dated
12th November, 2013, which were subsequently passed as resolutions of
Parliament were done in contravention of **Article 128 (1) (2) and (4)** of the
Constitution and so the report sought to be impugned should be declared
ultra vires. He also agreed with the petitioner that the doctrine of separation
25 of powers must be exercised by each arm of government and the
independence of the Judiciary must not be undermined.

In his submission in support of that position, counsel for the respondent cited
the case of **Gordon Sentiba and 2 ors vs Inspectorate of Government,**
Supreme Court Civil Appeal No. 06 of 2008 and argued that Parliament

5 cannot investigate, review or interfere with a matter that is completed or pending before court. He also submitted that he was aware of the oversight role of PAC but that did not include investigating conduct of judicial duties.

As already discussed under issue 2, **Article 2** of the Constitution, provides for the Supremacy of the Constitution. Every person, authority and organ of government must respect it. Under chapters six, seven and eight, the
10 Constitution establishes the three organs of government namely, the Executive, the Legislature and the Judiciary. Each of these organs has different roles and powers which should be exercised in accordance with the Constitution and without interference from the other, except where
15 permitted by the Constitution.

The Supreme Court in ***Major General David Tinyefuza vs Attorney General, Constitutional Petition Appeal No. 1 of 1997*** recognized the fact that the Constitutional platform comprises of Parliament, the Executive and the Judiciary. Kanyeihamba JSC (as he then was) stated as follows:

20 ***“The Uganda Constitution recognized these organs as the Parliament, the Executive and the Judiciary...Each of them has its own field of operation with different characteristics and exclusivity and meant by the Constitution to exercise its powers independently. The doctrine of separation of powers demands and ought to require that unless there is the clearest of cases
25 calling for intervention for the purpose of determining constitutionality and legality of action or the protection of the liberty of the individual which is presently denied or imminently threatened, the Courts must refrain from entering arenas not***

5 **assigned to them either by the Constitution or laws of Uganda.”**

Similarly, **Article 128** of the Constitution (supra) provides for the independence of the Judiciary.

In the instant case, the petitioner in the exercise of his judicial power delivered a judgment in **High Court Civil Suit No.003 of 2009, Beachside**
10 **Development Services Ltd versus National Forestry Authority**. It was a final decision in the matter based on the consent of the parties and an appeal was lodged against it in the Court of Appeal vide **Civil Appeal No. 80 of 2009, National Forestry Authority versus Beachside Development**
15 **Services Ltd**. It is against this background that PAC made a report and Parliament passed it. It is our considered view that the act of making judgment was a judicial act by the petitioner which brought him under the ambit of judicial immunity conferred by **Article 128 (4)** of the Constitution.

In **Constitutional Petition No. 55 of 2013, Gladys Nakibuule Kisekka vs Attorney General**, this Court stated as follows:

20 **“Judicial independence as a principle is recognized at the national and international levels and is of crucial importance to the independence of the Judiciary, as the third arm of Government, and to that of individual judicial officers. That is why there are constitutional guarantees in the Constitution to**
25 **promote, preserve and protect such independence.”**

We accept the petitioner’s contention that the observations, recommendations and resolutions by PAC and Parliament was an attempt

5 to usurp the powers of the Judiciary contrary to the doctrines of separation of powers, the independence of the Judiciary and the finality of court judgments. We therefore resolve issue 4 in the affirmative.

Issue No. 5: Whether the petitioner is entitled to the remedies sought.

10 The petitioner by his Petition sought for the declarations and orders listed at pages 4-6 of this judgment. Counsel for the petitioner urged this Court to make the declarations and grant the petitioner general damages and the costs of this Petition.

(i) Declarations

15 Following our findings under all the preceding 4 issues that the impugned action of PAC and Parliament contravened and are inconsistent with **Articles 2, 79 (3) and 128** of the Constitution, we are satisfied that the petitioner is entitled to the declarations sought in the terms we shall state in the conclusion of this judgment.

20 **(ii) General Damages**

Counsel for the petitioner submitted that the petitioner is a Judge of 30 years standing in judicial work. He contended that there is no mathematical formula for calculating the damages. Further, that the opportunity for the petitioner's promotion to a higher court was calculated at a sum of Shs. 2 million per month which implies a total of Shs. 240 million for a period of 10 years being
25 the period the petitioner would be eligible to serve in that higher court.

5 Counsel further submitted that the act of contravention entitled the petitioner to damages since the report was published and that it was the respondent who was responsible to pay damages for the consequential injury suffered.

Conversely, counsel for the respondent submitted that there was no proof of any grudge against the petitioner and therefore this was too remote to attract
10 general damages. He further submitted that the Attorney General cannot be held liable for publications by independent newspapers and therefore the petitioner should proceed against those newspapers. He contended that the allegation of missed promotion is speculative.

We have considered the arguments of both counsel regarding the award of
15 damages. **Article 137 (4) (a)** of the Constitution gives this Court the discretion to grant an order of redress, where upon determination of the Petition under clause (3) of that Article it considers that there is need to do so. Upon determining this Petition and granting most of the declarations sought, we are of the considered view that there is indeed need to grant
20 redress by an award of general damages.

Oder JSC (RIP) in the case of **Hajji Asumani Mutekanga vs Equator Growers (U) Ltd SCCA No. 7 of 1995** stated that;

25 *“General damages consist, in all, items of normal loss which the plaintiff is not required to specify in his pleadings in order to permit proof in respect of them at the trial.”*

He quoted Lord Wright in the case of **Monarch Steamship Co. Ltd vs Karlshamns Oljefabriker (A/B) [1949] AC, 196 at 221** who defined general damages as being:

5 *“Damages arising naturally (which means in the normal course of things) and cases where there were special and extra ordinary circumstances beyond the reasonable provision of the parties. In the latter event it is laid down that the special fact must be communicated by and between the parties.”*

10 In the instant case, as regards the claim by counsel for the petitioner regarding the consequential injury suffered due to the publication and the loss of promotion opportunity, we are of the view that they are farfetched and speculative as no evidence was adduced to show that the petitioner was due to be promoted but his promotion was halted or prevented by the negative
15 publication. In the premises, we are not satisfied that the petitioner suffered any injury for lost promotion opportunity that merit award of compensation.

Be that as it may, we are cognizant that the negative publication based on an unconstitutional Parliamentary process did cause inconveniences, anguish and injury to the petitioner which should be atoned for by an award
20 of general damages. The argument that the Attorney General cannot be held liable for publications by independent newspapers is untenable because those newspapers reported the proceedings in PAC and what was subsequently adopted by Parliament as contained in its report.

In the result, upon consideration of all the circumstances of this case, we are
25 satisfied that an award of general damages of Shs. 50 million would be adequate to atone for the injury, anguish and inconveniences suffered by the Petitioner.

(iii) Costs

The petitioner prayed for costs of this petition. It is a general principle of law that costs should follow the event unless there are special circumstances to the contrary. In this case, the petitioner is the successful party and therefore
10 entitled to costs.

However, counsel for the petitioner prayed that a certificate for costs be granted to the petitioner's 3 counsel who handled the petition. He informed court that he was handling the Petition jointly with Mrs. Vennie Kasande Murangira who was in Court and Mr. Blaze Babigumira who was indisposed.
15 Whereas a notice of joint instructions was filed by M/S Murangira Kasande & Co. Advocates on 25th April 2017, just a day before the hearing of the Petition, we have failed to appreciate the role counsel Vennie Kasande Murangira played in the preparation and presentation of the Petition that would justify a grant of a certificate to her.

20 In addition, it is our view that this was not a very complicated Petition involving complex questions of law that required a team of 3 counsel to do extensive legal research and argue it. To our minds, it was a very straight forward and simple Petition that only required pointing out the impugned action of PAC and Parliament and the articles that are alleged to have been
25 contravened. Counsel Mpeirwe did exactly that without requiring any additional support from counsel Vennie Kasande Murangira. For that reason, we decline to award a certificate for costs to counsel Vennie Kasande Murangira.



5 As regards counsel Arthur Mpeirwe who argued the Petition, we have not found on Court Record any notice of joint instructions filed by his law firm. We have also perused all the pleadings, documents and the conferencing proceedings on the record and it is clear that it was Mr. Blaze Babigumira of M/S Blaze Babigumira Solicitors & Advocates who had personal conduct of this matter. There is no mention of Mr. Arthur Mpeirwe or his law firm of M/S Mpeirwe & Co Advocates in any of the pleadings, documents and, or record of conferencing proceedings. His firm name only appears in the notice of joint instructions filed by M/S Murangira Kasande & Co. Advocates referred to above.

15 In the absence of a notice of joint instructions, we are inclined to assume that Mr. Mpeirwe was holding brief for counsel Blaze Babigumira when he appeared and argued the Petition. That, in our view, would not entitle him to a certificate of costs. In the circumstances, we find no justification for granting a certificate for 3 counsel. We are inclined to grant a certificate to one counsel, Mr. Blaze Babigumira of M/S Blaze Babigumira Solicitors & Advocates.

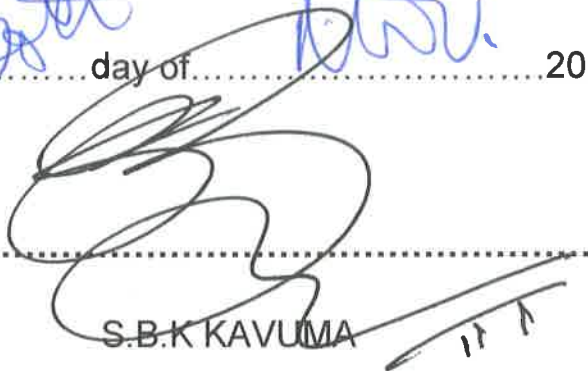
In conclusion, we allow the Petition on the grounds stated above under each issue and hereby declare and order as follows:

- 25 a. The adoption/passing by Parliament of the impugned report of the Public Accounts Committee on 14/11/2013 and the observations and recommendations affecting the petitioner therein into resolutions of Parliament was done in contravention of and is inconsistent with **Articles 2, 79 (3) and 128 (1), (2), (3) & (4)** of the Constitution, and it is null and void.

- 5 b. The observations and recommendations affecting the petitioner in item
29 of the impugned report of the Public Accounts Committee of
Parliament are inconsistent with and were made in contravention of
Articles 2, 79 (3) and 128 (1), (2), (3) & (4) of the Constitution, and it
is null and void.
- 10 c. The Public Accounts Committee of Parliament and Parliament by their
observations, recommendations and resolutions purported to veto the
judgments of the High Court in ***Civil Suit No. 003 of 2009, Beachside
Development Services Ltd versus National Forestry Authority***,
and the Court of Appeal of Uganda in ***Court of Appeal Civil Appeal
15 No. 80 of 2009, National Forestry Authority versus Beachside
Development Services Ltd***, which act is contrary to **Articles 2, 79 (3)
and 128** of the Constitution, and is ultra vires and contrary to the
doctrines of separation of powers, the independence of the Judiciary
and the finality of court judgments and those acts are unconstitutional,
20 and null and void.
- d. The respondent shall pay general damages to the petitioner to the tune
of Shs. 50 million.
- e. The petitioner is awarded costs of this Petition since the Petition has
been substantially successful.
- 25 f. Certificate for costs is granted to 1 counsel.

We so order.

5 Dated at Kampala this... 20th day of... 2017



S.B.K KAVUMA

DEPUTY CHIEF JUSTICE (E)

10



RICHARD BUTEERA

JUSTICE OF APPEAL

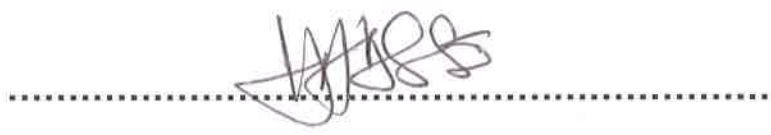
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GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL

20



HELLEN OBURA

JUSTICE OF APPEAL

25



PAUL K. MUGAMBA

JUSTICE OF APPEAL