

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Owiny-Dollo, DCJ, Kakuru, Egonda-Ntende, Cheborion, Madrama, JJA / JJCC)

Constitutional Petition No. 32 of 2012

BETWEEN

Mathias Mpuuga=====Petitioner No.1

Muhammad Muwanga Kivumbi=====Petitioner No.2

AND

Attorney General=====Respondent

Judgment of Fredrick Egonda-Ntende, JA / JCC

Introduction

- [1] The petitioners brought this petition jointly under rule 3 of the Constitutional Court (Petitions and References) Rules, 2005. The petition was supported by the affidavit of the first petitioner. The petitioners are seeking the following declarations:

‘a) A declaration that section 56 (2) (a) (iv), (vi) & (vii) of the PCA contravenes or is inconsistent with Objects: I (i); II (vi); XXVI (iii) and XXIX (a) & (f) of the National Objectives and Directives Principles of State Policy (hereinafter the “NODPSP”) as well as with Articles 1 (1); 1 (2); 2 (1) & (2); 20 (1) & (2), 21 (1), (2) & (4) (c); 29 (1) (a),(b) & (d); 38 (2); and 43 (1) & (2) (c) of the Constitution;

b) A declaration that section 56 (2) (c) of the PCA contravenes or is inconsistent with Objects: I (i); II (vi); XXVI (iii) and XXIX (a) & (f) of the NODPSP as well as with Articles 1 (1); 1 (2); 2(1) & (2); 20(1) & (2), 21 (1),(2)

& (4) (c); 29 (1) (a), (b) & (d); 38 (2); 42; and 43 (1) & (2) (c) of the Constitution;

c) A declaration that section 56 (3) of the PCA contravenes or is inconsistent with Objects: I (i); II (vi); XXVI (iii) and XXIX (a) & (f) of the NODPSP as well as with Articles 1 (1); 1 (2); 2 (1) & (2); 20 (1) & (2), 21 (1), (2) & (4) (c); 29 (1) (a), (b) & (d); 38 (2); 42; and 43 (1) & (2) (c) of the Constitution;

d) A declaration that sections 57, 58, 59, 60, 61, 62, 63 and 64 of the PCA, to the extent that they may relate to a society purported to be unlawful by reason of the operation of or actions taken under sections 56 (2) (a) (iv), (vi) & (vii); 56 (2) (c); or 56 (3) of the PCA, PCA contravenes or is inconsistent with Objects: I (i); II (vi); XXVI (iii) and XXIX (a) & (f) of the NODPSP as well as with Articles 1 (1); 1 (2); 2 (1) & (2); 20 (1) & (2), 21 (1), (2) & (4) (c); 29 (1) (a), (b) & (d); 38 (2); 42; and 43 (1) & (2) (c) of the Constitution;

e) A declaration that section 61 (2), (3) & (4) of the PCA contravene and are inconsistent with Articles 28 (1) & (2) and 44 (c) of the Constitution;

f) A declaration that section 63 of the PCA contravenes and is inconsistent with Articles 26 (1) & (2) and 43 (1) & (2) (c) of the Constitution; and

g) An order quashing the Penal Code (Declaration of Unlawful Societies) Order 2012, issued on the 4th April 2012.'

[2] The background to this petition is that in 2011, a group of political activists established a pressure group called Activists for Change (A4C) so as to raise awareness to ordinary Ugandans about their rights and duties as citizens. In April 2011, the civil society mobilized and launched a campaign amongst the masses against the government called 'walk to work.' They were protesting against corruption and bad governance that had led to economic hardship in the country which was symbolised by the increased price of transport and other goods thus leading to a high cost of living.

[3] Following the protests, on 4th April 2012, the then Attorney General Honourable Peter Nyombi, in exercise of the powers conferred on him by

section 56 (2) (c) of the Penal Code Act, Cap declared Activists for Change (A4C) an unlawful society through The Penal Code (Declaration of Unlawful Societies) Order, 2012. Subsequent to the banning of Activists for Change (A4C), the first petitioner and other political activists formed another pressure group called 'For God and My Country' (4GC) which was declared by the police unlawful under section 56 (3) of the Penal Code Act on the ground that there was similarity in the acronyms 'A4C' and '4GC' and that the office bearers were common in the two groups.

- [4] In light of the above, the petitioners contended that the actions of respondent of declaring the aforementioned civil pressure groups as unlawful violated their rights guaranteed under chapter four of the Constitution and that the provisions of the Penal Code Act cap 120 under which the respondent purported to act are inconsistent with the provisions of the Constitution.
- [5] The respondent filed an answer to the petition that was supported by the affidavit of Richard Adrole, a Principle State Attorney in the respondent's chambers. The respondent contended that this petition is misconceived, frivolous and vexatious and that there were no fundamental rights violated by the respondent as alleged by the petitioners.
- [6] It must be pointed out at this stage that the affidavit sworn and filed by Mr Richard Adrole on behalf of the respondent had nil evidential value. Where it alludes to certain facts it is entirely hearsay as Mr Adrole had no personal knowledge of the factual narrative he renders. In the result there is no evidence to support the case for the respondent. On the other hand, the petitioner's affidavit in support of the petition stands uncontroverted with regard to the facts put forth in the said affidavit.

Submissions of Counsel

- [7] At the hearing, the petitioners were represented by Mr. Ernest Kalibala and the respondent by Mr. Wanyama Kodooli. The parties opted to adopt their written submissions.
- [8] Counsel for the petitioners submitted that section 56 (2) (c) of the Penal Code Act grants the Minister power without discretion, without a right to a fair hearing to declare a society unlawful which is unconstitutional and contravenes Articles 21 (1) and (2), 29 (1) (a), (b), (d) and (e) of the Constitution and does not fit within the limits of Article 43 (2) of the Constitution.
- [9] Counsel argued that the object of unfettered control enabled by this section is unconstitutional. Further, counsel for the petitioners submitted that as the protection of fundamental human rights is a primary objective of every democratic Constitution and limiting the enjoyment of rights is an exception and therefore only a secondary objective of a Constitution, Section 56 (2) (c) has no place in Uganda's democratic society.
- [10] Counsel for the petitioners submitted that it is not unconstitutional to render a society unlawful but there must be a procedure and a standard the minister should adopt while exercising such powers otherwise this leaves room for the minister to act on the government's political whims since ministers are political appointees of the government in power.
- [11] It was counsel for the petitioner's submission that even when a society is made for lawful purpose, the minister can easily decree it unlawful basing on a test that is unknown. Counsel stated in the submissions that previous use of the challenged section shows that it was for political or religious control by the government. Counsel for the petitioners contended that Activists for Change (A4C) had nothing to do with the deaths that occurred during the walk to work protests but it was nonetheless banned. Counsel for

the petitioners submitted that this amounts to political persecution contrary to Article 43(2) (a) of the Constitution.

- [12] Counsel for the petitioner also submitted that the act grants power to the Minister to control the societies on how they associate in case they continue to associate, who leads them in doing so and whether they retain the property they hold for the association which is unconstitutional.
- [13] It was counsel for the petitioners' submission that the right to freedom of assembly and the right to equality are not absolute. However, that, where a provision of law derogates from any right, the derogation must be acceptable and demonstrably justifiable in a free and democratic society. Counsel contended that criminalising societies which are not formed for an unlawful purpose is derogation from the right to assembly, association, speech, conscience and belief.
- [14] Counsel for the petitioners submitted that peaceful assemblies and protests are vital and necessary in a democratic society and that since citizens are free to disagree with a sitting government from time to time and influence policy, they must be able to do so without the fear that of the offence of unlawful society that is determined by the Minister hovering over their heads. Counsel for the petitioners relied on the case of Moses Mwandha v Attorney General [2019] UGCC 5 for the proposition that a democratic society must be able to tolerate a good deal of annoyance and disorder so as to encourage the greatest possible freedom of expression, particularly political expression.
- [15] With regard to principles of constitutional interpretation, counsel for the petitioners submitted that in determining the constitutionality of any legislation, it is relevant to put into consideration the purpose and effect of the provision as intended by Parliament. He also submitted that a constitutional provision containing a fundamental right is a permanent provision intended to cater for all times and that it must be given an

interpretation that realises the full benefit of the guaranteed right. He also stated that such a provision must be given a dynamic, progressive, liberal and flexible interpretation so as to extend the benefit of the same to the maximum possible. Counsel for the petitioners relied on the case of Olara Otunnu v Attorney General [2019] UGCC 3 for the above submissions.

[16] Counsel for the petitioner also urged this court to put into consideration article 126 (1) of the Constitution upon which this court has over the years relied on to strike down any legislation that has a negative and detrimental effect on the entrenchment, promotion and protection of Uganda's path to constitutional governance. Counsel for the petitioners also submitted that this court should take into consideration the prevailing political environment following the enactment of the Penal Code Act and section 1 of the Act while determining whether the impugned provisions are unconstitutional. Counsel for the petitioners was of the view that the impugned provisions are not contextually different in terms of their overall purpose and effect on democracy from the provision that was declared unconstitutional in Charles Onyango Obbo & Another v Attorney General [2004] UGSC 1.

[17] Counsel for the petitioners also submitted that section 61 (2), (3), (4) and (5) of the Penal Code Act infringes on the right to a fair hearing and the presumption of innocence under Article 28 (3) (a) and allows any evidence against the accused to be presumed lawful whether it passes the admissibility test or not. Further, counsel for the petitioners contended that the manner in which section 63 allows property of a society that has been declared unlawful to be disposed of is unconstitutional and contrary to Article 26 (2) of the Constitution that requires adequate compensation before compulsory acquisition of property by the state. Counsel for the petitioner was of the view that sections 56 (3), 57, 58, 60, 62 (2), (3) (4), (5) and 63 of the Penal Code Act should be declared unconstitutional to the extent that they derive life from section 56 (2) (c) of the Penal Code Act.

- [18] Counsel for the petitioners prayed that the impugned provisions be declared unconstitutional for being inconsistent with Articles 1, 2, 20, 21 (1) and (2), Articles 26 (1) and (2), 28 (1) and (2), 29 (10 (a)) (b) (d) and (e), 38 (2), 42, 43 (1), 43 (2) (a) and (c) and 44 (c) of the Constitution.
- [19] In reply, counsel for the respondent submitted that the petition is misconceived and discloses no cause of action. It was counsel for respondent's submission that the impugned sections of the Penal Code Act are amongst the existing laws envisaged by Article 274 of the Constitution and are consistent with the Constitution. Counsel for the respondent further submitted that the purpose and effect of the disputed provisions are consistent with the Constitution and the principles of peace, stability, national unity, democracy and the rule of law as demonstrated in the affidavit in reply.
- [20] It was counsel for the respondent's submission that the sections are meant to maintain political and constitutional stability in the country which is consistent with the preamble and objectives I (i), II (i), III, V and XXIX of the national objectives and directives of state policy. Counsel cited the case of Okello-Okello John Livingstone & Others vs Attorney General Constitutional Petition No. 4 of 2005 (unreported) for the proposition that the national objectives and directives principles of state policy are relevant in Constitutional interpretation.
- [21] Counsel for the respondent argued that the pressure groups were unconstitutional and that they did not clarify under what legal entity they were created and registered. Counsel further stated that the formation of the impugned civil pressure groups violated fundamental human rights of the citizens and that it is a well-established principle in law that the Constitution must be interpreted as a whole. Counsel for the respondent submitted that Article 29 is not absolute and therefore subject to Article 43(1) of the Constitution.

- [22] Further, counsel for the respondents stated in the submissions that Activists for Change (A4C) incited violent public protests and demonstrations in several parts of Uganda that resulted into injury, death, destruction of property and disturbance of peace and order. Counsel for the respondent averred that the pressure groups also organised public rallies without notifying police which culminated into inciting and committing acts of violence on the 11th, 21st and 29th of April 2011. Counsel for the respondent was of the view that the activities of the civil pressure group A4C infringed on the rights of the people, paralysed trade and commerce in the country and that the petitioners failed to justify their activities under Article 43 of the Constitution
- [23] Counsel for the respondent further argued that the minister in his legal mandate lawfully declared the civil pressure groups; Activists for Change (A4C) and For God and My Country (4GC) in accordance with Article 43(1) of the Constitution and section 56 of the Penal Code Act. Counsel for the respondent submitted that section 56 (2) (a) (iv) of the Penal Code Act is in line with objective III(i) of the National Objectives and Directive Principles of State Policy that enjoins the government to promote national unity, peace and stability. Counsel also submitted that section 56 (2) (a) (vi) of the Penal Code Act is consistent with the Constitution because it is the duty of citizens according to objective XXIX (g) of the National Objectives and Directive Principles of State Policy to uphold and defend the law and that section 56 (2) (a) (vii) of the Penal Code Act is consistent with the provision of the Constitution, does not condone disorderliness and is line with objective III (i).
- [24] Counsel for the respondent also submitted that section 56 (2) (c) and 56 (3) of the Penal Code Act are consistent with Article 38 (2) which give every citizen the right to participate in peaceful activities to influence the policies of government through civic organisations and that section 56 (3) prevents societies that had already been declared unlawful like the A4C to reconstitute as they did in another name of 4GC.

- [25] With regard to sections 57 and 58 of the Penal Code Act, it was counsel for the respondent's submission that whereas it is constitutional under article 29 (1) (e) to form and join associations, there is no justification to form societies to levy war against government, incite violence and resist the administration of the law thus disturbing public order. Counsel for the respondent further submitted that section 62 of the Penal Code Act is consistent with article 26 (2) of the Constitution which permits lawful deprivation of property in interest of trade and public order.
- [26] Counsel for the respondent concluded by submitting that the respondent did not violate articles 1, 2, 20, 21 (1) and (2), 26 (1) and (2), 28 (1) and (2), 29 (10 (a)) (b) (d) and (e), 38 (2), 42, 43 (1), 43 (2) (a) and (c) and 44 (c) of the Constitution and that the petitioners failed to discharge the legal burden of proof as expected in sections 100 to 104 of the Evidence Act. Counsel prayed that this court dismisses this petition with costs.

Analysis

- [27] Article 137 (1) of our Constitution vests this court with jurisdiction to determine any question as to the interpretation of any provision of the Constitution. Article 137 (3) also grants this court the jurisdiction to grant a declaration that a law, act or omission is inconsistent with or contravenes a provision of the Constitution.
- [28] In interpreting the Constitution this court is guided by a number of principles that have been pronounced in a number of cases. The interpretation ought to be generous rather than legalistic so as to achieve the purpose of securing and guaranteeing persons fundamental rights and freedoms. See Fox Odoi-Oywelowo v Attorney General, Constitutional Petition No.8 of 2003 (unreported).
- [29] In the case of Attorney General v Momodon Jobe (1984) AC 689, an appeal to the Privy Council from the Court of Appeal of Gambia, Lord Diplock made the following observation:

‘A Constitution and in particular that part of it which protects and entrenches the fundamental rights and freedoms to which all persons in the State are to be entitled to be given generous and purposeful Construction.’

- [30] In Unity Dow vs Attorney General of Botswana 1992 LRC 623, it was held that generous construction means:

‘that you must interpret the provisions of the Constitution in such a way as not to whittle down any of the rights and freedoms unless by way of very clear and unambiguous provisions such interpretation is compelling.’

- [31] While interpreting the Constitution this court ought to look at the Constitution as a whole, with each particular provision not destroying the other but each in support of the other. No one provision of the Constitution must be segregated from the others and all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the greater purpose of the Constitution. See the case of Attorney General v Major General Tinyenfuza, Supreme Court Constitutional Appeal No. 1 of 1997 (unreported), Paul K. Ssemogerere and 2 others vs. Attorney General [2004] UGSC 10

- [32] Fundamental rights and freedoms guaranteed under the Constitution are to be interpreted having regard to evolving standards of human dignity. See Uganda Law Society v Attorney General [2006] UGCC 10.

- [33] In order to determine if any law that restricts fundamental rights and freedoms is constitutional or not one must ascertain whether it is the purpose of the law that is unconstitutional or it is its effect or impact that is unconstitutional. Either would lead that law to being unconstitutional. The Supreme Court of Canada in R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 expressed this test in the following words,

'80.in my view, both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. This object is realized through the impact produced by the operation and application of the legislation. Purpose and effect respectively, in the sense of the legislation's object and its ultimate impact, are clearly linked, if not indivisible. Intended and actual effects have often been looked to for guidance in assessing the legislation's object and thus, its validity.

81. Moreover, consideration of the object of legislation is vital if rights are to be fully protected. The assessment by the courts of legislative purpose focuses scrutiny upon the aims and objectives of the legislature and ensures they are consonant with the guarantees enshrined in the Charter. The declaration that certain objects lie outside the legislature's power checks governmental action at the first stage of unconstitutional conduct. Further, it will provide more ready and more vigorous protection of constitutional rights by obviating the individual litigant's need to prove effects violative of charter rights. It will also allow courts to dispose of cases where the object is clearly improper, without inquiring into the legislation's actual impact.'

Burden of Proof

- [34] Where it is contended for the petitioner that his or her or its fundamental rights and freedoms, (hereinafter referred to collectively as the Chapter 4 rights and freedoms), have been violated it is the duty of the petitioner to establish, *prima facie*, that they enjoy such rights and freedoms under the Constitution, and that such rights have been impaired by any law or act, or are threatened to be impaired, of or by the respondent. The burden of proof then shifts to the respondent to establish that such impairment as has occurred or is likely to occur, is justified under some law, and that such impairment is necessary for purposes of either protecting the rights and freedoms of other persons or the public interest. Secondly that the

impairment is as minimal as possible so as not to extinguish the fundamental right or freedom protected by the Constitution or that there is no other possible route to protect the fundamental rights and freedoms of other persons or the public interest. That it is absolutely necessary to impair the right or freedom in question. Thirdly the respondent would have to prove that this impairment is justifiable in a free and democratic society.

[35] Article 126 (1) of the Constitution provides:

‘126. Exercise of judicial power.

(1)Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.’

[36] Article 2 of the Constitution provides:

‘Supremacy of the Constitution

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

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.’

[37] Bearing in mind the above principles I shall proceed to resolve the issues in the petition.

Impugned Provisions

[38] Sections 56 (2) (a), (iv), (vi), (vii) and section 56 (2) (c) provide:

‘(2) A society is an unlawful society—

if formed for any of the following purposes or if it encourages or supports any such purpose—

(a)

(b)

(c) **if declared by a statutory order of the Minister to be a society dangerous to peace and order in Uganda.**' (Emphasis is mine.)

[39] Section 56 (3) states:

'(3) Where a society is an unlawful society by virtue of a declaration by an order of the Minister made under subsection (2)(c) and another society is formed after such declaration—
having, subject to section 61(5), any of the same office bearers as the unlawful society;
having a name similar to that of the unlawful society; or
having substantially the same membership as the unlawful society, such society shall be deemed to be an unlawful society.'

[40] Section 57 of the Penal Code Act provides:

'Managing unlawful society.

Any person who manages or assists in the management of an unlawful society commits a felony and is liable to imprisonment for seven years.'

[41] Section 58 provides for offences in relation to an unlawful society. It states:

'Any person who—
is or holds himself or herself out as being a member of an unlawful society;
knowingly allows a meeting of an unlawful society or of any members of an unlawful society to be held in any house, building or enclosed or unenclosed place belonging to or occupied by him or her or over which he or she has control; or
utters any speech or prints, publishes, sells, offers or exposes for sale or distributes any publication as defined by section 33, which, in the opinion of the court is likely or calculated to encourage the support of an unlawful society, commits an offence and is

liable to imprisonment for a period not exceeding three years.’

[42] Section 59 of the Penal Code Act states:

‘Restrictions on office bearers.

Subject to section 61 (5), no person who at the time of the declaration of a society to be a society dangerous to peace and order in Uganda under section 56 (2) (c) was an office bearer of that society shall be, remain or become an office bearer in or shall otherwise manage or assist in the management of any other society, other than a society solely concerned with trade or commerce.

Any person who contravenes subsection (1) commits an offence and is liable to imprisonment for a period not exceeding two years.’

[43] Section 60 of the Penal Code Act provides:

‘Definition of office bearer.

For the purpose of this Chapter, “office bearer”, in relation to a society, means any person who—
is the patron, president, vice president, chairman, deputy chairman, secretary or treasurer of such society;

b) is a member of the committee or governing or executive body of the society; or

(c) holds in that society any office or position analogous to any office or position specified in this section.’

[44] Section 61 of the Act provides:

‘Miscellaneous provisions relating to unlawful societies.

A prosecution for an offence under section 57, 58 or 59 shall not be instituted except with the consent of the

Director of Public Prosecutions; except that a person charged with such an offence may be arrested, or a warrant for his or her arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

Notwithstanding any rule of law or practice to the contrary, in any prosecution for an offence mentioned in subsection (1), for the purpose of establishing the existence of a society, evidence may be adduced and shall be admitted which—

shows that any person is reputed to be a member of such society;

shows that any announcement has been made, whether by the person charged or by any other person, by any means, that the society has been formed or is in existence; or

shows that by repute such society is in existence.

Any person who attends a meeting of an unlawful society shall be presumed, unless the contrary is proved, to be a member of the society.

Any person who has in his or her possession or custody or under his or her control any of the insignia, banners, arms, books, papers, documents or other property belonging to an unlawful society, or wears any of the insignia, or is marked with any mark of the society, shall be presumed, unless the contrary is proved, to be a member of the society.

Any office bearer of an unlawful society shall be permitted to become an office bearer of another society or may manage or assist in the management of another society two years after the date on which the unlawful society became unlawful or at any time if the Minister gives him or her permission'

[45] Section 62 of the Penal Code Act states:

'Powers in relation to unlawful societies.

Any peace officer, and any police officer authorised in writing by a peace officer, may enter with or without assistance any house or building or into any place in which he or she has reason to believe that a meeting of an unlawful society, or of persons who are members of an unlawful society, is being held, and arrest or cause to be arrested all persons found therein and search such house, building or place, and seize or cause to be seized all insignia, banners, arms, books, papers, documents and other property which he or she may have reasonable cause to believe to belong to any unlawful society or to be in any way connected with the purpose of the meeting. For the purposes of this section, “peace officer” means any magistrate or any police officer not below the rank of assistant superintendent of police.’

[46] Section 63 of the Penal Code Act states:

‘Disposition of property of unlawful societies.

When a society is declared to be an unlawful society by an order of the Minister, the following consequences shall ensue—

the property of the society within Uganda shall forthwith vest in an officer appointed by the Minister; the officer appointed by the Minister shall proceed to wind up the affairs of the society, and after satisfying and providing for all debts and liabilities of the society and the cost of the winding up, if there shall then be any surplus assets shall prepare and submit to the Minister a scheme for the application of such surplus assets;

such scheme, when submitted for approval, may be amended by the Minister in such way as he or she shall think proper in the circumstances of the case; the approval of the Minister to such scheme shall be denoted by the endorsement thereon of a memorandum of such approval signed by him or her, and upon this being done, the surplus assets, the subject of the scheme, shall be held by such officer

upon the terms and to the purposes thereby prescribed;

for the purpose of the winding up, the officer appointed by the Minister shall have all the powers vested in the official receiver for the purpose of the discovering of the property of a debtor and the realisation thereof.

The Minister may, for the purposes of enabling a society to wind up its own affairs, suspend the operation of this section for such period as to him or her shall seem expedient.

Subsection (1) shall not apply to any property seized at any time under section 62.'

- [47] Section 64 of the Penal Code Act provides:

'Forfeiture of insignia, etc.

Subject to section 63, the insignia, banners, arms, books, papers, documents and other property belonging to an unlawful society shall be forfeited to the Government, and shall be dealt with in such manner as the Minister may direct.'

- [48] Chapter VIII of the Penal Code Act under which the disputed provisions fall creates offences and punishment in relation to unlawful societies, unlawful assemblies, riots and other offences against public tranquillity.

- [49] The Constitution guarantees the freedom to associate which is fundamental in a free and democratic society. It is one of the basic conditions for a democratic society to progress. Article 29 of the Constitution provides:

'29. Protection of freedom of conscience, expression, movement, religion, assembly and association.

Every person shall have the right to—

- (a) freedom of speech and expression which shall include freedom of the press and other media;
- (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;

(c) freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with this Constitution;

(d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition;

and (e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.’

[50] Article 38 (2) of the Constitution provides:

‘(2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations’

[51] However, these rights are not absolute; rather, they are subject to restrictions in specific circumstances as provided for under article 43 of the Constitution. It states, ‘

‘43. General limitation on fundamental and other human rights and freedoms.

(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

(2) Public interest under this article shall not permit—

political persecution; detention without trial; or any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.’

Article 43 (Limitation) Analysis

- [52] The Supreme Court in Charles Onyango Obbo v Attorney General [2004] UGSC 1 approved the 'rationality test' adumbrated by the Supreme Court of Zimbabwe in Mark Gova Chavunduka & Others v Minister of Home Affairs & Anor (S.C. 36 of 2000) [2000] JOL 6540 (ZS) that sets out three elements to consider whether a law limiting fundamental rights and freedoms passed constitutional muster. These principles were picked out of Canadian jurisprudence. Firstly, the legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right. Secondly the measure designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational consideration. Lastly the means to impair the right or freedom must be no more than necessary to accomplish the objective. I shall apply the same elements of analysis to the matter at hand.
- [53] The answer to the Petition is simply a bare denial that the Petitioner's rights and freedoms claimed to have been violated were not violated or that the impugned laws do not impair constitutionally protected rights and freedoms. The Respondent does not assert justification of the law under which the petitioners' organisations were declared unlawful societies as either not impairing the petitioners' chapter 4 rights and freedoms or that such impairment was constitutionally protected. It is only in the submissions that an attempt is made to justify the impairment of the chapter 4 rights and freedoms. It is therefore questionable whether the respondent is entitled to raise matters that were outside its pleadings. In effect on the answer to the petition other than the bare denial there is effectively no answer to the case put forth by the petitioner.
- [54] However, in light of the fact that the declarations sought by the Petitioners are a matter of law, that is declaring certain statutory provisions in the Penal Code Act in relation to unlawful societies as unconstitutional it shall cause no prejudice to the petitioner or the cause of justice to take into account the submissions on the issues in this case made by the Respondent.

Section 56 (2) (a) (iv) (vi) & (vii) of the Penal Code Act

- [55] Though in the main petition a declaration is sought that section 56 (2) (a) (iv) (vi) and (vii) of the Penal Code Act is unconstitutional in the written submissions that were filed in this matter this ground was not canvassed at all by Counsel for the Petitioner. I shall consider the same to have been abandoned.

Section 56 (2) (c) of the Penal Code Act

- [56] The main contention under this head is the constitutionality of the power of the Attorney General or a Minister to declare a society unlawful and the consequences that attend both the officers of such a society and its property. This power is contained in section 56 (2) (c) of the Penal Code Act and has already been set out above. Obviously once a society is proscribed as an unlawful society the effect is the immediate curtailment or impairment of its activities and the activities of the members of that society. Their chapter 4 rights and freedoms are immediately curtailed. This curtailment is by law. The issue that arises is whether this law is constitutionally permissible under the limitation clause, under article 43 of the Constitution or any other provision of the Constitution.
- [57] It is the duty of the respondent in this regard to prove that the limitation or the impairment of the petitioners' chapter 4 rights, especially under articles 28 (1) and 29 passes constitutional muster. In this regard counsel for the respondent submitted that the petitioners' societies were formed to levy war against government, incite violence and resist the administration of the law thus disturbing public order. That the Attorney General was therefore acting lawfully in declaring them unlawful societies.

- [58] On the other hand, the petitioner no.1 in the affidavit in support to the petition declared that the two societies that were declared unlawful were committed to pursuing their agenda by way of peaceful activities including non-violent demonstrations. It was the Police and other armed forces of Government that inflicted violence upon their demonstrations, through the use of tear gas, live bullets and beating up their members. With regard to specifically to the Police officer that died they were unaware of the cause of death of such officer as no post mortem report was made public to determine the cause of death. The petitioner no.1 claimed that they played no part in the death of such officer.
- [59] As noted herein above the respondent has put no evidence before this court in this matter to show that the petitioners' societies had declared war against the Government or were levying war against the Government or the Republic of Uganda. And perhaps even if this were to be the case there are laws in place to prosecute those responsible for such acts. There is no indication that any member of the proscribed societies was prosecuted on account of levying war against the Republic of Uganda.
- [60] What is clear is that the Attorney General exercised the powers provided under section 56 (2) (c) to declare the societies in question unlawful which in effect barred those societies from engaging in the lawful activity of organising protests against Government policies. In doing so the Attorney General was not required to hold a hearing and determine if the allegations against the said societies were truthful or not. The petitioners' rights and freedoms pursuant to article 38 of the Constitution were thus impaired without an opportunity of being heard in conflict with article 28 (1).
- [61] At the same time the petitioners' rights and freedoms of expression, movement, assembly and association under article 29 were also impaired by the Attorney General's order declaring the petitioners' societies unlawful.

- [62] The question before this court is whether such impairment as shown above is saved by article 43 of the Constitution. For that to be the case the obligation is upon the respondent to show that impugned section 56 (2) (c) of the Penal Code Act is a necessary measure and provides the least objectionable impairment of the petitioners' rights and freedoms in protecting the fundamental rights and freedoms of other persons or the public interest.
- [63] It is important to note that there are legal provisions under the Penal Code Act that criminalise acts that cover levying war against the Republic of Uganda or undermining the administration of justice, law and order, which it is not shown are insufficient to thwart those engaged in such acts. Chapter V111 of the Penal Code Act creates offences for unlawful assemblies, riots and other offences against public tranquillity.
- [64] I shall assume that the legislative objective of the impugned provision can be gathered both from the words of the impugned provisions, as well as the history of its application over the years.
- [65] An examination of past uses of this authority reveals that from about 1948 to 1959 the Colonial Authority in Uganda used this power to proscribe as unlawful religious or political associations of the indigenous population of this country or neighbouring countries. Starting with Dini ya Msambwa, the Uganda African Farmers Union, Mau Mau, Yomut, Uganda National Movement, Uganda Freedom Movement and Uganda Freedom Convention. See S.1. 106-1 (Laws of Uganda, 1964 Revised Edition).
- [66] Between 1959 to 1963 the following organisations were proscribed as unlawful societies; Uganda League, Uganda Freedom Union, Uganda Underground Movement, Buganda Voluntary Defence Force, Inyezi, Rwenzururu Separate District Movement, and Rwanda Youth Organisation. See S.I. 106-2, Laws of Uganda, 1964 Revised Edition. The

independence government appears to have followed in the tradition of the Colonial State.

- [67] In 1966 Azania Liberation Front and Anya-Anyas were proscribed as unlawful societies. See S.I. 171 of 1966.
- [68] In 1968 the Survivors Progressive Party was declared a society dangerous to the peace and order in Uganda. See S.I. No. 12 of 1968.
- [69] In 1969 the Night Security Organisation alias 999 alias Uganda Dembe was proscribed as unlawful society as well as the Democratic Party, Uganda National Union, Uganda Farmers Voice, Uganda Conservative Party, Uganda Socialist Party, and Uganda Vietnam Solidarity Party. See S.I. 194 and 233 of 1969.
- [70] In 1972 the Sant Mat Path sect and the National Union of Students of Uganda (NUSU) were proscribed as unlawful societies vide S.I. 153 of 1972.
- [71] Pursuant to S.I. 63 of 1973 and 11 of 1975 13 religious societies including United Pentecostal Churches, Uganda Church of Christ, Campus Crusade for Christ, International Bible Students Association, The Navigators of Colorado, The Uganda East African Yearly Meeting, Emmaus Bible School, Legio Maria of Africa and Jehovah's Witness were declared unlawful societies on the ground that the societies are dangerous to peace and order in Uganda.
- [72] However, under S.I. No. 18 of 2000, Attorney General Bart Katureebe, (as he was then), revoked S.I. Nos. 106-1, 106-2, 171 of 1966, 12 of 1968, 194 of 1969, 233 of 1969, 153 of 1972, 35 of 1991, and 41 of 1991.

- [73] The brunt of the use of this power has been in relation to political and religious organisations and to a lesser extent, civil organisations. It has been directed at associations for political, civic or religious association on the blanket ground that they are dangerous to the peace and order in Uganda. What is perhaps clear in relation to political organisations is that the governments of the day have viewed with suspicion those organisations on account of being opposed to those or even foreign governments rather on account of peace and order in Uganda.
- [74] The effect or impact of an order of the minister under the impugned provisions was to curtail the fundamental rights and freedoms of the petitioners, and the members of those societies proscribed or declared unlawful, in relation to freedom of association, expression and assembly. To that extent both the orders made under the impugned provision and the impugned provisions violated the petitioners' rights protected by the Constitution.
- [75] It would appear to me that the article 43 sets a new threshold hitherto unavailable in Uganda. Any impairment of a chapter 4 fundamental right and freedom must be premised on protecting the fundamental rights and freedoms of other persons or the public interest and it must be **'demonstrably justifiable in a free and democratic society'**.
- [76] Under article 1 (3) of the Constitution 'all power and authority of Government and its organs derive from' the Constitution. The Constitution is the supreme law of Uganda under Article 2 (1) and has binding force on all authorities and persons throughout Uganda. All other laws must be consistent with the Constitution and where such other laws are inconsistent with the Constitution they are void to the extent of the inconsistency. As section 56 (2) (c) of the Penal Code Act has the effect of impairing chapter 4 rights it must be shown that the exercise of such power is necessary and demonstrably justifiable in a free and democratic society.

- [77] The legislative measure adopted in section 56 (2) (c) of the Penal Code Act would be appear to be arbitrary and unfair. It is not preceded by an inquiry including the hearing of the affected persons whether within the Executive arm of Government or by an independent court of law.
- [78] In my view such power is neither necessary nor justifiable in a free and democratic society, given that there are provisions in the law of this country under Chapter V111 of the Penal Code Act, able to deal with persons and associations engaged in activities that are criminal in nature. This chapter creates offences and punishments in relation to unlawful societies, unlawful assemblies, riots and other offences against public tranquillity. It is not suggested that such provisions are ineffective hence the need for this power under section 56 (2) (c) of the Penal Code Act.
- [79] At the same time there are concurrent provisions in section 56 (1) and (2), not challenged in the present petition, which define an unlawful society and offences are created in relation to managing such unlawful societies in sections 57 and 58 which have not been attacked in this petition. Those provisions allow for judicial inquiry as charges must be raised and tried before an independent court. It is not suggested that those specific provisions in relation to unlawful societies are inadequate. In my view they would be sufficient to cover any threat to the peace and public order of the country without resort to the draconian provision under section 56 (2) (c).
- [80] The respondent has not shown before this court that the 2 civic groups to which the petitioners belonged threatened the chapter 4 rights and freedoms of any other persons or the public interest. Section 56 (2) (c) of the Penal Code Act does not oblige the Attorney General or responsible Minister to apply a constitutional threshold before issuing such an order. In failing to do so I am satisfied that it fails to pass constitutional muster and can be become a tool for the unjustifiable infringement of any one's right or freedom of expression, movement, religion, assembly and association. Past use of this power points more to abuse of fundamental rights and freedoms rather protection of such rights.

- [81] In exercise of such power, under section 56 (2) (c) of the Penal Code Act, the Minister or Attorney General is not required to conduct an investigation, hold a hearing, or give the affected people, an opportunity to be rebut any allegations against them. There is no oversight provided against abuse of such power. It is more consistent with a colonial or dictatorial regime than with a just, free and democratic society. In my view, it is impermissible under article 43 of the Constitution.
- [82] I am strengthened in my view by a Supreme Court of India decision in State of Madras v V. G. Row [1952] AIR 196 which considered, 70 years ago, the constitutionality of a provision that is somewhat akin to the impugned provision in the case before us. In that case section 15 (2) (b) of the Indian Criminal Law Amendment Act, 1908, as amended by the Indian Criminal Law Amendment Act, 1950, included within the definition of an “unlawful association” an association “which has been declared by the State by notification in the official Gazette to be unlawful on the ground (to be specified in the notification) that such association (i) constitutes a danger to the public peace; or (ii) has interfered or interferes with the maintenance of public order or has such interference for its object, or (iii) has interfered or interferes with the administration of the law or has such interference for its object.” Section 16 of the Act as amended provided that a notification under section 15 (2) (b) shall (i) specify the ground on which it is issued and such other particulars, if any, as may have a bearing on the necessity therefor and (ii) fix a reasonable period for any office bearer or member of the association or any other person interested to make a representation to the State Government in respect of the issue of the notification. Under section 16 A the Government was required after the expiry of the time fixed in the notification for making representation to place the matter before an Advisory Board and to cancel the notification if the Board finds that there was no sufficient cause for the issue of such notification. There was however no provision for adequate communication of the notification to the association and its members or office bearers. It was conceded that the test under section 15 (2) (b) as amended was, as it

was under section 16 as it stood before the amendment, a subjective one and the factual existence or otherwise of the grounds was not a justiciable issue and the question was whether section 15 (2) (b) was unconstitutional and void.

- [83] The Supreme Court held on appeal, affirming a decision of the High Court that section 15 (2) (b) imposed restrictions on the fundamental right to form associations guaranteed by article 19 (1) (c), which were not reasonable within the meaning of article 19 (4) and was therefore unconstitutional and void. The fundamental right to form associations or unions guaranteed by article 19 (1) (c) of the Constitution has such a wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields that the vesting of the authority in the executive Government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects to be duly tested in a judicial inquiry, is a strong element which should be taken into account in judging the reasonableness of restrictions imposed on the fundamental right under article 19 (1) (c). The absence of a provision for adequate communication of the Government's notification under section 15 (2) (b) by personal service or service by affixture to the association and its members and office-bearers was also a serious defect. **The formula of subjective satisfaction of the Government or of its officers with an advisory Board to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits.** In considering the reasonableness of laws imposing restrictions on fundamental right, both the substantive and procedural aspects of the impugned law should be examined from the point of view of reasonableness and the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. **The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the**

imposition, the prevailing conditions at the time should all enter into the judicial verdict.

- [84] The impugned provision in Uganda is much more draconian than the Indian provision. No notice to the affected party is necessary. No judicial inquiry is provided for. There are no provisions for testing the correctness of the factual grounds for the order of the Minister. No review of any sort is provided for. There is no evidence of any sort provided by the respondent in relation to the underlying purpose of the restrictions or order made by the Minister, the factual basis for the same, or the extent and urgency of the evil sought to be remedied by such order. Neither is any evidence produced to enlighten this court on both the proportionality of the restriction and the prevailing conditions at the time the order was imposed.
- [85] I would hold that section 56 (2) (c) is unconstitutional for impairing articles, 21, 28 (1), 29, 38 and 43 of the Constitution. It has, however, not been demonstrated that it contravenes article 42 as the order to declare a society unlawful is hardly simply an administrative decision and it requires no hearing of any sort prior or after it is made.
- [86] The whole statutory scheme that is premised on the order made under section 56 (2) (c) of the Penal Code Act must collapse on the finding that such order is unconstitutional. This would cover sections 59, 60, 61, 62 and 63 of the Penal Code Act, only in so far as they relate to an order by the Minister made under section 56 (2) (c) of the Penal Code Act, which are to that extent, consequentially unconstitutional, given that their foundation is unconstitutional.
- [87] Counsel for the petitioners also contended that section 63 of the Penal Code Act that allows property of a society that has been declared unlawful to be disposed of is unconstitutional and contrary to Article 26 (2) of the Constitution that requires adequate compensation before compulsory acquisition of property by the state. Article 26 of the Constitution provides:
- ‘26 Protection from deprivation of property.**

- (1) Every person has a right to own property either individually or in association with others.
- (2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-
 - (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
 - (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for-
 - (i) prompt payment of fair and adequate compensation prior to the taking of possession or acquisition of the property and;
 - (ii) a right of access to a court of law by any person who has an interest or right over the property.’

[88] Section 63 of the Penal Code Act is to the effect that when a society is declared to be unlawful by the order of the Attorney General, its property vest in officer appointed by the Minister who is to find the affairs of the property. In case of any surplus assets, they are to be applied to a scheme following the approval of the Attorney General. Considering the historical background in this country where the past governments compulsorily acquired people’s property, it is no wonder that the current Constitution is very restrictive on the powers of the government to acquire land compulsorily. It provides for adequate compensation before taking possession or acquisition under Article 26 (2) (b) (i). In my view, section 63 is inconsistent with Article 26 (2) (b) (i). See Uganda National Roads Authority v Irumba Asuman [2015] UGSC 22.

Decision

[89] I would grant the following orders:

- (a) A declaration that section 56 (2) (c) of the Penal Code Act is inconsistent with and in contravention of articles 21, 28, 29, 38 and 43 of the Constitution.
- (b) A declaration that sections 59, 60, 61, 62, 63 and 64, to the extent that they relate to a society purported to be unlawful by reason of the operation of section 56 (2) (c) of the Penal Code Act, contravenes and is inconsistent with articles 21, 29, 38, and 43 of the Constitution.
- (c) A declaration that section 63 of the Penal Code Act is inconsistent with and in contravention of Article 26 (2) (b) (i) of the Constitution.
- (d) An order quashing the Penal Code (Declaration of Unlawful Societies) Order, Statutory Instrument No.14 of 2012, issued on 4th April 2012.

Signed, dated and delivered at Kampala this

1st day of Sept

2020

Fredrick Egonda-Ntende

Justice of the Constitutional court

THE REPUBLIC OF UGANDA,

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

*(Coram: Owiny- Dollo, DCJ, Kakuru, Egonda-Ntende, Cheborion, Madrama,
JJA / JJCC)*

CONSTITUTIONAL PETITION NO 32 OF 2012

BETWEEN

- 1. MATHIAS MPUUGA}
2. MUHAMMAD MUWANGA KIVUMBI}PETITIONERS**

AND

ATTORNEY GENERAL}RESPONDENTS

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

I have read in draft the lead judgment of Hon. Justice Frederick Egonda – Ntende, JA/JCC and I agree with his summary of the relevant facts, analysis of the issues disclosed in the petition and answer to the petition and the resolution of the issues.

In the result, I concur with the judgment of Hon. Justice Frederick Egonda – Ntende, JA/JCC and have nothing useful to add.

Dated at Kampala the 1st day of Sept 2020


Christopher Madrama Izama

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

**CORAM: OWINY - DOLLO, DCJ; KAKURU, EGONDA-NTENDE, CHEBORION
BARISHAKI, & MADRAMA IZAMA JJA/JJCC.**

CONSTITUTIONAL PETITION No. 32 OF 2012

BETWEEN

1. MATHIAS MPUUGA

2. MUHAMMAD MUWANGA KIVUMBI

}

.....PETITIONERS

AND

ATTORNEY GENERAL} RESPONDENT

JUDGMENT OF OWINY - DOLLO; DCJ

I have had the benefit of reading, in draft, the judgment of my learned brother Egonda-Ntende JA/JCC. I agree with his reasoning, findings, and the conclusion he has reached that this petition must succeed. Since Kakuru, Barishaki and Madrama JJA/JJCC are also in agreement, orders are hereby issued in the terms proposed by Egonda-Ntende JA/JCC in his judgment.

Dated, and signed at Kampala this ^{1st} day of ^{Sept} 2020



Alfonse C. Owiny - Dollo

Deputy Chief Justice

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 32 OF 2012

1. MATHIAS MPUUGA

2. MUHAMMAD MUWANGA KIVUMBI..... PETITIONERS

VERSUS

THE ATTORNEY GENERAL..... RESPONDENT


CORAM: Hon. Mr. Justice Alfonse C. Owiny-Dollo, DCJ
Hon. Mr. Justice Kenneth Kakuru, JA/ JCC
Hon. Mr. Justice F.M.S Egonda-Ntende JA/ JCC
Hon. Mr. Justice Cheborion Barishaki, JA/JCC
Hon. Mr. Justice Christopher Madrama, JA/JCC

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment of my learned brother Hon. Mr. Justice F.M.S Egonda-Ntende JA.

I agree with him that this petition ought to succeed to the extent he has set out in his well reasoned Judgment. I also agree with the orders he has proposed and I have nothing useful to add.

Dated at Kampala this 1st sept **day of** **2020.**


.....
Kenneth Kakuru
JUSTICE OF APPEAL/CONSTITUTIONAL COURT

5

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

*(Coram: Owiny-Dollo, DCJ. Kenneth Kakuru, Egonda-Ntende, Cheborion
Barishaki & Christopher Madrama, JJA/ JJCC)*

Constitutional Petition No.32 of 2012

10

BETWEEN

1. Mathias Mpuuga

2. Muhammad Muwanga Kivumbi

.....Petitioners

AND

15

Attorney General:.....Respondent

JUDGMENT OF CHEBORION BARISHAKI, JA/JCC

I have had the benefit of reading in draft the judgment of my learned brother Egonda-Ntende, JA/JCC and I agree that this Petition ought to succeed.

20 The Constitution under Article 29 protects freedom of conscience, expression and association. The right of every Ugandan to participate in peaceful activities to influence the policies of Government through civic organisations is guaranteed. The two groups; Activists for Change (A 4 C) and For God and my Country (4 Q C) were formed in line with this Constitutional provision and
25 therefore legal. For any person to declare them unlawful, he has to comply with

5 the requirement of according each side a fair hearing as required by Article 28(1) of the Constitution.

Section 56 (2) (C) of the Penal Code Act does not provide for a hearing at all. It gives the Minister unfettered discretion to declare such societies unlawful without meeting this Constitutional requirement.

10 It is the Minister alone to decide whether activities of the Organization amount to a danger to peace.

The provisions of Article 43 of the Constitution show that the enjoyment of rights and freedoms are not absolute. The limitations to be enforced on the enjoyment of the rights have to be acceptable and demonstrably justifiable in a free and
15 democratic society, or what is provided in the Constitution.

I find the enormous and unlimited powers granted to the Minister under section 56(2) (c) of the Penal Code Act unjustified because the Minister can declare a society such as 4 A C unlawful without granting it a hearing.

It was incumbent upon the respondent to demonstrate that the powers granted
20 to the Minister under section 56 of the Penal Code Act were necessary and justified. In an attempt to do so, the respondent submitted that the sections were intended to maintain political stability in the Country. The respondent also submitted that the formation of the pressure groups violated the rights of other citizens.

5 In both assertions, the respondent did not show, explain or demonstrate how the sections were necessary or how the groups' existence violated the human rights of other citizens. These assertions by the respondent were merely speculative without any basis or merit.

It is taken that regulation of organizations is necessary as societies may be
10 formed for unlawful purposes and the Minister would have every right to stop them but this should be done following the Constitutional path.

The 1995 Uganda Constitution put in place several principles to guarantee respect for human rights and democracy. I find that section 56 contravenes Article 28(1) of the Constitution which guarantees the right to a fair hearing.

15 I do not agree with the submissions by the respondent that the societies are meant to maintain peace and Constitutional stability in the country. To the contrary, they undermine the democratic principles of right of assembly, freedom of speech and association.

In the result I would allow the appeal and adopt the orders proposed by Justice
20 Egonda-Ntende, JA/JCC.

Dated at Kampala this day of 2020


Cheborion Barishaki, JA/JCC