

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

*[Coram: Egonda-Ntende, Barishaki Cheborion, Musoke, Kibeedi &
Mulyagonja; JJCC]*

CONSTITUTIONAL PETITION NO. 20 of 2014

BETWEEN

Joshua Tumwine _____ Petitioner


AND

Attorney General _____ Respondent No. 1
Uganda Revenue Authority _____ Respondent No. 2

Judgment of Fredrick Egonda-Ntende, JCC

- [1] I have had the benefit of reading in draft the judgment of my sister, Musoke, JCC. I agree with it and have nothing useful to add.
- [2] As Barishaki Cheborion, Kibeedi and Mulyagonja JJCC, agree, the petition is dismissed with no order as to costs.

Dated, signed and delivered at Kampala this 4th day of May 2021


Fredrick Egonda-Ntende
Justice of the Constitutional Court

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 0020 OF 2014**

JOSHUA TUMWINE:.....PETITIONER
VERSUS

1. ATTORNEY GENERAL

2. UGANDA REVENUE AUTHORITY:.....RESPONDENTS

**CORAM: HON. MR. JUSTICE FREDRICK EGONDA NTENDE, JCC
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC
HON. MR. JUSTICE CHEBORION BARISHAKI, JCC
HON. MR. JUSTICE MUZAMIRU KIBEEDI, JCC
HON. LADY JUSTICE IRENE MULYAGONJA, JCC**

JUDGMENT OF ELIZABETH MUSOKE, JCC

The petitioner filed this Petition pursuant to the provisions of **Article 137 (3), (4) and (7)** of the **1995 Constitution** after he felt aggrieved with certain acts done by then Minister responsible for Finance which he alleges to have been inconsistent with and/or in contravention of the 1995 Constitution.

Background

On 12th June, 2014, Hon. Maria Kiwanuka, then Minister responsible for Finance, appeared before Parliament to present the Government's estimates of revenues and expenditure for the next financial year, 2014/15. In the speech she read to Parliament (Annexure A to the petitioner's affidavit in support of the Petition), the Minister spoke of the emergency of Mobile Money Services (MMS), and said that in the course of the preceding year, approximately 14 million Ugandans had utilized those services. The Minister stated that in a bid to increase Government revenue, it would be necessary to impose a 10% Excise duty tax on withdrawals made through MMS, a measure which was anticipated to generate revenue of Ug. Shs. 16 billion. The tax was subsequently imposed and collected.

The Petitioner alleges that Mobile Money Business (MMB) was unregulated prior to its being mentioned in the relevant budget speech. The fact of being unregulated meant that MMB was an illegitimate economic activity. The Petitioner further alleges that MMB is a financial institution business within the meaning of Section 3 of the Financial Institutions Act, 2004 (FIA). Under the FIA, there is a requirement that only persons with licences may carry on a financial institution business. As a result, because MMB was offered by Telecom Service providers who do not have a license to carry on a financial business, the petitioner asserts that in carrying out MMB, those service providers were committing a crime proscribed by Section 4 (1) of the FIA. The Petitioner faults the Minister for encouraging illegal and unlawful trade/business activity and citizens to break the law by using the illegal MMS. The Petitioner also makes further allegations which will be examined during the resolution of the Petition. He then prays that this Court grants the following declarations and orders:

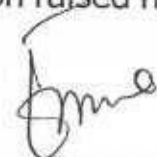
- "(i) The Ministerial act of recognizing the business and taxation of Mobile Money Services pursuant to the National Budget 2014/15 amounts to legitimization of illegal business contrary to the Financial Institutions Act, 2004 and is an act which undermines the rule of law in business, and is inconsistent with Articles 2, 17 (f), 40 (2), 111 (2), 115, 152 and 162 of the 1995 Constitution.**
- (ii) The Ministerial act of recognizing the business and taxation of Mobile Money Services pursuant to the National Budget 2014/15 contrary to the Financial Institutions Act 2004, undermine and interferes with the constitutional mandate of the Bank of Uganda to properly regulate The financial sector in Uganda and is in contravention of Articles 2, 79 and 162 of the Constitution of the Republic of Uganda.**
- (iii) The Ministerial act of recognizing the business and taxation of Mobile Money Services pursuant to the National Budget 2014/15, the conduct of which business amounts to a criminal offence under the Financial Institutions Act, aids and abets the commission of a criminal offence, enables the offender to evade the criminal sanction and is inconsistent with Articles 2, 20, 28, 40, 79 and 162 of the 1995 Constitution.**



- (iv) **The Ministerial act of recognizing the business and taxation of Mobile Money services contrary to the Financial Institutions Act, 2004 promotes unequal and discriminatory treatment before and under the law and is in contravention of Articles 2, 20, 21, 40 and 79 of the 1995 Constitution.**
- (v) **The Taxes and Duties (Provisional Collection) Order, 2014 which enables imposition and collection of a 10% Excise Duty by the 2nd respondent on Mobile Money withdrawal fees legitimizes an illegal business contrary to and is inconsistent with Article 79 which requires Parliament to make laws to promote order, development and good governance.**
- (vi) **A permanent injunction issues against the respondents, any Government organ or agency, their officer, agents or servants, restraining them from continued recognition/legitimization of the business and taxation of Mobile Money Services until the legalization of the said business.**
- (vii) **An order granting costs of the Petition to the petitioner.**
- (viii) **Any other or further declaration or order as Court may deem fit."**

The petitioner deponed two affidavits in support of the Petition setting out the relevant evidence. The respondents opposed the Petition. In answer to the Petition, the 1st respondent contended that the Petition raised no question for constitutional interpretation and that therefore, this Court has no jurisdiction to entertain it. In the alternative, the 1st respondent contended that the allegations of unconstitutionality set out in the Petition were unfounded. The evidence in support of the 1st respondent's Answer was set out in an affidavit deponed by Ms. Kiyingi Josephine, a State Attorney in the 1st respondent's chambers.

In its Answer, the 2nd respondent contended that "the Petition is misconceived and misguided in its entirety in so far as it is premised on ignorance of the Bank of Uganda Act and the Bank of Uganda Mobile Money Guidelines, 2013 which regulates the mobile money banking and mobile money services in Uganda." According to the 2nd respondent, the Petition is premised on misinterpretation of the provisions of the FIA in relation to the MMB. The 2nd respondent also contended that the Petition raised no question



for constitutional interpretation, and that the allegations therein that the 2nd respondent did acts which were inconsistent with the 1995 Constitution, were misconceived. The evidence in support of the 2nd respondent's Answer was set out in an affidavit deposed by Mr. Kizito Kiwanuka John Baptist, an employee of the 2nd respondent.

Representation

At the hearing, Mr. Andrew Oluka, learned counsel appeared for the Petitioner. Ms. Clare Kokunda, learned State Attorney in the 1st respondent's Chambers appeared for the 1st respondent. Mr. Ronald Baluku Masamba, Mr. Donald Bakashaba and Mr. Allideki Ssali Alex, all learned counsel, jointly appeared for the 2nd respondent. Counsel made oral submissions in support of the cases for the respective parties.

Petitioner's submissions

Counsel for the Petitioner submitted that the thrust of the petitioner's case is that while reading the budget for the financial year 2014/15, then Minister responsible for Finance, spoke about the MMB, and said among other things, that it was an emerging business; and that a tax could be imposed on it for purposes of raising Government revenue. In doing so, and considering that the MMB was unregulated at the time, the Minister had acted in contravention of the 1995 Constitution. Counsel further submitted that by her acts, the Minister had imposed and created a tax on MMS in a budget speech, which was unconstitutional. The Minister's proposals to have tax imposed on the MMS were adopted by Parliament which eventually led to the taxing of the MMS. In counsel's view, an unregulated business could not be taxed, and doing so as the Minister had proposed to be done in the present case was unconstitutional.

Counsel further contended that at the relevant time, the MMS which was unregulated had a semblance of a financial institution business, but it actually was not, and thus remained unregulated.

Counsel also contended that the **Taxes and Duties (Provisional Collection) Order, 2014**, passed by then Minister of State responsible for

Time

Finance, in so far as it permitted the collection of taxes imposed on then unregulated MMB was inconsistent with Article 79 of the 1995 Constitution and an ultra vires exercise of powers of the said Minister.

1st respondent's submissions

Counsel for the respondent submitted that the issues raised in the Petition could best be addressed in an action instituted pursuant to Article 50 of the 1995 Constitution, before a competent Court.

On the constitutionality of the impugned 2014 Order, counsel for the 1st respondent submitted that the Order was an exercise of Ministerial powers authorized under the Taxes and Duties Provisional Collection Act, Cap. 348. The Order was therefore not illegal and the collection of taxes pursuant to it did not contravene any provision of the 1995 Constitution.

2nd respondent's submissions

Counsel for the 2nd respondent, relying on the decision of this Court in **Jude Mbabali vs Edward Kiwanuka Ssekandi, Constitutional Petition No. 28 of 2012**, submitted that complaints alleging violation of rights enshrined in the 1995 Constitution, such as the ones contained in the present Petition, can best be handled in an action pursuant to **Article 50** of the **1995 Constitution** lodged in the Competent Court. However, counsel did not point out these violations which he felt could best be handled under Article 50.

On the merits of the Petition, counsel for the 2nd respondent submitted that the petitioner's allegations that the Minister, in relation to MMB, did any act which was or promoted illegality were misconceived. Counsel for the 2nd respondent submitted that the Minister acted in exercise of powers vested in her by Article 79 of the 1995 Constitution, and all the actions she took were legal.

Counsel further submitted that the Petition had been overtaken by events and will only lead in this Court making a moot or academic decision. He prayed that this Court finds that this Petition has been overtaken by events and dismisses it.



Resolution of the Petition

I have carefully studied the Petition and the respective respondent's Answer thereto, and considered the evidence and counsel's submissions made in support of each party's case. The jurisdiction of this Court to entertain Constitutional Petitions is derived from Article 137 of the 1995 Constitution which is reproduced below:

"137. Questions as to the interpretation of the Constitution.

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

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

(3) A person who alleges that—

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

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

(4) Where upon determination of the petition under clause (3) of this article the constitutional court considers that there is need for redress in addition to the declaration sought, the constitutional court may—

(a) grant an order of redress; or

(b) refer the matter to the High Court to investigate and determine the appropriate redress.

(5) ...

(6) ...

(7) ..."

Each respondent contends that the Petition raises no question for constitutional interpretation. I observe that the Supreme Court and this Court have in the past stressed that the Constitutional Court does not have jurisdiction to entertain matters which do not require interpretation of the Constitution. Matters, which allege rights violations, alone, for example do

for me

not require Constitutional interpretation and must be referred to a competent Court for resolution through actions lodged pursuant to Article 50 of the 1995 Constitution. **See for example: Attorney General vs. Tinyefuza, Constitutional Appeal No. 1 of 1997 (Supreme Court); Ismail Serugo vs. Kampala City Council and Another, Constitutional Appeal No. 2 of 1998 (Supreme Court); Charles Kabagambe vs. U.E.B, Constitutional Petition No. 2 of 1999.**

Having said that, it is not true, as contended by the respondents that the petitioner is alleging human rights violations in the present Petition. In my view, there are three main allegations made by the petitioner which may be put this way. First, the petitioner alleges that businesses undertaken in this country will only be said to be legitimate if they are regulated by Government. Second, the petitioner alleges that taxes can only be imposed on regulated businesses in this country. Third, that in 2014, Mobile Money Business (MMB) was not regulated and therefore, it was unconstitutional for the Minister responsible for Finance, while giving her budget speech for that year, to recognize it as a legitimate business and to propose its taxation. The petitioner alleges that his allegations are founded on the provisions of the 1995 Constitution. This must be assumed to be true at this stage. Therefore, I find that the three questions highlighted above as contained in the Petition call for constitutional interpretation.

I will now proceed to consider the merits of the Petition. I will begin by considering the third allegation, because if answered in the negative, it will have the effect of disposing of the Petition and rendering the resolution of the other two allegations, academic. The petitioner alleges that MMB was unregulated in 2014. The 2nd respondent disagrees, and states in its Answer that MMB was at the time regulated by Bank of Uganda (BOU) which had put in place regulations for the purpose. I note that the 1995 Constitution establishes the BOU with functions set out under Article 162 (1) thereof, which provides:

"162. Functions of the bank.

(1) The Bank of Uganda shall—

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- (a) promote and maintain the stability of the value of the currency of Uganda;
- (b) regulate the currency system in the interest of the economic progress of Uganda;
- (c) encourage and promote economic development and the efficient utilisation of the resources of Uganda through effective and efficient operation of a banking and credit system; and
- (d) do all such other things not inconsistent with this article as may be prescribed by law."

As one of its functions, BOU may "do all such other things not inconsistent with Article 162 as may be prescribed by law." Pursuant to the Bank of Uganda Act, Cap. 51, the BOU is responsible for maintaining monetary stability, and may be put in place regulations for purposes of achieving that objective. The BOU issued the Bank of Uganda Mobile Money Guidelines, 2013 ("The 2013 Guidelines") which came into force on October 1, 2013. Under those guidelines, it is stated that:

"These Guidelines address mobile money issues. Mobile money, along with "mobile banking", pertains to the larger area of "mobile financial services". "Mobile money" is e-money available to a user to conduct transactions through a mobile phone. The mobile money wallet/mobile money account is an electronic money (e-money) account which receives electronic value either after the account holder deposits cash via an agent or receives a payment/remittance from elsewhere. "Mobile banking", on the other hand, refers to the use of a mobile phone to perform transactions on one's account in a licensed institution (including balance inquiries, mini-statements, statements and cheque books requisitions, forex rates enquiries and funds transfer to other nominated bank accounts). The term "mobile financial services" encompasses both "mobile money" and "mobile banking".

Currently, mobile money services are offered by mobile network operators (MNOs), as well as other mobile money service providers, who operate mobile money services using the MNOs' networks – in partnership with licensed institutions to offer the mobile money service. The rapid growth of the mobile money service demonstrates the financial inclusion potential of the service."



The objectives of the 2013 Guidelines were as follows:

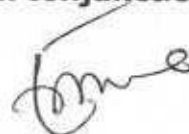
"The objectives of these Guidelines are to:

- (a) Provide clarity on mobile money services to customers, mobile money service providers, licensed institutions, mobile money agents and other parties involved in the provision of mobile money services in Uganda;**
- (b) Outline the approval procedure for parties seeking to engage in the provision of mobile money services;**
- (c) Stipulate roles and responsibilities of parties engaged in the provision and usage of mobile money services;**
- (d) Foster consumer protection for mobile money customers including a mechanism for handling complaints relating to the provision of mobile money services and further the interests of customers in mobile money services;**
- (e) Enhance competition in the provision of mobile money services and related markets; and**
- (f) Promote financial inclusion."**

According to the **Black's Law Dictionary, 8th Edition**, regulation is defined as "...the act or process of controlling by rule or restriction". In view of that definition, I find that in 2013, the BOU enacted Guidelines which were aimed at controlling MMB, as can be seen from the above objectives. The Guidelines provided for such things as 1) the process of getting approval to start MMB (Guideline 6); the role of the various stakeholders such as the BOU, Uganda Communications Commission (UCC), Mobile Money Service Provider, Mobile Money Agent and the Customer (Guideline 7), among other things. The Guidelines recognized that MMB was growing at a fast pace and there was need to put in place a more comprehensive regulatory framework than the Guidelines. Therefore, the Guidelines were intended to be an interim measure, as was stated in Guideline 14:

"14. Future Development of the Regulatory Framework for Mobile Money

These Guidelines are an interim measure for enabling the operation of the mobile money service. The Bank of Uganda in conjunction with other



stakeholders will create a comprehensive regulatory framework over time through the necessary legal and regulatory changes."

By 16th July, 2014 when the petitioner filed this Petition, there was some regulatory framework for MMB in place since 1st October, 2013; that the petitioner was oblivious of this is clearly apparent from his Petition. Therefore, it is hard to disagree with the statement contained in paragraph 4 of the 2nd respondent's Answer that "the Petition is misconceived and misguided in its entirety in so far as it is premised on ignorance of the Bank of Uganda Act and the Bank of Uganda Mobile Money Guidelines, 2013 which regulates Mobile Banking and Mobile Money Services in Uganda". Further, I must note that on 12th June, 2014, when the Minister responsible for Finance read the Budget Speech for 2014/15 Financial Year, the 2013 Guidelines were already in place. Therefore, she did not recognize an unregulated business in that speech as the petitioner alleges.

Moreover, in the intervening period since the Petition was filed, Parliament has enacted legislation that regulates MMB, to wit The National Payment Systems Act, 2020 (NPSA). This law recognizes "electronic money" or "mobile money" as referred to in the Petition, and the same is defined to mean "a monetary value represented by a claim on the issuer, which is: (a) stored on an electronic device; (b) issued upon receipt of funds in an amount not less in value than the monetary value received; (c) accepted as a means of payment by undertakings other than the issuer; and d) prepaid or redeemable in cash. Section 3 of the NPSA provides the legislation's objects as interalia; to provide for the safety and efficiency of payment systems; and to prescribe the framework to govern the oversight and protection of payment systems.

While making reference to the enactment of the NPSA, counsel for the 2nd respondent, submitted that at the hearing, the Petition had been overtaken by events and had become academic. Counsel for the Petitioner conceded that the NPSA provides a framework for regulation of MMB, but he insisted that given that it was enacted in 2020, the petitioner's complaints which were made in 2014 could not be retrospectively addressed by taking into



account the NPSA. I have already found earlier in this Judgment, that MMB was regulated by the BOU 2013 Guidelines. Therefore, I reject as misplaced, the petitioner and his counsel's allegations that MMB was unregulated in 2014 when the petition was filed.

The above findings mean that the Minister acted in accordance with **Article 155 (1)** of the **1995 Constitution**, which lays down the procedure for presenting estimates of revenue expected to be collected by Government. Article 155 (1) provides as follows:

"155. Financial year estimates.

(1) The President shall cause to be prepared and laid before Parliament in each financial year, but in any case not later than the fifteenth day before the commencement of the financial year, estimates of revenues and expenditure of Government for the next financial year."

The Minister, in conforming with the requirements of Article 155 (1) of the 1995 Constitution, communicated to Parliament the revenue that Government expected to collect from tax levied on fees charged on withdrawals from Mobile Money Services. Further, the tax was imposed by an Act of Parliament as obligated by Article 152 (1) of the 1995 Constitution which provides:

"152. Taxation.

(1) No tax shall be imposed except under the authority of an Act of Parliament."

In terms of the above stated provision, tax was imposed on Mobile Money Services under the authority of an Act of Parliament, to wit, the Excise Duty Act, 2014 which commenced on 1st July, 2014. The said legislation imposed a tax of 10% of the fees charged on Money transfer or withdrawal services, including through Mobile Money Services. It was therefore erroneous for the petitioner to allege that tax on MMB was imposed pursuant to either the National Budget 2014/15, or solely based on the Taxes and Duties (Provisional Collection) Order 2014.

I note that provisional tax collection orders are provided for under the Taxes and Duties (Provisional Collection) Act, Cap. 348, and are meant to facilitate

the collection of taxes in the period, between the introduction of a tax bill and its passing into law by parliament. Section 1 of Cap. 348 provides:

"1. Provisional collection orders.

Whenever the Government approves the introduction into Parliament of a bill by which if the bill were passed into law—

(a) any tax or duty or rate of tax or duty, or any allowance relating to the tax or duty, would be imposed or created; or

(b) any tax or duty or any such rate or allowance would be altered or removed, the Minister may, subject to this Act, by statutory instrument order that there shall be charged, levied and collected the tax or duty which would become payable if the bill were passed into law and came into operation in place of the tax or duty which would otherwise be payable or, as the case may be, that there shall cease to be charged, levied and collected any tax or duty which would cease to be payable if the bill were passed into law and came into operation."

The Minister of State responsible for Finance, alive to the fact that Government had introduced in parliament, the Excise Duty Bill, 2013 which was subsequently passed as the Excise Duty Act, 2014, made an Order providing for collection of tax which would be imposed by the latter Act. The Order was intended to be in place until the process of passing the Act was completed, and in this case from 1st July, 2014 until 19th October, 2014 when the Act was assented to. In my view, the purpose of legislation governing provisional tax collection orders is to ensure that, during the transition from one financial year to the other, when some Tax Acts from the previous year have expired, and the process of enacting new ones has started, there will be an Act of Parliament under whose authority tax can be imposed and collected, so as to comply with Article 152 (1). This is what was done in 2014, and I would find that contrary to the petitioner's allegations, all the responsible Ministers acted in accordance with the 1995 Constitution and the relevant laws.

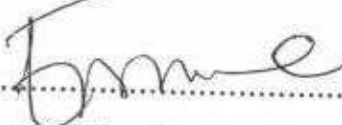
All in all, I would find that the petitioner's allegation that Mobile Money Services and Business was unregulated in 2014 is untrue. As this formed the basis for the other allegations contained in the Petition, I am inclined to find



that the Petition is misguided and lacking in merit, and would dismiss it. However, as the Petition was brought in the public interest of seeking clarity about the constitutionality of Mobile Money Services and Business, used by millions of citizens, I would make no order as to costs.

I would so order.

Dated at Kampala this^{20th}..... day of^{May}..... 2021.

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Elizabeth Musoke

Justice of the Constitutional Court

1. ATTORNEY GENERAL
2. UGANDA REVENUE AUTHORITY:.....RESPONDENTS
CORAM: HON. MR. JUSTICE FREDRICK EGONDA NTENDE, JCC
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC
HON. MR. JUSTICE CHEBORION BARISHAKI, JCC
HON. MR. JUSTICE MUZAMIRU KIBEEDI, JCC
HON. LADY JUSTICE IRENE MULYAGONJA, JCC

I have had the benefit of reading in draft the judgment prepared by my learned sister Musoke, JCC in this matter. I agree with it. For the reasons she has given, I too, would dismiss this Petition but make no order as to costs.

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Justice of the Constitutional Court

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

*(Coram: Egonda-Ntende, Elizabeth Musoke, Barishaki Cheborion,
Muzamiru M. Kibeedi & Irene Mulyagonja, JJCC)*

CONSTITUTIONAL PETITION NO. 0020 OF 2014

BETWEEN

JOSHUA TUMWINE ::::::::::::::::::::::::::::::::::: PETITIONER

VERSUS

1. ATTORNEY GENERAL]

2. UGANDA REVENUE AUTHORITY] ::::::::::::::::::::::::::: RESPONDENTS

JUDGMENT OF MUZAMIRU M. KIBEEDI, JCC

I have had the advantage of reading in draft the Judgment prepared by the Hon. Lady Justice Elizabeth Musoke, JCC. I concur with her reasoning and the orders she has proposed. I wish to add a few remarks for emphasis.

At the centre of this petition is the constitutionality of Mobile Money Services provision in Uganda at the time the petition was filed in court in 2014. As such, it becomes imperative to place the legal dispute in the bigger context.

In 2009, Uganda witnessed the emergence of Mobile Money Services. It was a development that was technologically driven. At the time, the service could not be readily categorized as one of the traditional financial or banking products which the Commercial banks were licensed to deal

in. And neither could it likewise be categorized as one of the traditional "communications" products which the telecommunications companies were licensed to deal in. Provision of mobile money services entailed telecommunication companies "partnering" with licensed commercial banks.

Nevertheless, the new product was readily embraced by Ugandans. While appearing before the Parliamentary Committee on Information and Communication Technology on the 25th February 2015, the Governor of Bank of Uganda stated, among other things, that:

- As of December, 2014, there were over 18 million registered mobile money customers in Uganda;
- The average monthly value of the transactions was UGX 2.1 trillion;
- Mobile money therefore had a high potential to foster financial inclusion in Uganda. (<https://www.bis.org/review/r150310d.htm>)

The number of Mobile Money users has since continued to grow to hitherto unprecedented levels in the financial market. As of 2020, the total number of registered mobile money customers in Uganda was over 30.3 million. And in the third quarter of 2019, the value of mobile money transactions in Uganda corresponded to 5.2 billion U.S. dollars (<https://www.statista.com/statistics/1187304>).

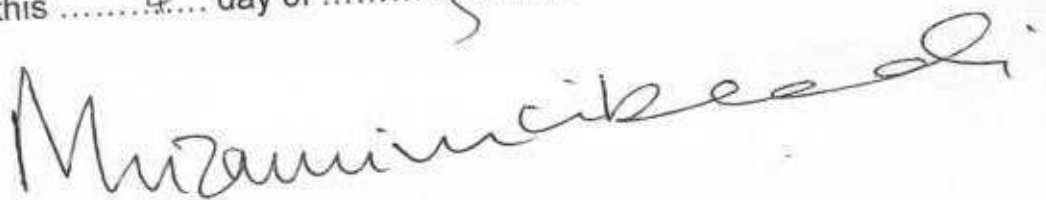
By this petition, the Petitioner sought, among other things, that this court does issue a permanent injunction against government and government agencies restraining it /them from continued recognition /legitimization of the business and taxation of Mobile Money Services on the ground that there was no law regulating that business and, therefore, it was

unconstitutional. In the Lead judgment with which I totally concur, Hon. Lady Justice Elizabeth Musoke has ably demonstrated that the said claim was baseless. That the regulatory framework for the Mobile Money Services at the time of the Petition in July 2014 was contained in the Bank of Uganda Mobile Money Guidelines of 2013. And that Parliament subsequently enacted the National Payment Systems Act, 2020 which, as of now, contains the regulatory framework for the Mobile Money Services.

The aforesaid notwithstanding, this petition sought to resurrect the historical debate about the position of the Law in Change Management. We live in an information era. Technology has become a key driver of change in not only the financial and banking sectors, but also in almost all the other aspects of our daily lives. Technology is "disrupting" all sectors at a rate hitherto unprecedented. In his book titled, *Rich Dad's Guide to becoming Rich*, 2011, Robert T. Kiyosaki stated at Page 29 that in the information technology industry, the time it took a new idea to be conceived and then accepted and adopted, otherwise termed as "lag time" was one year. Eleven years down the road, the lag time in the I.T industry is definitely much shorter. The consequence of such a short and ever shortening lag time is that for a private citizen to expect specific laws to always be passed by parliament or any other regulatory body ahead of the technological innovations that are constantly being generated and/or driven obsolete is not only unrealistic, but is a recipe for commission of "technological suicide" on the part of the country under consideration. When faced with such a challenge, the court of law must make the choice to be an enabler /facilitator of technological development and change. This is the command of Article 126 (1) of the Constitution which enjoins

80 courts to exercise judicial power "in conformity with...the norms and
aspirations of the people" among other key considerations. Our people
have demonstrated that e-money is the way to go through overwhelmingly
embracing the Mobile Money Services. It is only by dismissing this
petition that I would be meeting the standard set by the constitution when
faced with resolution of issues in such grey areas.

85 Dated at Kampala this4th... day ofMay..... 2021.



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Muzamiru Mutangula Kibeedi
JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Egonda-Ntende, Musoke, Barishaki, Mutangula Kibeedi & Mulyagonja, JJCC

CONSTITUTIONAL PETITION NO. 0020 OF 2014

BETWEEN

JOSHUA TUMWINE.....PETITIONER


AND

ATTORNEY GENERALRESPONDENT

JUDGMENT OF IRENE MULYAGONJA, JJA/JJC

I have had the benefit of reading in draft the judgment of my sister, Justice Elizabeth Musoke, JCC. I agree that this petition should be dismissed for the reasons she has ably set out in her judgment, with no order as to costs.

Dated at Kampala this4th.....day ofMay.....2021.


Irene Mulyagonja

JUSTICE OF THE CONSTITUTIONAL COURT