

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
*[Coram: Egonda-Ntende, Barishaki Cheborion, Musoke, Kibeedi &
Mulyagonja; JJCC]*

CONSTITUTIONAL PETITION NO. 28 OF 2013

BETWEEN

LUKWAGO ERIAS=====PETITIONER

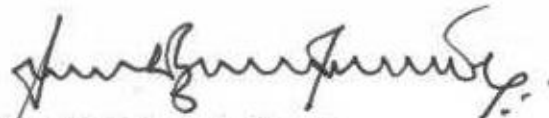
AND

ATTORNEY GENERAL=====RESPONDENT

Judgment of Fredrick Egonda-Ntende, JCC

- [1] I have had the benefit of reading in draft the judgment of my sister, Mulyagonja, JCC. I agree with it and have nothing useful to add.
- [2] As Musoke, Barishaki Cheborion and Kibeedi, JJCC, agree, this 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. 0028 OF 2013**

**LUKWAGO ERIAS, LORD MAYOR
KAMPALA CAPITAL CITY AUTHORITY:::::::::::::::::PETITIONER**

VERSUS

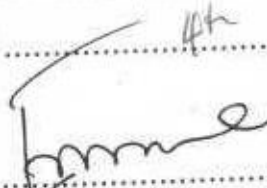
ATTORNEY GENERAL:::::::::::::::::RESPONDENT

**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

I have had the advantage of reading in draft the Judgment of my learned sister Mulyagonja, JCC in this matter. I agree with it. For the reasons she has given, I too would dismiss this Petition and make no order as to costs.

Dated at Kampala this^{14th} day of.....^{May}.....2021.


.....

Elizabeth Musoke

Justice of the Constitutional Court.

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 28 OF 2013

(Coram: Egonda-Ntende, Elizabeth Musinguzi, Cheborion Barishaki, Mutangula

Kibeedi & Irene Mulyagonja, JJCC)

LUKWAGO ERIAS, LORD MAYOR

OF KAMPALA CAPITAL CITY:.....PETITIONER

VERSUS


ATTORNEY GENERAL:.....RESPONDENT

JUDGMENT OF CHEBORION BARISHAKI, JCC

I have had the benefit of reading in draft the judgment prepared by my learned sister Lady Justice Irene Mulyagonja, JCC and I agree with her that this petition ought to be dismissed for the reasons she has ably advanced.

I also agree with the order proposed on costs.

Dated at Kampala this^{4th} day of *May* 2021


Cheborion Barishaki

JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende, Barishaki Cheborion, Musoke, Kibeedi & Mulyagonja; JJCC)

CONSTITUTIONAL PETITION NO. 28 OF 2013

BETWEEN

**LUKWAGO ERIAS, LORD MAYOR OF
KAMPALA CAPITAL CITY** ::::::::::: **PETITIONER**

AND

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

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JCC

I have had the advantage of reading in draft the Judgment prepared by Hon. Lady Justice Irene Mulyagonja, JCC. I agree with the detailed reasoning and the Orders she has proposed. I have nothing useful to add.

Dated at Kampala this 4th day of May 2021



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 Cheborion, Mutangula-
Kibeedi & Mulyagonja; JJCC

CONSTITUTIONAL PETITION NO. 28 OF 2013

BETWEEN

**LUKWAGO ERIAS, LORD MAYOR OF
KAMPALA CAPITAL CITY**

.....PETITIONER

AND

ATTORNEY GENERAL

..... RESPONDENT

JUDGMENT OF IRENE MULYAGONJA, JCC

Introduction

This petition was brought under Article 137 (3) (a) and (b) of the Constitution for declarations that certain provisions of the Kampala Capital City Act (the KCC Act) and actions that the Minister for Kampala took in the course of his duties under the Act are inconsistent with and contravene provisions of the Constitution of the Republic of Uganda as follows:

- i) Section 12(5) of the Kampala Capital City Act to the extent that it confers quasi-judicial powers to the minister who is an integral part of the KCCA administration is inconsistent with and/or in contravention of Articles 28(1), 42 and 44(c) of the Constitution of the Republic of Uganda and is null and void to the extent of the inconsistency.

- 5 ii) Section 79(3) of the Kampala Capital City Act to the extent that it confers unlimited, unguided as well as unfettered and subjective powers to the minister who is an integral part of the KCCA administration is inconsistent with and/or in contravention of Articles 1, 28 (1), 42 and 44(c) of the Constitution of the Republic of Uganda and is null and void to the extent of the inconsistency.
- 10 iii) The act of the respondent in failing to advise the minister responsible for Kampala Capital City Authority on the incompetence of the purported petition of some councilors of Kampala Capital City Authority is inconsistent with and in contravention of Article 119(3) and (4) of the Constitution of the Republic of Uganda.
- 15 iv) The act of the respondent in failing to advise the minister responsible for Kampala Capital City Authority to establish a Physical Planning authority, approve the Public Accounts Committee and to enact the instrument for the election of Councillors representing professional bodies to the Authority is inconsistent with and in contravention of Article 119(3) and (4) (a) of the Constitution of the Republic of Uganda.
- 20 v) The actions of the Minister responsible for Kampala Capital City in frustrating an order of the High Court in Miscellaneous Cause No 60 of 2012 and ordering the unlawful collection of taxi levy of Uganda shilling One Hundred Twenty Thousand is inconsistent with and in contravention of Article 128(2) and (3) of the Constitution of the Republic of Uganda.
- 25 vi) The actions of the Minister responsible for Kampala in frustrating the order of the Constitutional Court in Miscellaneous Cause No. ... (sic) of 2012 restraining the respondent and KCCA from disbanding the Kampala District Land Board and/or refusing to recognize and paralyzing operations of the said Board is inconsistent with and in

contravention of Articles 128 (2), (3) and 241 (2) of the Constitution of the Republic of Uganda.

vii) That the actions of the Minister responsible for Kampala Capital City Authority in acting with bias, partiality and in bad faith while making a quasi-judicial decision of evaluating the petition and establishing a tribunal to investigate the petitioner with a view to removing him from office of Lord Mayor is inconsistent with and in contravention of Article 28(1), 42 and 44(c) of the Constitution of the Republic of Uganda.

viii) That the actions of the Minister for Kampala Capital City Authority in subjecting the petitioner to parallel proceedings, setting up a tribunal to investigate matters which are substantially before Parliament is inconsistent with and in contravention of Article 28(1), 42, 44(c) and 79(3) of the Constitution of the Republic of Uganda.

The petition was supported by the affidavit of the petitioner sworn on the 7th June 2013, in which he enumerated the actions of the Minister for Kampala complained about.

The respondent opposed the petition and filed an affidavit in answer thereto sworn by Mugisha Moses, State Attorney, stating that the petition is misconceived, itself having abated, devoid of merit, frivolous and vexatious.

At the hearing of the petition, the petitioner agreed that because the acts of the Minister had been the subject of judicial review in the High Court and the term within which they occurred expired, they were overtaken by events. The petitioner then decided to continue with the matters raised in paragraphs (i) and (ii) above and he sought the following declarations and orders:

(i) Section 12(5) of the Kampala Capital City Act to the extent that it confers quasi-judicial powers to the minister who is an integral part of the KCCA administration is inconsistent with and/or in contravention of Articles 28(1), 42 and 44(c) of the Constitution of the Republic of Uganda and null and void to the extent of the inconsistency.

(ii) Section 79(2) of the Kampala Capital City Act to the extent that it confers unlimited, misguided as well as unfettered and subjective powers to the minister who is an integral part of the KCCA administration is inconsistent with and/or in contravention of Articles 1, 28 (1), 42 and 44(c) of the Constitution of the Republic of Uganda, and null and void to the extent of the inconsistency.

(iii) The respondent pays the costs of this petition with a certificate for two counsel.

At the hearing, the petitioner was represented by learned counsel, Mr Chrysostom Katumba. Mr Geoffrey Madete, Principal State Attorney represented the respondent.

The petitioner filed written submissions on 19th October 2020 while the respondent filed a reply to the submissions after the hearing by leave of court, on 29th October 2020. Counsel for the petitioner was allowed to address court on the salient issues raised in the petition, but thereafter the court adopted the written submissions filed by both parties and the petition has be decided on that basis.

Issues

The petitioner identified two issues for the determination by this court as follows:

- i) Whether section 79(3) of the KCC Act is unconstitutional to the extent that it confers unlimited, unguided as well as unfettered and subjective powers on the Minister for Kampala to veto Authority resolutions.
- 5 ii) Whether section 12 (5) of the Kampala Capital City Act is in contravention of or inconsistent with Article 28 (1), 42 and 44 (c) of the Constitution of the Republic of Uganda to the extent that it confers quasi-judicial powers on the Minister for Kampala to evaluate an impeachment petition against the Lord Mayor and establish a
- 10 Tribunal to investigate the same.

Principles of constitutional interpretation

The principles of constitutional interpretation were summarised in **David Tinyefuza v Attorney General, Constitutional Petition No 001 of 1996**, by Manyindo, DCJ to include, among others, that:

- 15 *"... the entire Constitution has to be read as an integrated whole, and no one particular provision destroying the other but each sustaining the other (sic). This is the rule of harmony, rule of completeness and exhaustiveness and the rule of paramountcy of the written Constitution. The third principle is that the words of the written Constitution prevail over all unwritten*
- 20 *conventions, precedents and practices. I think it is now also widely accepted that a Court should not be swayed by considerations of policy and propriety while interpreting provisions of a Constitution."*

The principles were approved by the Supreme Court in various decisions, including, **Paul K. Ssemowogerere & Others v Attorney General, SCCA**

25 **No 001 of 2002**, where Kanyeihamba, JSC added that guidance on how to interpret a constitutional instrument in relation to other documents, including those which are not specifically mentioned by that instrument, may be discerned from Article 273 of the Constitution.

I have addressed my mind to the stated principles and employed them in the resolution of this petition. I now proceed to address the issues in the order that they are stated above.

Issue 1

5 Submissions of Counsel

The petitioner contended that section 79 (3) of the KCC Act confers unlimited, unguided as well as unfettered discretion on the Minister for Kampala to veto resolutions of Kampala Capital City Authority (KCCA). That in enacting section 79 (3) of the KCC Act, Parliament did not take the
10 principles of good governance, specifically the devolution and separation of powers, the right to a fair hearing and constitutionalism into account before enacting that provision, and so contravened Articles 28 (1), 42 and 44 (c) and 176 (2) (c) of the Constitution.

The petitioner argued that the powers vested in the Minister under section
15 79 (3) of the KCC Act render KCCA a totalitarian institution where the Minister for Kampala has complete dominion over all its organs; there are no mechanisms for checks and balances and there are no parameters set within which the Minister may veto decisions of the Authority. The petitioner also contended that the Minister's power under section 79 (3) is
20 susceptible to abuse and this is deduced from the wording of the provision for it states that the Minister may veto decisions which "*appear to the Minister to be illegal.*" The petitioner contended that this means that the power that is vested in the Minister is subjective so that he may veto decisions that he "perceives" to be illegal. That the decision vetoed does
25 not have to be illegal; any appearance of illegality is sufficient for the Minister to veto the decision.

He further submitted that the power vested in the Minister in section 79 (3) is different from that in subsection section 79 (1) of the KCC Act because in section 79 (1), the Minister is vested with powers to vary or rescind any decision of the Authority which is in contravention of any law or Government policy, subject to the approval of Cabinet. This means that there are some safeguards provided to check the likelihood of arbitrariness on the part of the Minister. The petitioner therefore asserted that section 79 (3) of the Act renders subsection (1) of the provision redundant.

The petitioner further contended that the power conferred on the Minister under section 79 (3) is contrary to the spirit and letter of the Constitution in that Article 176 (2) thereof provides for devolution of power. Further that section 6 of the KCC Act makes the Council the decision making body and it is comprised of the Lord Mayor and Councillors who are elected by the people by adult suffrage. That the decisions of the Council are based on the basic principle of constitutionalism that such representatives make decisions based on the aspirations, values and will of the people of Kampala City.

He went on to argue that the rules of natural justice would dictate that for good governance to be achieved, elected leaders must at all times be involved in the decision-making process to the extent that even at the time when a decision of the Council is to be varied or vetoed the elected leaders must be involved or heard before the power to veto can be exercised. The petitioner asserted that section 79(3) negates the participation of the people in the decision making process and renders Article 176 (2) of the Constitution illusory because when exercising powers under that provision, the Minister is not duty bound to accord the Lord Mayor and the Councillors a hearing, so contravening the provisions of Articles 28 (1), 42 and 44(c) of the Constitution.

In reply, the respondent submitted that section 79 (3) does not take away the duty and/or the power of elected leaders in the Authority/Council to participate in decision making. That section 79 (3) recognises the duty of the Authority to make decisions, however the parameter set out in the law is that the Minister can use his powers to veto a decision where he deems it to be illegal or tainted with illegality.

The respondent further submitted that the statutory power vested in the Minister under section 79 (3) is no different from that vested in him or her under section 79 (1) of the KCC Act. Therefore, subsection (3) does not render subsection (1) irrelevant. The respondent further contended that it is a well settled cannon of interpretation of statutes that the entire Act must be read as an integral whole and all provisions touching on a matter must be brought into context, and read together, commonly referred to as the rule of completeness and harmony. Further that subsection (1) of section 79 outlines the powers of the Minister in relation to the Authority. Subsection (2) and (3) of section 79 are therefore complementary to each other.

In response to the submission that section 79 (3) of the KCC Act is contrary to the spirit of the Constitution in as far as the doctrine of separation of powers is concerned, the respondent submitted that the argument is misconceived because section 3 of the KCC Act provides that the Capital City shall in accordance with Article 5 of the Constitution be administered by the Central Government. He prayed that this court finds that section 79 (3) is not in contravention of the Constitution, and therefore it is not unconstitutional.

Resolution of Issue 1

The petitioner contends that Parliament did not consider the principles of devolution of powers in Article 176 (2) of the Constitution when it enacted section 79(3) of the KCC Act. That the decisions of the Council are based on the basic principle of constitutionalism that such representatives make decisions based on the aspirations, values and will of the people of Kampala City. The respondent's submissions seems to be that KCCA may not fall squarely under Article 176(2) of the Constitution because Article 5 provides for the status of KCCA in the local government system. It therefore behoves this court to interpret Articles 5 and 176 (2) of the Constitution and establish how they relate to each other, if at all, and to the KCC Act.

For a comprehensive analysis of the provisions, it is necessary to set out the whole of Article 176 of the Constitution at the onset; it provides for the local government system as follows:

(1) Subject to Article 178, the system of local government in Uganda shall be based on the district as a unit under which there shall be such local governments and administrative units as Parliament may by law provide.

(2) The following principles shall apply to the local government system—

- a) the system shall be such as to ensure that functions, powers and responsibilities are devolved and transferred from the Government to local government units in a coordinated manner;
- b) decentralisation shall be a principle applying to all levels of local government and, in particular, from higher to lower local government units to ensure peoples' participation and democratic control in decision making;
- c) the system shall be such as to ensure the full realisation of democratic governance at all local government levels;
- d) there shall be established for each local government unit a sound financial base with reliable sources of revenue;

- e) appropriate measures shall be taken to enable local government units to plan, initiate and execute policies in respect of all matters affecting the people within their jurisdictions;
- f) persons in the service of local governments shall be employed by the local governments; and
- g) the local governments shall oversee the performance of persons employed by the Government to provide services in their areas and to monitor the provision of Government services or the implementation of projects in their areas.

(3) The system of local government shall be based on democratically elected councils on the basis of universal adult suffrage in accordance with article 181 (4) of the Constitution.

Article 176 specifies that the main unit through which decentralisation shall be implemented is the district. Clause (2) (a) specifies that the powers and responsibilities shall devolve and be transferred from Government to local government units, meaning the districts as specified in clause 1, in a coordinated manner. Clause (3) emphasises that the principle of decentralisation shall in particular apply from higher local government units to lower local government units to ensure participation of the people in democratic control and decision making.

The districts of Uganda are specified in Article 5 (2) (c) of the Constitution which provides that they are those which are specified in the First schedule of the Constitution, and such other districts as may be established in accordance with the Constitution or any other law. Clause (4) of Article 5 then specifically provides for the Capital City as follows:

"Kampala located in Buganda shall be the capital city for Uganda and shall be administered by the Central Government."

Kampala is not included among the districts of Buganda neither is it included on its own as a district. It therefore has its own special status as "the capital city of Uganda" which is "administered by the Central Government." Article 5 (5) goes on to provide that the territorial boundary

of Kampala shall be delineated by Act of Parliament, while clause (6) provides that Parliament shall, by law, make provision for the administration and development of Kampala as the capital city. That law is the Kampala Capital City Act, 2010. The statute is stated to be:

- 5 *"An Act to provide, in accordance with article 5 of the Constitution, for*
Kampala as the capital city of Uganda; to provide for the administration of
Kampala by the Central Government; to provide for the territorial boundary
of Kampala; to provide for the development of Kampala Capital City; to
10 *establish the Kampala Capital City Authority as the governing body of the*
city; to provide for the composition and election of members of the Authority;
to provide for the removal of members from the Authority; to provide for the
functions and powers of the Authority; to provide for the election and
removal of the Lord Mayor and the Deputy Lord Mayor; to provide for the
appointment, powers and functions of an executive director and deputy
15 *executive director of the Authority; **to provide for lower urban councils***
under the Authority; to provide for the devolution by the Authority
***of functions and services;** to provide for a Metropolitan Physical Planning*
*Authority for Kampala and the adjacent districts; **to provide for the power***
of the Minister to veto decisions of the Authority in certain
20 ***circumstances and for related matters.**"*

In view of the long title of the KCC Act above, the devolution of functions and services cannot be from the Central Government to the Authority; instead it is from the Authority which, strictly speaking, is part of the Central Government to the lower local urban councils.

- 25 With regard to the principle of separation of powers, the principle is well settled. It relates to the various branches of the democratic state: the legislature, the executive and the judiciary. Each must carry out its mandate in its field and also serve to check abuse of power in the other branches in the exercise of their mandates. In this case, since the
30 administration of Kampala is vested in the executive branch of the state, the checks and balances against the Authority would be from the legislative branch and the judiciary. I think it is for that reason that one

of the purposes of the KCC Act was *“to provide for the power of the Minister to veto decisions of the Authority in certain circumstances and for related matters.”*

Unlike other local governments in the districts of Uganda, Kampala Capital City Authority, like other statutory corporations established by law, reports directly to Parliament by virtue of section 79 (1) (e) of the KCC Act. The provision requires the Minister to make an annual report to Parliament. With effect from January 2020, the Authority has to comply with the budgeting procedures for institutions under the Central Government which are set out in the Public Finance Management Act, 2015.

But for avoidance of doubt, section 4 (2) of the KCC Act provides that upon the commencement of the Act, any entity that immediately before the commencement of the Act existed as a local government in the area delineated under subsection (1) ceased to be a local government. Decisions of the Authority, as it was, though reached democratically by the councillors are subject to government policy and they can be varied or rescinded by the Minister with the approval of Cabinet, under section 79 (1) KCC Act. The democratic principles that are set out in Article 176 of the Constitution therefore bow to Article 5 (4) of the Constitution which distinguishes the Capital City from the districts, and thus excludes it from the local government system provided for in Article 176 of the Constitution.

As to whether section 79 (3) contravenes and is inconsistent with Articles 28 (1), 42 and 44 (c) of the Constitution, it is important to take into consideration the fact that the KCC Act was amended by the Kampala Capital City (Amendment) Act 2020. The Act which was assented to on 29th January 2020 (Act 01 of 2020) came into force on 10th January 2020. One may thus quickly reach the conclusion that the amendment of the Act

brought the dispute in this petition to its end and as a result the questions that were posed for the determination of this court abated or they became academic questions. It is incumbent upon this court to make a decision on that point before any further interpretation of the impugned provisions is attempted.

In dealing with the circumstances in which an appeal will be rendered academic and thereby not appealable in **Sun Life Assurance Co of Canada v. Jervis [1944] 1 All ER 469** at pp 470–471, Viscount Simon LC stated thus:

"I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellant hopes to get decided in its favour without in any way affecting the position between the parties. ... I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue."

It is my view that the test above can be applied to any matter before the courts, including petitions for the interpretation of statutes. In this case, the question for interpretation has been in this court since 2013. During the pendency of the petition, the KCC Act was amended. The question as it stood at the time may have been overtaken by events in that the statute was amended so affecting the position of the petitioner and the various organs of KCCA vis-à-vis the Minister for Kampala represented by the respondent.

Several other provisions that may affect the decision in this petition were also amended. In order for this court to do justice to this matter and provide an interpretation that will be useful to implementers of the KCC

Act, I will consider the petitioner's complaints within the context of the amended Act. Short of that, the decision might be purely academic and useless to implementers of the Act and others that may require guidance on the impugned provisions in this petition.

- 5 I will therefore proceed to analyse the provisions complained of as they stand in the amended Act to determine whether there is still a question for interpretation of the Act in as far as it relates to the constitutional rights of the petitioner and the institution that he leads.

The petitioner complains about the powers of the Minister in section 79 (3) and the powers of the Minister under that provision relate to the functions of the Authority. Section 79 (3) of the KCC Act provides as follows:

15 **“(3) The Minister may veto decisions taken by the Authority which appear to the Minister to be illegal and where the Authority fails to perform any of its duties, the Minister may by writing, direct the Authority to carry out those duties.”**

It is important to differentiate between the powers of the Authority and the powers of the Council after the KCCA (Amendment) Act, No. 01 of 2020 came into force. This is because the amendment introduced a dichotomy in the bodies under the Act as is detailed below.

- 20 The KCC Act, 2010 established the Kampala Capital City Authority in section 5 thereof. Subsection 3 of section 5 which provided that the Authority shall be the governing body of the Capital City and administer the Capital City on behalf of the Central Government was repealed. Section 6 which provided for the composition of the said Authority was also
25 repealed and replaced with a new section 6 which provides as follows:

“6. Council of the Authority

- 1) The Council is the governing body of the Capital City.**

(2) The Council shall consist of the following members-

- a) the Lord Mayor
- b) the Deputy Lord Mayor
- c) one councillor directly elected by secret ballot to represent each electoral area in the Capital City on the basis of universal adult suffrage;
- d) the councillors representing the youth, one of who shall be female;
- e) two councillors with disability representing persons with disabilities, one of whom shall be female;
- f) women councillors forming one third of the Council such that the councillors elected under paragraph (c) (d) and (e) shall form two thirds of the Council;
- g) two councillors representing the workers, one of who shall be female, and
- h) two councillors representing the elderly, one of who shall be female.

2) A person is not qualified to be a councillor unless he or she is a citizen of Uganda."

Section 9 of the principal Act which established the office of the Lord Mayor was also amended. The change in the provision was the replacement of the word "Authority" with "Council" and including the office of Deputy Lord Mayor in the head note. The amendment still specifies that the Lord Mayor is the political head of the Capital City.

In his affidavit, the petitioner complained about directives from the Minister to call meetings of the Authority, which led to an impasse in which 16 Councillors lodged a petition for the removal of the petitioner from the Office of Lord Mayor. The responsibility to call meetings was taken away from the Lord Mayor and given to the office of the Speaker established in Act 01 of 2020 by inserting new sections 8A, 8B and 8C. Section 8C provides for the functions of the office of the Speaker and Deputy Speaker as follows:

"The Speaker and Deputy Speaker shall-

- a) **preside over all meetings of the Council**
- b) **be charged with the overall authority for the preservation of order in the Council and ensuring enforcement of the rules of procedure of the Council;**
- 5 c) **Perform functions which are similar to those of the Speaker of Parliament as may be consistent with this Act."**

The functions of the Council are now distinct from those of the Authority and they are specifically provided for in a new section 6A which provides as follows:

10 **"The functions of the Council are-**

- a) **To determine taxation levels within the Capital City;**
- b) **Enact subsidiary legislation for the proper management of the Capital City;**
- 15 c) **Review and approve budget proposals made by the Executive Director;**
- d) **To monitor delivery of services within the city;**
- e) **To mobilize residents to undertake income generating activities and self-help projects;**
- 20 f) **To assist the city divisions in mobilising residents to pay local taxes."**

The functions of the Authority are now provided for in section 7 of the Act which was amended by section 5 of Act 01 of 2020 by repealing 8 paragraphs thereof which were re-enacted in the new section 6A which provides for the functions of the Council. Section 7 of the KCC Act now
25 provides for the functions of the Authority as follows:

1) The functions of the Authority are-

- a) **To initiate and formulate policy;**
- b) **To set service delivery standards;**
- 30 c) **To promote economic development in the Capital City**
- d) **To construct and maintain roads;**
- e) **To construct and maintain drains;**
- f) **To install and maintain street lights;**
- g) **To organise and manage traffic;**
- h) **To carry out physical planning and development control;**

- i) To monitor the delivery of services within its area of jurisdiction;
- j) To assist in the maintenance of order and security;
- k) To draw the attention of the divisions to any matter that attracts the concern or interest of the Authority; and
- l) To perform any other functions given to the Authority by the Central Government.

2) Notwithstanding anything in this Act the Authority shall in addition perform the functions and services prescribed in Parts A, B and C of the third Schedule.

3) The Ministries responsible for health and environment shall oversee the public health and environment matters respectively in the Capital City.

4) The Minister responsible for the administration of the city shall supervise, guide, inspect, monitor and coordinate the governance activities of the Capital city in order to ensure compliance with this Act and any other law.

That being the law as it stands today, pursuant to section 7 (4) the Minister for Kampala supervises, guides, inspects, monitors and coordinates the governance activities in the capital city. By virtue of this provision he is charged with ensuring that the Authority complies with the KCC Act and any other law. There is no doubt that the Minister can intervene and in suitable circumstances veto the decisions of the Authority under section 79 (3) of the KCC Act. He cannot intervene in the decisions of the Council under the same provision but can exercise other means of control over it as will be seen later in this judgment.

It must now be decided whether the power of the Minister to veto the decisions of the Authority before the enactment of Act 01 of 2020 was is unlimited, unguided and subjective as alleged by the petitioner.

Before the enactment of the Act 1 of 2020, the Authority had myriad functions that were set forth in section 7 of the KCC Act, including both those that are now in the domain of the Authority and the Council. The

functions included legislative powers, policy matters and administrative services to ensure that residents access services specified under Parts A, B and C of the Third Schedule to the Act.

5 One of the main objectives for enactment of the KCC Act was to clarify the powers of the Central Government over the Capital City Authority established by the Act, the Authority being the representative of the Central Government to administer the City. It was specifically stated that the objectives of the KCC Act were, among others, *to provide for the power of the Minister to veto decisions of the Authority in certain circumstances*. If
10 that was one of the specific intentions of the legislature, what kinds of decisions could the minister veto, apart from varying and rescinding those stated in section 79(1) (a) of the Act?

Section 79 (1) (a) provides that in relation to the Authority the minister has power,

- 15 **a) To vary or rescind any decision of the Authority which is in contravention of any law or Government policy, with the approval of Cabinet;**

Section 79 (3) provided and it still provides that the decisions that may be vetoed are those that *"appear to be illegal,"* not any others. Decisions that
20 appear to be illegal have criteria for determining whether they are legal or not, and it is always the law. The functions of the Authority, though myriad, were specified in section 7 (1), (2) and (3) of the KCC Act at the time that the dispute between the petitioner on the one hand and the councillors and the Minister on the other, arose. The decisions that the
25 petitioner wished to protect from the interference of the Minister would be related to the functions of the Authority, the hodgepodge of administrative functions, policy and legislative matters.

In my view, the functions in section 7 of the Act resulted in decisions and or actions in which the Minister could interfere. They were clustered in the KCCA (Amendment) Act leaving purely administrative issues under the management of the Authority. Policy, taxation, legislative and oversight
5 functions were assigned to the Council. Nonetheless, even before the amendment, it was not likely that the Minister would veto decisions of the Authority "*appearing to be illegal*" unless there was a specific law identified that was contravened or was about to be contravened by the Authority.

With regard to the legislative powers of the Authority, the mode of the
10 Minister's involvement was clearly provided for in section 8 of the KCC Act. Subsection 3 thereof provided that a local bill passed by the Authority shall before it is signed by the Lord Mayor be forwarded to the Attorney General through the Minister to certify that the local bill is not inconsistent with the Constitution or any other law. After the advice of the Attorney General,
15 the Minister would then return the bill with comments to the Authority for its modification. The Minister maintains this role with respect to legislation enacted by the Council of the Authority.

I therefore find that the power conferred upon the Minister under section 79 (3) of the KCC Act is neither unfettered, unlimited, unguided nor
20 subjective as the petitioner would have this court believe. Neither was it before the amendment of the Act in 2020. The powers of the Minister under section 79 (3) are guided by the functions of the Authority and the criteria for the Minister's intervention are the attendant laws both before the Amendment of the Act in 2020, and after it.

25 As to whether the implementation of section 79 (3) contravenes Articles 28 (1), 42 and 44 (c) of the Constitution, it must be considered what is meant

by the right to be heard under the various Articles of the Constitution cited by the petitioner.

Starting with Article 28(1) of the Constitution, it provides for the right to a fair hearing as follows:

- 5 **(1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.**

10 The right to a fair hearing is an essential aspect of the judicial process and is vital for the protection of other human rights. The purpose of the right to a fair hearing is to ensure the proper administration of justice. The basic elements of the right to a fair hearing are: equal access to, and equality before, the courts; the right to legal advice and representation; the right to procedural fairness; the right to a hearing without undue delay;
15 the right to a competent, independent and impartial tribunal established by law; the right to a public hearing; and the right to have the free assistance of an interpreter where necessary.¹

20 The right to a fair hearing applies in both civil and criminal proceedings and in courts and tribunals. The right may also apply when dealing with various government bodies. This right is concerned with *procedural* fairness rather than the *substantive* fairness of a decision or judgment of a court or tribunal.

25 The decisions of the Authority are made by employees of the Authority and what was originally referred to as the Authority, but is now the Council. By virtue of section 79 (3) the Minister vetoes composite decisions of the

¹ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; retrieved on 24/02/2021, from http://hrlibrary.umn.edu/research/ZIM%20Principles_And_G.pdf

Authority, not necessarily particular individuals. And in so doing, the Minister does not veto the decisions as a court or tribunal or an administrative body sitting to hear parties, but as the representative of the Central Government with statutory powers to do so. In addition, the
5 Authority or its employees make decisions for the benefit of the people of Uganda; employees of the Authority and Members of the Authority/Council, both before and after the amendment, had no personal rights to protect in the decisions referred to in section 79 (3) of the KCC Act in order for them to be afforded a hearing before the exercise of the
10 powers of the Minister under that provision. Neither did/does the Minister sit as a court or tribunal in the determination of any civil or criminal rights when he exercises his powers under section 79(3) of the KCC Act. The petitioner's complaint that the Minister's veto of decisions of the Authority or Council violates Article 28 (1) of the Constitution was therefore
15 misconceived.

Going on to Article 42 of the Constitution, it provides for the right to fair treatment in administrative decisions as follows:

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

Similar to Article 28(1), the provision refers to a person appearing before an administrative official or body. This connotes that there is a hearing of some sort before the official or body in which the person appearing has to
25 be accorded due process and treated justly and fairly in the proceedings. In the event that the person is not accorded their rights under the principles of natural justice they have recourse to the courts of law.

- Section 79 (3) does not require the Minister to hold a hearing. However, it sets parameters; the decision of the Authority that is vetoed must be one that "*appears to be illegal*," such that the only criteria on which vetoes by the Minister are based is the law. There is no procedure that was provided for in the KCC Act with steps that the Minister must take before he/she vetoes the decisions of the Authority. Since the principles of natural justice are about procedure, not substance, and criteria for the Minister's veto is about the substance of the decision which is the law; the Minister cannot be faulted for not according the Authority the right to be heard.
- 10 In conclusion, the decisions of the Minister to veto decisions of the Authority under section 79 (3) before the Amendment of the KCC Act did not entitle the members of the Authority to the rights that are guaranteed under Article 44 (c) of the Constitution. Neither is the Authority entitled to the said rights after the amendment of the Act.
- 15 I therefore find that the powers of the Minister for Kampala that are set out in section 79 (3) of the KCC Act are not in contravention of or inconsistent with Articles 28 (1), 42 and 44 (c) of the Constitution.

Issue 2

- 20 The petitioner's complaint was that section 12(5) of the KCC Act contravenes Articles 28(1), 42 and 44 of the Constitution in as far as it confers quasi-judicial powers on the Minister for Kampala to evaluate a petition against the Lord Mayor and establish a Tribunal to investigate the same.

Submissions of counsel

- 25 The petitioner submitted that section 12(5) of the KCC Act contravenes the rules of natural justice guaranteed under the provisions of the

Constitution cited above. Further that the power conferred on the Minister to evaluate the petition for impeachment of the Lord Mayor and constitute a three member tribunal to investigate the petition makes the Minister a judge in his own cause because the Minister is an integral part of the administrative structure of KCCA. That he participates in the "running" of the institution as is shown in section 79 of the KCC Act and other provisions such as section 7, 79 and 7(4) of the Act.

The petitioner further submitted that section 79 vests power in the Minister to oversee the administration and performance of KCCA and he is vested with power to give directives on policy and general development of the Capital City and the Authority has to comply. That in essence he is an integral part of the administration and a working partner. The petitioner asserted that the worst case scenario comes about when the Lord Mayor and the Minister fail to agree on governance, administrative or policy issues and the Minister invokes his powers to veto decisions of the Authority superintended over by the Lord Mayor. That the Minister can easily interpret this as misconduct on the part of the Mayor which would then constitute some of the grounds for his/her impeachment under section 12 of the Act.

The petitioner went on to submit that the implementation of section 12 (5) of the KCC Act would grossly contravene Articles 28 (1), 42 and 44 (c) of the Constitution as has already come to pass as indicated in the petitioner's affidavit in support of this petition. That the allegations that led to the filing of a petition by some councillors for his impeachment were the failure to convene and conduct Authority meetings which had been orchestrated by the Minister. That the Minister then evaluated the petition to satisfy himself about the veracity of the allegations therein and subsequently constituted a tribunal to investigate the allegations against

the Lord Mayor. The petitioner stated that the Minister's role in the process can be deduced from the angry correspondence which he addressed to the petitioner directing him to convene meetings of the Authority. He referred us to Annexure D to his affidavit, a letter dated 15th April 2013 from the
5 Minister to the Lord Mayor.

The petitioner further asserted that the Minister was directly involved in the affairs of the Authority. That the interaction between the Minister and the Lord Mayor presupposes interdependence on one another. That as a result, the Minister cannot take the lead role in the investigation of the
10 Lord Mayor's impeachment concerning issues of which he has personal knowledge because questions about his impartiality would arise.

The petitioner also complained that section 12 (5) confers powers on the Minister to appoint the Chairperson and two other persons to constitute a tribunal to investigate allegations brought against the Lord Mayor. In his
15 opinion this would not be seen as independent and impartial. Further, that the Minister is mandated to conduct the entire exercise from the stage when councillors petition him up to the stage where he/she presides over the Council meeting which votes on the motion to impeach the Lord Mayor under section 12 (17) of the KCC Act. He referred us to the decision in
20 **John Ken Lukyamuzi v Attorney General and Electoral Commission, Constitutional Appeal No 02 of 2007** where the Supreme Court held that it would not in the interest of promoting proper administration of justice to allow a situation where the power of investigation, prosecution and adjudication are combined in one institution.

25 The petitioner postulated that the hearing by the Tribunal could not be conducted comprehensively if the Minister, the immediate supervisor of the Lord Mayor is not summoned as a witness to testify about his or her

performance. That in the words of Article 42 of the Constitution, the Lord Mayor cannot be justly and fairly treated by appearing before a tribunal established by a conflicted Minister. In addition, such a tribunal cannot be said to be independent and impartial to the standard envisaged by Article 28 (1) of the Constitution. He proposed that it would be just if such a petition is lodged with the Chief Justice as the case was before the law was amended, or the Principal Judge who would evaluate the petition and then constitute a tribunal under section 12 (5) of the KCC Act.

The petitioner further submitted that in the alternative such a tribunal ought to be constituted by Cabinet and not the Minister, akin to what is provided for under section 79 (1) (a) of the KCC Act where Cabinet is empowered to take the final decision on the orders of the Minister, lest the process leading to the removal of the Lord Mayor continues to be taken lightly and prone to abuse by the Minister. He prayed that the petition be granted with costs.

In reply, the respondent submitted that the Minister does not conduct a hearing under section 12 (5) of the KCC Act. He is enjoined to consult the Attorney General in determining whether there are sufficient grounds in order for him to establish a tribunal to investigate the allegations. Further that the process of constituting a tribunal to investigate the allegations is done in consultation with the Chief Justice. That the Minister's role in the process is administrative, not a judicial one where the rules of natural justice ought to apply.

The respondent further submitted that the tribunal is by law chaired by a judge of the High Court or one suitable to become a judge. If a judge is appointed, he or she is deemed to be independent, having taken an oath to defend the Constitution and to do right to all manner of people. It is

therefore expected that he or she will be impartial and so the question of independence is not a ground for challenging the KCC Act, 2010 as amended.

5 The respondent further submitted that the law provides various safeguards that a person shall not be appointed as a member of the tribunal unless he or she is of high moral character and proven integrity and possesses considerable experience and demonstrates competence and is of high calibre in the conduct of public affairs. Further that though a
10 standoff can easily arise due to the fact that the Minister is a working partner with the Authority, the law provides that it is the Council that has the power to remove the Lord Mayor, and that, only when the resolution to remove him/her is supported by not less than two-thirds majority of all members of the Council, not the Minister.

The respondent finally submitted that section 12 (5) of the KCC Act is not
15 inconsistent with or in contravention of the Constitution. That section 12 (7) of the KCC Act entitles the Lord Mayor and Deputy Lord Mayor to appear at the proceedings of the tribunal and to be represented by a lawyer or expert of their choice. He prayed that this court answers this issue in the negative

20 Regarding the costs, the respondent's counsel submitted that the petition was brought in the public interest. That as a result, the petitioner is not entitled to costs and a certificate for two counsel in that regard. He prayed that the petition be dismissed with no order as to costs.

Resolution of Issue 2

25 The submissions of counsel with regard to this second issue show that there are basically 3 questions to be answered in order to establish whether the implementation of section 12 (5) of the KCC Act contravenes

or is inconsistent with Articles 28(1), 42 and 44 (c) of the Constitution of Uganda, and they are as follows:

- i) Whether the minister for Kampala is an integral part of the administration of KCCA;
- 5 ii) Whether the Minister's role in the process of impeachment of the Lord Mayor is in conflict with his role as the Minister for Kampala rendering him a judge in his own cause; and if so,
- 10 iii) Whether the implementation of section 12 (5) of the KCC Act contravenes Articles 28(1), 42 and 44 (c) of the Constitution of Uganda.

As stated earlier in this judgment, the KCC Act was amended in 2020. Interpretation of provisions of the Act vis-à-vis the Constitution has to take that into consideration so as not to render an interpretation that is not merely academic. I will therefore consider the relevant provisions stated in
15 the issues above as amended, if at all, in 2020.

With regard to the 1st sub-issue above, strict interpretation of sections 5 and 6A which establish the Authority and the Council of the Authority, respectively, shows that the Minister is not part of either of the two bodies. However, the Minister has multiple and diverse roles assigned to him or
20 her in the KCC Act. That is not surprising because Article 5 (4) of the Constitution provides that Kampala is the Capital City of Uganda and it shall be administered by the Central Government. The main purpose of the KCC Act is provide for the administration of Kampala by the Central Government. Everything in the Act flows from that objective which
25 originates from Article 5 (4) of the Constitution.

In order to achieve the main objective of the KCC Act, power is vested in the Minister for Kampala as the representative of the Central Government.

Starting with boundaries, the Minister is vested with power to delineate boundaries within the territorial boundaries specified in the Second Schedule to the Act to establish divisions, in consultation with Cabinet. He may also in consultation with the Authority establish ward urban
5 councils and village urban council and alter the boundaries of the councils.

Although section 7 of the Act, as amended by the KCC (Amendment) Act of 2020 provides for specific roles of the Authority that are distinct from those of the Council provided for in the new section 6A of the Act,
10 subsection 4 of section 7 provides that

“The Minister responsible for the administration of the Capital City shall supervise, guide, inspect, monitor and coordinate the governance activities of the Capital City and ensure compliance with the Act and any other law.”

15 It seems it is for that reason that though the functions of the Council of the Authority provided for in section 6A are distinct from those of the Authority set out in section 7 of the Act as amended by Act No. 1 of 2020, both of these bodies report to the Minister.

The Minister also has a role to play in the legislative functions of the
20 Council. Section 8 of the KCC Act, as amended by Act 1 of 2020, provides that the Council shall have power to make ordinances. Section 8 (3) of the Act provides that a local bill before it is signed by the Lord Mayor shall be forwarded to the Attorney General through the Minister to certify that it is not inconsistent with the Constitution. Subsection (4) provides that:

25 **“Where the minister on the advice of the Attorney General is of the opinion that a bill for an ordinance contravenes or derogates from the Constitution or other law made by Parliament, he or she shall, within 60 days after receipt of the bill, return the bill with his or her**

comments to the Council for modification or other appropriate action.”

Section 17 of the KCC Act provides that the Executive Director is the Chief executive of the Authority and he/she is appointed by the President. The Executive Director must be qualified to be a permanent secretary in a Government Ministry. The functions of the Executive Director stated in section 19 of the Act are also diverse, but it is clear that they are administrative functions. Section 19 (o) provides that the Executive Director is responsible for liaising with the Central Government and other institutions on behalf of the Authority. In order to maintain control of the activities by the Central Government, section 19 (t) provides that the Executive Director is responsible to the Council but subject to the general direction of the Minister. It is then provided in section 19 (u) that on the day-to-day operations, the Executive Director is responsible to the Minister for Kampala. Clause (w) of section 17 goes on to provide that the Authority or the Minister may assign any other duties, other than those specified in section 17 of the Act, to the Executive Director.

However, though the Executive Director is the accounting officer of the Authority, she/he no longer has control over the budget because section 17(c) which provided that the Executive Director would be responsible for the management of all public funds of the Authority and accountable to Parliament was repealed. Instead, budgetary powers were assigned to the City Executive Committee which is chaired by the Lord Mayor, and the Council.

In addition, section 58 provides for the Capital City Public Accounts Committee. The members are appointed by the Authority on the recommendation of the Lord Mayor with the approval of the Minister. The Committee is required to submit their reports to the Authority and to the

Minister, who then lays the reports before Parliament. I think that drafts person of the KCC (Amendment) Act, 2020, omitted to amend this provision. The logic behind the amendment implies that the word "Authority" in section 58 ought to have been replaced with the word "Council."

The other bodies such as the Metropolitan Physical Planning Authority established by section 21 of the KCC Act and the Metropolitan Police also owe allegiance to the Minister. By virtue of section 21 (2) the Minister with the approval of Cabinet appoints all four persons who constitute the Metropolitan Physical Planning Authority. Section 22 (7) of the Act requires the Metropolitan Physical Planning Authority to submit quarterly and annual reports to the Minister with copies to the Minister responsible for Physical Planning. With regard to the Metropolitan Police, though it is still under the direct control of the Uganda Police Force, the Minister is vested with powers to make regulations, on the recommendation of the Police Authority for regulating the Metropolitan Police Force.

Section 79 of the KCC Act, as amended by Act 01 of 2020 provides for the powers of the Minister in detail, as follows:

(1) The Minister shall have the following powers in relation to the Authority—

- a) to vary or rescind any decision of the Authority which is in contravention of any law or Government policy, with the approval of Cabinet;
- b) where the Minister considers that the matter is of a grave nature, to institute a Commission of inquiry to inquire into the matter;
- ba) to address the Council on matters of policy, national importance or development of the Capital city;
- c) to receive and take appropriate action on reports submitted by the Lord Mayor, executive director or a commission of inquiry;

**d) to appoint and remove members of the Metropolitan Authority;
and**

**e) to oversee the performance of the Authority and make an
annual report to Parliament.**

**2) The Minister shall have general powers to give directives on policy
and general development of the Capital City and the Authority shall
comply with the directives.**

**3) The Minister may veto decisions taken by the Authority which appear
to the Minister to be illegal and where the Authority fails to perform
any of its duties, the Minister may by writing, direct the Authority
to carry out those duties.**

**4) The Authority shall give effect to any direction given by the Minister
under subsection (3).**

**5) Where, under this Act the Minister is empowered to exercise any
powers or perform any duty, the Minister may delegate that power or
duty to any person by name, or office, to exercise that power or
perform the duty on his or her behalf, subject to any conditions,
exceptions and qualifications as the Minister may prescribe.**

In conclusion, although the Minister is not part of the Kampala Capital
City Authority, the KCC Act gives him a heavy hand over the Authority and
the Council of the Authority. It is therefore not surprising that the Lord
Mayor perceives the Minister to be *"an integral part of the Authority."* But
in my view, it would have been more appropriate to state that the Minister
is vested with a lot of power over the activities of the Council and the
Authority, as a whole, including over the Lord Mayor who is accountable
to the Minister in the exercise of his duties.

As to whether the Minister's role in the process of impeachment of the Lord
Mayor is in conflict with his role as the Minister for Kampala rendering
him a judge in his own cause, the reason for impeachment that led to this
petition was the Lord Mayor's alleged failure to convene meetings of the
Authority, among other complaints. However, section 12 of the KCC Act
was amended by Act 01 of 2020 by repealing subsection 1 (e) thereof. That
provision provided that one of the grounds for the removal of the Lord

Mayor was failure to convene meetings of the Authority without reasonable excuse. In addition, the Lord Mayor was relieved of the responsibility to convene meetings by the establishment of the office of the Speaker and the Deputy Speaker of the Council.

- 5 Section 12 (1) of the KCC Act now provides for the vacation of the office of the Lord Mayor and Deputy Lord Mayor on grounds of abuse of office, incompetence, misconduct or misbehaviour, physical and mental incapacity rendering him or her incapable of performing the duties of Lord Mayor or Deputy Lord Mayor, and corruption. There are other
10 circumstances in subsection (2) which result in the vacation of the office such as resignation, breach of the Leadership Code Act, sentence to imprisonment, taking up another public office and disqualification under other laws.

- The petitioner's complaint and his concern about the seeming absence of
15 protection for the Lord Mayor's office from the powers of the Minister was that in the impeachment proceedings that almost removed him from office in 2013, the reasons that were advanced by the Council members were abuse of office, incompetence, misbehaviour, failure to constitute standing committees and failure to convene Meetings of the Authority, without any
20 reasonable cause. The petitioner averred that the Minister was angry with him for failing to convene meetings, as well as pointing out that the Minister failed to carry out his duty to enact an instrument to bring the members of professional bodies into their offices provided for by the Act. That as a result, the Minister hurriedly, and with bias against the
25 petitioner constituted a Tribunal to entertain the petition without consulting the Attorney General, as is required by law.

It is my view that this was a peculiar situation that came about during the operation of the KCC Act, before its amendment by in 2020. The Act did not clearly distinguish between the roles of the elected representatives and the employees of the Authority. All of them were lumped together to
5 implement that hodgepodge of roles that had been provided for in section 7 of the Act. This resulted in the struggle for power between the executive and the political branches of the Authority. It culminated in an impasse that polarised the institution and resulted in the conflict that is evidenced by the angry letters between the Minister for Kampala and the Lord Mayor,
10 attached to the affidavit in support of the petition.

It also appears from the affidavit of the petitioner, paragraphs 16, 17 and 18, that the Minister did not follow the procedure in section 12 (5) to the letter. It seems that he appointed the Tribunal before securing the input of the Attorney General which is required by section 12 (5) of the Act. It is
15 not clear from the evidence on record whether the other impartial person referred to in the provision, the Chief Justice, was consulted before the appointment of members of the tribunal that was set up to investigate the petitioner. However, it is clear that because he was embroiled in a dispute with the Lord Mayor over business of the Authority, when he appointed
20 the Tribunal to investigate the conduct of the Lord Mayor complained about by the Councillors, the Hon Minister for Kampala appeared to act as a judge in his own cause.

I now turn to the final question raised by the petitioner, which is whether the implementation of section 12 (5) of the KCC Act, outside the peculiar
25 circumstances between the petitioner and the Minister for Kampala in 2013, mandates the Minister for Kampala to take charge of and participate in all the processes leading to, as well as chairing the Council meeting for the resolution to impeach the Lord Mayor, and if so, whether it contravenes

or is inconsistent with Articles 28 (1), 42 and 44 (c) of the Constitution of Uganda.

It is important that section 12 (5) of the KCC Act is laid down first so that it can be interpreted, vis-à-vis the several provisions of the Constitution that it is alleged to violate. Subsection 5 of section 12 of the Act provides as follows:

10 **"The Minister shall evaluate the petition in consultation with the Attorney General and if satisfied that there are sufficient grounds for doing so, shall within twenty-one-days after receipt of the petition, constitute a tribunal consisting of a Judge of the High Court or a person qualified to be appointed a Judge of the High Court, as chairperson and two other persons all of whom shall be appointed by the Minister in consultation with the Chief Justice, to investigate the allegations."**

15 On the other hand, Article 28 (1) of the Constitution provides that,

"In the determination of civil rights and obligations or any criminal charges, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."

20 The first canon of statutory interpretation is that the words of a statute are given their plain and ordinary meaning. At a glance, it would appear that the Minister receives the petition from the Councillors, evaluates it and appoints the tribunal to investigate the allegations against the Lord Mayor. The interpretation does not augur well with the provisions of Article 25 28(1) for the Minister may harbour a biased view against the Lord Mayor created during their interactions in the course of their duties.

Frederick J. De Sloovere, in his article, *"Contextual Interpretation of Statutes,"* 5 Fordham L. Rev. 219 (1936)² stated that:

² Available at: <https://ir.lawnet.fordham.edu/flr/vol5/iss2/2>

5 "A statute is ... only tentatively plain and explicit until the necessary
interpretative techniques have been applied and a critical analysis of the
meanings of all other parts of the statute or of other statutes in pari materia
or of relevant common law doctrines confirms the obvious meaning so
chosen. Hence, every statute must be interpreted in the light of (1) the
subject-matter with which it deals; (2) the reason or purpose behind its
enactment as found in the text and the evil toward which it was directed
(including here extrinsic aids and the common law); and (3) the meanings of
the several other relevant parts of the same statute or of statutes in pari
10 materia."

Therefore, in order to establish whether section 12 (5) of the KCC Act is in
contravention of, or inconsistent with Article 28 (1) the general scheme of
the Act has first got to be established. Section 12 (5) has got to be
interpreted within its context in the KCC Act in order for us to understand
15 the intention of the Legislature in the enactment and then establish
whether it is inconsistent with Articles 28 (1), 42 and 44 (c) of the
Constitution. I will now go on to analyse the context within which the
provision is placed.

The removal of the Lord Mayor is triggered by a petition under section 12
20 (3) of the KCC Act which was amended by substituting the word "Authority"
with the word "Council" and now provides as follows:

**"(3) For the purposes of removing the Lord Mayor or Deputy Lord
Mayor under subsection (1) other than under subsection (1)(d), a
petition in writing signed by not less than one third of all the
members of the Council shall be submitted to the Minister—**
25

**(a) stating that the members intend to pass a resolution of the
Council to remove the Lord Mayor or Deputy Lord Mayor on
any of the grounds set out in subsection (1);**

**(b) setting out the particulars of the charge supported by the
necessary documents, where applicable, on which it is claimed
30 that the conduct of the Lord Mayor or Deputy Lord Mayor be
investigated for the purposes of his or her removal."**

It is important to note that the petition does not call for the removal of the Lord Mayor. The council members lay a charge or charges against the Lord Mayor or the Deputy Lord Mayor on any one or more of the grounds specified in section 12 (1) of the KCC Act. The petition then constitutes the
5 basis for an investigation under section 12 (3) (b) of the Act. It calls for the action of the Minister in section 12 (5) of the Act which was reproduced above.

It has already been established that the Minister for Kampala receives a lot of information about the activities of the executive branch of the
10 Authority as well as the Council in the reports submitted to him as the supervisor and overseer of the institution for the Central Government. He receives information from the Executive Director on the day-to-day activities of the Authority and also indirectly controls some of the activities of the Council through the Executive Director who is *"responsible to the*
15 *Council subject to the general direction of the Minister,"* by virtue of section 19 (t) of the KCC Act. The Lord Mayor is directly responsible to the Minister in the performance of his duties by virtue of section 11 (2) of the Act. So the Minister receives information from his office as well.

I think it is for that reason that Parliament deemed it fit to introduce an
20 independent legal mind to advise the Minister on any petition brought before him proposing to move a motion to remove the Mayor(s). Section 12 (5) therefore requires the Minister to consult the Attorney General about the sufficiency of the grounds levelled against the either of the Mayors by the Councillors. The Attorney General is consulted in his capacity as the
25 designated legal advisor to Government under Article 119 (1) of the Constitution. The petition to impeach the Lord Mayor was therefore not taken lightly by Parliament when it enacted section 12 (5) of the KCC Act.

The Minister and the Attorney General have a statutory period of 21 days within which to decide whether the petition raises sufficient grounds before the Minister goes ahead to appoint the Tribunal to investigate the allegations in it, if at all. The petition should not be one that is merely
5 frivolous or intended to vex the Lord Mayor. It must state concrete grounds that will pass muster after legal scrutiny in the Chambers of the Attorney General.

As to whether the Lord Mayor is entitled to a hearing at this point of the process, it is my view that the function of the Minister and the Attorney
10 General at this point is not adjudicative. Some of the grounds set forth in section 12 (1) such as abuse of office, corruption and misconduct or misbehaviour are couched in technical or legal terms which have equivalents in statutes like the Anti-Corruption Act and the Leadership Code Act. The Attorney General evaluates the petition in order to advise
15 the Minister whether the matters raised by the Councillors in the petition, and the documentary evidence presented with it, if any, are sufficient to warrant an investigation by a Tribunal.

It is also my view that this stage is an administrative process paving way for what can be described as a quasi-judicial process, the investigation by
20 the Tribunal constituted by the three persons specified in section 12 (5). The lodging of the petition before the Minister is akin to making a complaint to the Police. The police cannot determine what offences to prefer as charges in court until the Director of Public Prosecutions renders legal advice to the investigators. The evaluation by the Attorney General is
25 a preliminary step that the petition has to go through before an investigation is carried out by the Tribunal. If the Attorney General finds that the allegations do not fall under any of the grounds stated in section 12 (1) he may advise the Minister not to continue with the process, so that

the Minister has to return the result to the petitioners that the grounds stated in their petition cannot be sustained.

In the event that Attorney General establishes that the petition raises sufficient grounds worthy of setting up a Tribunal, the Minister is so
5 advised. He or she will then proceed to appoint the Tribunal provided for in section 12 (5) of the Act. Parliament was not oblivious of the fact that the process could be abused at this stage either. In order to set up the Tribunal, the Minister is duty bound to consult the Chief Justice about the persons that he seeks to appoint as Chairperson and members of the
10 Tribunal. In the event the a Tribunal is appointed, section 12 (7) provides that,

"The Lord Mayor or Deputy Lord Mayor is entitled to appear at the proceedings and to be represented by a lawyer or other expert or person of his or her choice."

15 Section 12 (8) explains that the purpose of the proceedings before the Tribunal is to establish whether there is a *prima facie* case for the removal of the Lord Mayor or Deputy Lord Mayor under section 12 (1), other than subsection (1) (d), which provides that the Mayors may be removed due to physical or mental incapacity rendering them incapable of performing their
20 duties.

Section 12 (17) provides that within 14 days of receipt of the report of the Tribunal, the Minister presents the report to the Council. If there is a *prima facie* case established before the Tribunal, the motion for removal of the Lord Mayor or Deputy Lord Mayor shall be moved in Council within 14
25 days following the presentation of the report as is provided for under section 12 (18) of the KCC Act. Section 12 (19) specifically provides that:

“The Lord Mayor or Deputy Lord Mayor is entitled to appear in person and be heard during the proceedings of the Council relating to the motion for a resolution under this section or to appear by an advocate or other expert of his or her choice.”

5 The petitioner complained that the Minister participates in all the processes including chairing the meeting of the Council that makes the final decision whether or not to impeach the Lord Mayor. Before the amendment in 2020, section 12(17) of the KCC Act provided that the Minister shall convene the Authority within 14 days after the receipt of the
10 report of the tribunal or the medical board. Presumably, this was for the presentation of the report to the Councillors, not for debate of the motion to remove the Lord Mayor.

Section 12 (17) was repealed and replaced by a new section which is clearer about the procedure and it provides that the Minister shall within 14 days
15 of receipt of the report of the Tribunal or Medical Board present it to the Council. It is understood to mean that the Minister was simply required to present the report to the Authority which I believe would be convened by the Deputy Lord Mayor because the Lord Mayor who was the subject of the report being presented would be in conflict of interest if he was charged
20 with the responsibility of convening and chairing the meeting. This flows from section 11(3) of the Act which provides that the Deputy Lord Mayor shall assist the Lord Mayor in the performance of his or her functions and shall otherwise deputise for the Lord Mayor in his or her absence. This situation does not arise after the amendment of the Act in 2020 because
25 the role to convene the Council and to chair its meetings is assigned to the Speaker and the Deputy Speaker in section 8C of the KCC (Amendment) Act, 2020.

Section 12 (8) then provides that the motion for the removal of the Lord Mayor is moved in the Council within 14 days of receipt of the report of

the tribunal, and if it is not, the resolution shall be barred by time. This meeting would also be presided over by the Deputy Lord Mayor but is now convened and presided over by the Speaker or Deputy Speaker. It therefore cannot be correct, as alleged by the petitioner, that the Minister convened and chaired the two meetings in which the report was presented and discussed, because if he did so it was contrary to section 11 (3) of the Act at the time.

Turning to the interpretation of section 12 (5) of the KCC Act vis-à-vis Article 28 (1) of the Constitution, in **Charles Harry Twagira v. Attorney General, Supreme Court Criminal Appeal No 27 of 2003**, the court explained the meaning of a "fair trial" or "hearing" under Article 28 of the Constitution as follows:

"A fair trial, or a fair hearing, under Art.28, means that a party should be afforded opportunity to, inter alia, hear the witnesses of the other side testify openly; that he should, if he chooses, challenge those witnesses by way of cross-examination; that he should be given opportunity to give his own evidence, if he chooses, in his defence; that he should, if he so wishes, call witnesses to support his case. ..."

The requirements for a fair hearing in the proceedings to impeach the Lord Mayor are satisfied by section 12 (7) and 12 (19) of the KCC Act in processes that follow the evaluation of the petition by the Attorney General and the Minister for Kampala under section 12 (5) of the Act. Section 12(5) therefore does not stand alone. It has got to be interpreted within the context of the rest of the statute in order to establish the intention of the legislature. Having done so, I find that section 12 (5) does not contravene Article 28 (1) and 44 (c); neither is it inconsistent with the said provisions of the Constitution.

As to whether section 12 (5) of the KCC Act contravenes Article 42 of the Constitution, Article 42 provides for the right to just and fair treatment in administrative decisions as follows:

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

10 The provision emphasises that it applies to persons appearing before administrative officials or bodies. There is no requirement under the KCC Act for the Lord Mayor or Deputy Lord Mayor to appear before the Minister for Kampala and the Attorney General while they evaluate the petition presented by the Councillors for the proposed resolution to impeach them. Article 42 clearly does not apply at that point of the proceedings. However, the Lord Mayor and Deputy Lord Mayor subject to a petition and motion
15 for impeachment appear before the Tribunal and they are present in Council under sections 12 (7) and 12 (19) of the Act, respectively.

20 The Tribunal is a quasi-judicial body chaired by a judge of the High Court or a person who qualifies to hold that office. It makes the crucial decision about whether the rights of the Lord Mayor or the Deputy Lord Mayor to continue holding that office should be subjected to a motion for their removal from office. It is therefore subject to the supervision of the High Court in judicial review under section 36 of the Judicature Act. In addition, section 12 (20) of the KCC Act specifically provides for the remedy in Article 42 of the Constitution after the resolution to impeach the Mayors when it
25 provides that:

"The person who is removed as Lord Mayor or Deputy Lord Mayor may appeal to the High Court within twenty one days after the decision is communicated to him or her and the High Court may confirm or

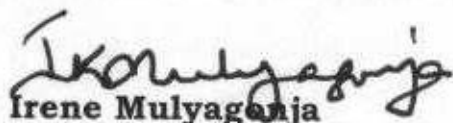
revoke the decision to remove him or her and make any order that the court considers just in the matter."

Once again, section 12 (5) cannot be interpreted as a standalone provision. It has to be interpreted within the context of the whole statute in order to ascertain the intention of the Legislature. The Mayors cannot be heard at all stages of the process for it could produce the absurd result that they can stop the impeachment process at all of its three stages. It could develop into a situation where there is no end to the complaints in the courts of law and so delay the trial contrary to the provisions of Article 28 (1) of the Constitution. The requirement for a fair hearing includes that the subject of the proceedings is not only entitled to a public and fair trial but to a speedy trial as well. I therefore find that section 12 (5) of the KCC Act does not contravene Article 42 of the Constitution; neither is it inconsistent with it.

In conclusion, this petition fails on all of the grounds and it is hereby dismissed. But because it was brought in the public interest, I will make no order for costs.

It is so ordered.

Dated at Kampala this 4th Day of May 2021.


Irene Mulyagonja

JUSTICE OF THE CONSTITUTIONAL COURT