THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

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

CONSTITUTIONAL PETITION NO. 24 of 2018

BETWEEN

Godfrey Kwiringira Magezi==========Petitioner No.1

Musitafa Kasaija==========Petitioner No. 2

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, 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. 0024 OF 2018

1. GODFREY KWIRINGIRA MAGEZI

2. MUSITAFA KASAIJA::PETITIONERS

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 ....4th............ 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. 20 OF 2018

(Coram: Egonda-Ntende, Elizabeth Musoke, Cheborion Barishaki, Mutangula Kibeedi & Irene Mulyagonja, JJCC)

1. GODFREY KWIRINGIRA MAGEZI

2. MUSITAFA KASAIJA::PETITIONER

VERSUS

ATTORNEY GENERAL:::RESPONDENT

JUDGMENT OF CHEBORION BARISHAKI, JCC

I have had the benefit of reading in draft the judgment of my learned sister Lady Justice Irene Mulyagonja, JCC and I agree that this petition should fail for the reasons she has set out therein.

I also agree with the order she has 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

CONSTITUTIONAL PETITION NO. 20 OF 2018

(Coram: Egonda-Ntende, Elizabeth Musoke, Cheborion Barishaki, Mutangula Kibeedi & Irene Mulyagonja, JJCC)

1. **GODFREY KWIRINGIRA MAGEZI**
2. **MUSITAFA KASAIJA:::PETITIONER**

VERSUS

ATTORNEY GENERAL:::RESPONDENT

JUDGMENT OF CHEBORION BARISHAKI, JCC

I have had the benefit of reading in draft the judgment of my learned sister Lady Justice Irene Mulyagonja, JCC and I agree that this petition should fail for the reasons she has set out therein.

I also agree with the order she has 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. 20 OF 2018

BETWEEN

1. **GODFREY KWIRINGIRA MAGEZI**
2. **MUSITAFA KASAIJA** ::::::::::::::::::::::::::::::::::**PETITIONERS**

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 reasoning and the Orders she has proposed.

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, Kibeedi & Mulyagonja; JJCC

CONSTITUTIONAL PETITION NO. 24 OF 2018

BETWEEN

1. GODFREY KWIRINGIRA MAGEZI

2. MUSITAFA KASAIJA ::::::::::::::::::::::::PETITIONERS

AND

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

JUDGMENT OF IRENE MULYAGONJA, JCC

Introduction

This petition was brought under Article 137 of the Constitution for annulment of a resolution of Parliament dated 3rd September 2015 wherein it was resolved to alter the boundaries of some districts in Uganda in order to create 25 new districts. The petitioners sought declarations that:

i) The creation of Kikube District without first passing an Act of Parliament seeking to amend Article 178 (3) to (12) and the First Schedule of the Constitution is inconsistent with and in contravention of Articles 259, 261, 262 and 263 of the 1995 Constitution, as amended.

ii) The creation of Kikube District, among others, by Parliament through a resolution dated 3rd September 2015 is inconsistent (with) and in contravention of Article 5 (2), 178 and the First and Fifth Schedules of the 1995 Constitution as amended.

iii) The creation of Kikube District without taking into account the means of communication, geographical features, density of population, the economic viability of Hoima District together with Uganda contravenes, infringes and is inconsistent with Article 179 (4) and 8A of the Constitution of the Republic of Uganda.

iv) Parliament's decision to create Kikube District without establishing and debating whether such alteration or creation will ensure effective administration or bring services closer to the people is inconsistent with and contravenes Article 179 (4) and Article 8A.

v) The creation of Kikube without considering the wishes of the people is inconsistent with and contravenes Article 179 (4) and 8A.

vi) The alteration of the boundaries of Hoima District and creation of Kikube District among others without an Act of Parliament for that purpose is inconsistent with and contravenes Article 269 of the Constitution of Uganda, as amended.

The petitioners proposed that the court makes the following orders and declarations:

a) Annulment of the resolution of Parliament dated 3rd September 2015 altering the boundaries of Hoima District to create Kikube District and other Districts that were created in contravention of the provisions of the Constitution referred to above.

b) A declaration that the districts of Buliisa, Hoima, Kibaale and Masindi forming Bunyoro Region as stipulated in the Fifth Schedule of the Constitution are entrenched and hard-corded, embedded and thus cannot be split to create new districts.

c) Declaration that the alteration of the boundaries of Hoima and the other Districts and the creation of Kikube and other Districts specified in the aforesaid parliamentary resolution is unconstitutional, null and void.

d) Immediate cessation and disbandment for (sic) the existence and operation of Kikube and other districts unconstitutionally and illegally created.

e) Costs of the Petition.

The petition was supported by the affidavits of the petitioners sworn on the 27th June 2018, the supplementary affidavit of the First petitioner sworn on 29th June 2018 and the additional affidavits of Tibyangwa Alex, Mbabazi Twaha, Kyamuhangire Francis, Kaahwa Dan and Katusabe Francis Bujune, all sworn on the 28th June 2018. The First petitioner deposed an additional/supplementary affidavit on 13th July 2018.

The respondent opposed the petition and filed an affidavit in support sworn by Jane Kibirige, the Clerk to Parliament, on 30th September 2018 and the additional affidavit of Ntaro Geoffrey, Principal Research Officer in the Ministry of Local Government sworn on the 20th October 2020. They asserted that the alteration of boundaries and creation of new districts was done according to the provisions of the Constitution and the Local Governments Act. That as a result, the petition was misconceived and without merit and ought to be dismissed.

Appearances

At the hearing of the petition the petitioners were represented by learned counsel, Robert Ojambo, Muhammad Mbabazi and Bernard Mugyenyi. Geoffrey Atwine, Principal State Attorney, appeared with Imelda Adong for the Attorney General. The petitioners filed conferencing notes on the 22nd

October 2018, while the respondent's conferencing notes were filed on 18th October 2020. Counsel for both parties applied to have their conferencing notes adopted as their submissions and the application was granted. In addition, counsel for both parties addressed court orally on what they considered to be the salient issues in the petition for the consideration of court.

Issues for determination

In their scheduling memorandum, the petitioners raised issues to be determined by court as follows:

1. Whether the creation by Parliament of Kikube District, among others and the consequent alteration of the boundaries of Old Hoima District, without a bill for an Act of Parliament seeking to amend Article 5 (2) of the Constitution (as amended) for that purpose, and without an Act of Parliament being passed in regard thereto was/is unconstitutional.
2. Whether the creation by Parliament of Kikube District, among others and the consequent alteration of the boundaries of the Old Hoima District, and the resultant alteration of the composition of the Districts comprising the regional government of Bunyoro, without a Bill for an Act of Parliament specifically seeking to amend Articles 178 (3), (4) and (13) and without an Act of Parliament being passed in regard thereto was/is unconstitutional.
3. Whether the alteration by Parliament of the boundaries of the Old Hoima District, among others, without a motion, decision and or resolution of Parliament is unconstitutional.
4. Whether the creation by Parliament of Kikube District, among others, and the resultant alteration of the boundaries of the Old

Hoima District, among others, without debating, considering and establishing whether it was/is necessary for effective administration and the need to bring services closer to the people of the concerned areas, is unconstitutional.

5. Whether the creation by Parliament of Kikube District, among others, and the resultant alteration of the boundaries of Old Hoima District, among others, without taking into account the means of communication, geographic features, density of population, economic viability and the wishes of the people concerned is unconstitutional.

6. Whether the alternation by Parliament of the boundaries of the original Hoima District and creation of Kikube Disctrict without taking into account and or considering whether it would not lead to unbalanced and inequitable development is unconstitutional.

The respondent's counsel summarized them into one broad issue as follows:

1. Whether the creation of Kikube District by way of resolution of Parliament is inconsistent with and in contravention of Articles 5 (2), 8A, 178, 179(4), 259, 261 and 263 of the Constitution.

Mr Ojambo, for the petitioners argued issues 1 and 2 separately and issues 3, 4, 5 and 6 together. The respondent's counsel argued all the issues together, I believe because he framed one broad issue including all that were framed by counsel for the petitioners.

I have carefully perused the petition and the response to it and the submissions of counsel for both parties. It is my view that the relevant issues for the consideration of this court in this matter are as follows:

1. **Whether Article 178(3) and (13) of the Constitution brought the districts referred to therein and identified in the First Schedule of the Constitution, including those under Bunyoro, into being as regional governments forming part of the Republic of Uganda as is specified in Article 5(2) and the First Schedule of the Constitution.**
2. **Whether the alteration of the boundaries of Hoima District to create Kikuube District by a resolution of Parliament contravened Articles 179 and 8A of the Constitution.**
3. **Whether Parliament's resolution on 3rd September 2015 to create new districts, including Kikuube, resulted in an amendment of Articles 5 (2), 178 (3), (4) and (13) and the First Schedule of the Constitution, by infection and implication, and contrary to Articles 259 and 261 of the Constitution.**

I will address the issues above while taking into consideration the submissions of counsel for both parties, the authorities cited and the evidence in the affidavits filed by both parties.

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:

> *"... 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 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 have been approved by the Supreme Court in various decisions, including, **Paul K. Ssemowogerere & Others v Attorney General, SCCA 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 3 issues in the order that they were listed above.

Issue 1: Regional Governments in the Constitution

Submissions of counsel

The first issue requires an interpretation of the implications of Article 5 (2) on the contents of Articles 178 (3) and the First Schedule of the Constitution. In that regard, counsel for the petitioners submitted that by virtue of Article 178 (3) of the Constitution the districts of the regions of Buganda, Bunyoro, Busoga, Acholi and Lango specified in the First Schedule to the Constitution shall be deemed to have agreed to form regional governments for purposes of Article 5 (2). That the First Schedule of the Constitution specifies the districts under Bunyoro as Buliisa County, Hoima, Kibaale and Masindi Districts and by virtue of Article 178 (13) they are deemed to have formed a regional government, as of First July 2006, as is provided for in Article 178 (3) of the Constitution.

Counsel went on to submit that the resolution of Parliament passed on 3rd September 2015 purported to create Kikube District out of Hoima District with effect from First July 2018, resulting in the reduction of the size of the original Hoima District. He submitted that Hoima which was deemed

to have agreed to form part of the Regional Government of Bunyoro was included in the area that Parliament purported to curve Kikube out of. That this was in effect a variation or alteration of Hoima District anticipated and provided for in the First Schedule to the Constitution as forming Bunyoro Regional Government.

The respondent's counsel made no specific response to this issue but he asserted that Parliament has the power to create new districts under Article 5 (2) which provides that subject to Article 178 of the Constitution, Uganda shall consist of the districts specified in the First Schedule and such other districts as may be established in accordance with the Constitution or any other law. That the Constitution and the Local Governments Act permit the altering of boundaries of districts to create new districts, however, they do not expressly provide for the manner in which the said mandate is to be carried out by Parliament.

Resolution of Issue 1

Article 5 of the Constitution provides for the regions, districts, and territorial boundaries of the land that constitutes the Republic of Uganda. Article 5 (2) leans on the provisions of Article 178 when it provides that,

> **Subject to article 178 of the Constitution, Uganda shall consist of-**
>
> **a) Regions administered by regional governments <u>when districts have agreed to form regions as provided for in this Constitution;</u>**
>
> **b) Kampala; and**
>
> **c) the districts of Uganda,**
>
> **as specified in the First Schedule to this constitution, and such other districts as may be established in accordance with this Constitution or any other law.**

For clarity of the analysis here, it is also useful to reproduce the relevant clauses of Article 178 of the Constitution, and they are as follows:

Regional Governments

1) Two or more districts may cooperate to form a regional government to perform the functions and services specified in the Fifth Schedule to this Constitution.

2) A districts shall not be taken to have agreed to enter into a cooperation arrangement to form a regional government, unless-

a) the proposal to join the regional government has been approved by resolution of the district council by a majority of two thirds of the members of the district council; and

b) the decision of the council has been ratified by not less than two-thirds of the sub-county councils in the district.

3) **Subject to clause (1) and to the provisions of this Constitution, the districts of the regions of Buganda, Bunyoro, Busoga, Acholi and Lango, specified in the First Schedule to this Constitution, shall be deemed to have agreed to form regional governments for the purposes of this article.**

The petitioners' advocates advanced the argument that because Article 178 (13) of the Constitution provided that regional governments shall commence on 1st July 2006, Bunyoro's regional government came into existence on that date. It therefore behoves us to analyse the provisions of Articles 5(2) 178(1), (3) and (13) and establish the intent of the framers of the document in that regard.

Starting with Article 5 (2), it provides that the regions specified therein shall be those which are administered as regions *when the districts have agreed to form regional governments as is provided for by the Constitution.* This clarifies Article 178 (3) to mean that unless the districts specified in the First Schedule do agree to form regional governments, the demarcations of regions as administrative units cannot and does not come into being.

This intention carries through to clause (3) of Article 178 because its operation is stated to be "*subject to clause 1 thereof and to the provisions of the Constitution.*" It is my view that the provisions of the Constitution referred to, apart from clause (1) of Article 178 are Articles 5 (2) (a) and 178 (2) (a) and (b). Clause 2 (a) and (b) are particularly important because they provide for the procedure by which regional governments were supposed to be formed. The districts agreeing to come together as a regional government shall not be construed to have agreed unless their proposal to form the regional government has been approved by a majority resolution of two-thirds of the members of each council of each of their district councils.

Clause 2 (b) of Article 178 takes it further by providing that it is not enough for the district councils to resolve to be part of a regional government. The resolution does not become operational unless it is ratified by not less than two thirds of the members of all the sub county councils in each of the districts that have resolved to be formed into a regional government. This, in my view is a process that requires the district councils in each of the districts to marshal resources of negotiation and cooperation, not only in the district councils but also in the sub-county councils, before each and every sub-county council in each of the districts ratify the decisions of the various district councils.

There is no evidence in the affidavits sworn to support the petition either by the petitioners themselves or the other deponents that agreed to provide evidence in this petition that the districts of Hoima, Kibaale, Masindi and the District comprising of Buliisa County entered into a cooperation agreement as is provided for in Article 178 of the Constitution. The alleged regional government of Bunyoro therefore does not exist; or as the Clerk

to Parliament put it in her affidavit, the regional government is not operational and no decision can be made by a non-existent entity.

The intentions of Article 178 (13) are therefore really just inchoate. Though it states that the regional governments would commence on First July 2006, it was only the start date of a process. The various districts in the country, apart from those specified in Article 178 (3) and deemed to be blocks for the creation of regional governments, in the event that they agree to be governed as such, could have from the First of July 2006 agreed amongst themselves to be governed in the manner specified in the Fifth Schedule of the Constitution. The deeming of the districts specified in Article 178 (3) was therefore only just that; an offer by the Legislature to those districts, having identified them as best suited to agree and be governed in the manner provided in the Fifth Schedule. It was up to the leaders and the citizens in those districts to seize the opportunity to take up the regional government model, with effect from the First July 2006.

The system of governance in regions, popularly referred as the *"regional tier"* was included in the Constitution as a measure to satisfy the desires of regions that wished to govern themselves as Federal Governments with full administrative and legislative powers, paying homage to their cultural leaders. Attempts to enact a law to operationalise the regional tier system failed during the 8th and 9th Parliaments. Though a Bill was tabled, it was never debated and it lapsed. Some of the reasons given for its failure, were that it did not pass muster for the pure federal system of governance desired by regions because the political power would still be vested in the central government.[1]

[1] Buganda's quest for *Federo* and the right to self-determination: A reassessment; Human Rights and Peace Centre, Working Paper No 17, August 2007.

Though there are still demands for implementation of the tier system, a lot has changed since 2005, such as the introduction of several municipalities and now cities in the regions for which it was intended. But most importantly, the system seems to have been rejected by Buganda, the region that was most interested in it and led other regions in demanding for it. The provisions of Article 5(2) and 178 of the Constitution are therefore more or less redundant. It seems that this petition was an effort to bring the question of a federal government for Bunyoro back into view, at the time when it became most apparent that there were more economic resources from which a federal government in that region would benefit.

Having found that Bunyoro regional government does not exist, it automatically follows that the districts that were identified in the First Schedule and deemed to be suitable to be governed under the regional government model remained as separate and independent districts of Uganda. This conclusion is justified by the fact that though the petitioners claim that Hoima hitherto had recourse to economic and other resources that were largely taken by Kikube (hereinafter referred to as "Kikuube", as it is in the Hansard Reports) which negatively affected Hoima, the economic independence of Hoima was not demonstrated by the petitioners. Instead, according to publications of the Ministry of Finance, Planning and Economic Development (http://budget.go.ug) pursuant to Article 178A of the Constitution, all the districts under the proposed regional governments in Schedule 1 have specific votes through which the Central Government provides funding to them.

I therefore find that the districts included in Article 178 (3) and the First Schedule to the Constitution were not entrenched, hard-corded and embedded in the Constitution; they could be altered to form new districts.

What remains to be determined is whether the process to alter the boundaries was lawful and/or constitutional.

<u>Issue 2:</u> Alleged non-compliance with and/or contravention of Articles 179 and 8A of the Constitution in forming the 25 new district(s).

Submissions of Counsel

Simply put, the 2nd issue was that the procedure that was adopted by Parliament in the creation of the new districts contravened the whole of Article 179 and therefore also Article 8A of the Constitution; that as a result, the creation of the new districts, including Kikuube was unconstitutional.

In this regard, Mr Ojambo submitted that no motion was presented to Parliament to create new districts pursuant to Article 179 (1) (a) because the new districts were created from already existing districts. That the creation of the new districts was subjected to a vote by Parliament but the alteration of the boundaries of the original Hoima District was not subjected to any vote. Further, that although Article 179 (2) of the Constitution provides that any measure to alter the boundary of a district or to create a new boundary shall be supported by a majority vote of all members of Parliament, it was evident from the Hansard that no motion was presented to Parliament for the creation of new districts. That the motion was simply put to a vote without debate on it and 216 members being the majority of the members present voted in its favour.

Counsel for the petitioners further submitted that the resolution of Parliament to create new districts pursuant to Article 179 (1) (b) and (2) did not of itself amount to the creation of new districts but was a measure

towards the creation of the districts. That the motion to create Kikuube was not debated because Parliament did not establish whether creation of new districts was necessary for effective administration and the need to bring services closer to the people as required by Article 179 (4). That neither did Parliament take into account the means of communication, geographical features, density of population, economic viability and the wishes of the people concerned as is required by Article 179 (4).

In support of the contention that Parliament did not take the viability of the new Hoima District into account when making the decision to curve out the new Kikube District, Counsel for the petitioners referred us to the First petitioner's additional supplementary affidavit, filed with the amended petition. In that affidavit Mr Kwiringira explained how the decision placed the New Hoima District at an economic disadvantage because it was left with no natural resources that would foster development. Counsel then asserted that for that reason the decision was inconsistent with and contravened Article 8A of the Constitution and the Objective of balanced and equitable development that is set down in clause XII of the National Objectives and Directive Principles of State Policy in the Constitution. That the failure to comply with these principles and Articles 8A and 179 (4) made the resolution of Parliament unconstitutional.

In reply, the respondent's counsel submitted that according to the affidavit of Jane Kibirige, Clerk to Parliament, sworn in answer to the petition on the 18th July 2012, the Minister for Local Government moved a motion under Article 179 (1) (b) of the Constitution for a resolution of Parliament to create 25 districts, including Kikuube. That the creation of Kikuube followed a resolution of the District Executive Council of Hoima District Local Government to alter the boundaries of Hoima District to create the new District. That Parliament's Committee on Public Service and Local

Government considered the matter and the same was debated by Parliament following which on 3rd September 2015 a resolution was passed to alter the boundaries of Hoima and create Kikuube District. Counsel for the respondent thus submitted that the petitioner's contention that the motion was passed without following the provisions of Articles 259 and 261 and passing an Act of Parliament was misconceived.

He further submitted that the creation of Kikuube District was done in compliance with Article 8A of the Constitution which provides that Uganda shall be governed based on principles of national interests and common good enshrined in the national objectives and directive principles of state policy. He finally submitted that the resolution to alter the boundaries of Hoima was supported by the majority of the members of Parliament in accordance with Article 179 (2) of the Constitution.

Resolution of Issue 2

With regard to the submission that no new districts were created owing to the fact that the new ones were curved out of original districts, the provisions of Article 5 (3) of the Constitution are clear that the whole of the land mass that makes up the Republic of Uganda was delineated as is shown in the Second Schedule to the Constitution. While the Second Schedule provides for the land mass and its boundaries, the First Schedule lays down the administrative divisions of the Republic of Uganda. There is no other land, other than that specified in the Second Schedule from which new districts can be created, unless the Government of Uganda encroaches on land that makes up neighbouring countries.

For a consistent and comprehensive discussion of this issue, it is important to reproduce Article 179 of the Constitution, and it provides as follows:

1) Subject to the provisions of this Constitution, Parliament may-

a) alter the boundaries of districts; and

b) create new districts

2) Any measure to alter the boundary of a district or to create a new district shall be supported by a majority of all members of Parliament

3) Parliament shall by law empower district councils to alter the boundaries of lower local government units and to create new local government units within their districts.

4) Any measure for the alteration of the boundaries of or the creation of districts or administrative units shall be based on the necessity for effective administration and the need to bring services closer to the people and may take into account the means of communication, geographical features, density of population, economic viability and the wishes of the people concerned.

It is my view that clause 1(b) of this Article should be read as a continuation of clause 1(a), so that the alteration of boundaries of the districts results in new districts. It would be absurd to image any contrary interpretation to that in the face of clause (2) and (3) of Article 5 of the Constitution which lead to the conclusion that the land mass specified in the Second Schedule is what makes up the administrative units in the First Schedule. Clause (3) of the same Article amplifies this when it provides that there shall be a law that empowers district councils to alter the boundaries of lower local government units to create new local government units within their districts. In similar vein and for the avoidance of doubt, section 7 (2) of the Local Governments Act provides that,

"(2) Boundaries of a district unit may be altered or new district units formed, in accordance with article 179 of the Constitution."

With regard to the contention that the resolution to create new districts did not result in the creation of the districts but was only a measure to do so, the respondent's counsel submitted, correctly in my view, that Article

179 did not specify the procedure for the creation of new districts. This is because clause (2) of Article 179 refers to *"any measure to alter the boundary of a district"* meaning that there are different measures that can be taken by Parliament to achieve that purpose.

In the matter now before us, at least two different measures were identified that could achieve the purpose. The first is by passing an Act of Parliament to amend Article 5(2) and the First Schedule of the Constitution as is provided for by Article 261 of the Constitution. The other was by a notice of motion brought before Parliament under Part X of the Rules of Procedure of Parliament (2012). *"Motion"* was defined in rule 2 thereof to mean *"a proposal made by a Minister that Parliament or a Committee of Parliament do something, order something to be done or express an opinion concerning a matter."* In this case, the Minister moved a motion for the creation of new districts in different parts of the country for the consideration of the whole of Parliament and for a decision on the matter.

Regarding the submission that the creation of the new districts was subjected to a vote by Parliament but the alteration of the boundaries of the original Hoima District was not subjected to any vote, the procedure that was followed can be established from the evidence on record. In her affidavit in support of the reply to the petition, the Clerk to Parliament provided the details relating to the tabling of the motion to create new districts, its debate and the passing of the resolution to create them. Attached to her affidavit were copies of the Hansards for the 18th July 2012, 18th August 2015 and 19th August 2015. But the Hansard Reports attached to the affidavit revealed that the motion was also in issue on the 13th of August 2015.

It has already been established that the new districts were created out of already existent districts. It is therefore clear that there could be no creation of new districts out of the old districts without the alteration of boundaries of the old districts. Therefore, when the Minister for Local Government moved the motion for the creation of new districts at 4.28 pm on 18th August 2015, included among the districts to be created and to become effective on the First July 2018 was Kikuube District. In the motion, the proposed district was item (vi) and it was listed and described as follows:

"vi) Kikuube District, currently part of Hoima District, consisting of Buhaguzi County with its headquarters at Kikuube Town Board."

Buhaguzi would not have been described as a county unless its boundaries had already been delineated as such. There was therefore no need for a separate motion for the alteration of boundaries because they were already delineated for the existent Buhaguzi County.

Regarding the petitioners' contention that the motion to create the new districts was not debated by Parliament because there is no evidence that the specific factors to take into account in the process named in Article 179 (4) were considered by Parliament, there is evidence available on record about that debate. In his affidavit sworn on 27th June 2018, the First petitioner stated that he established from the Hansard for the 3rd September 2018 that the impugned resolution was passed with absolutely no debate at all as to whether the alteration of Hoima to create Kikuube would ensure effective administration of both Hoima and the newly created district and bring services closer to the people.

The 1st petitioner further deposed that the Hansard shows that there was no statistical information or report furnished to Parliament to demonstrate

that the alteration of the boundaries of Hoima to create Kikuube was necessary for the effective administration of the two districts. That the wishes of the people were neither sought nor considered before it was proposed to alter the boundaries of Hoima and create Kikuube District.

The contention that the people were not consulted was repeated in the affidavits of Tibyangwa Alex, Mbabazi Twaha, Kyamuhangire Francis, Kaahwa Dan and Katusabe Francis Bujune. The deponents averred that they were at the time Local Council Chairpersons for Kigomba, Kinubi, Wagesa, Kitorogya and Bulimya Villages, respectively. That as local leaders, they were aware that the people in their areas were neither consulted nor sensitized about the altering of the boundaries of Hoima to create another District. That the wishes and views of the people in their villages were neither sought nor considered before a decision was made to alter the boundaries of Hoima.

However, it seems that the petitioners did not follow the process that led to the creation of the new districts from the time that the motion was first presented in Parliament in July 2012 to the date of the resolution in September 2015. The affidavit in reply sworn by Jane Kibirige, the Clerk to Parliament had a set of copies of the Hansard Report for some days on which the impugned motion was considered by Parliament attached to it as follows: 18th July 2012, 18th August 2015, 19th August 2015 and 5th September 2015. It is therefore useful to set out the chronological sequence of the debate on the matter in order to understand how the resolution was passed.

The Hansard for the 18th July 2012, shows that on that day the Minister for Local Governments moved a motion for a resolution for the creation of new districts, effective 1st July 2012. The motion was not debated

immediately because according to the Rules of Procedure, it was required that the matter be considered by the relevant parliamentary committee. The Deputy Speaker thus tasked the Sectoral Committee on Public Service and Local Government to consider the matter and come up with a report by the 26th July 2012. This was as provided for under rule 147 of the Rules of Procedure of Parliament at the time.

It is evident from the Hansard for the 18th August 2015, at page 1749, that government halted the creation of new districts in 2012, 2013 and 2014 due to financial constraints resulting in a delay in presentation of the Report of the Sectoral Committee and subsequent debate of the motion. The matter came up as a pending motion that had remained so for long to be disposed of by Parliament. As a result, in July 2015, the Sectoral Committee presented its report on the findings made in their search for views on the motion.

However, due to the Moratorium issued by Government on the creation of new districts, the resolution could not be debated immediately after the presentation of the Report. Members of Parliament against the creation of the new districts called for a withdrawal of the motion on the ground that Government had abandoned its own motion and it was redundant. The Minister for Local Government had no alternative but to apply to withdraw the motion. The motion to withdraw had to be debated because it was a substantive one and the motion to be withdrawn was one in which many Members of Parliament had a stake. The copy of the Hansard that was retrieved from https://www.parliament.go.ug for the 13th August 2015 showed that a lot of issues relating to the creation of the new districts were debated on that day in an emotive manner, for and against the withdrawal. For Kibaale the facts and figures were given with passion as follows:

"Mr Speaker, Kagadi and Kibaale altogether are 4,322 square kilometres compared to some districts with only 84 square kilometres. We are crippling with service delivery. You can imagine in the report of the Committee on Local Government Committee – see Annex II – in 2014 there was a lot of imbalance in this country. Kibaale District was given a provision of just Shs 29 billion yet Luweero, with a smaller population, was given Shs 30 billion and Iganga was given Shs 31 billion. Which yardstick does our Government use? (Laughter)

Secondly, our people in Kibaale have been wishing that these two districts be created since 2001; it is a strong wish of our people. The Minister said he did not have money, but where is he getting the money to create new municipalities in our local governments? (Laughter) Where is he also getting money to bring in more MPs here by creating new municipalities and counties? Mr Speaker, we feel segregated. This is deliberate because if the President came to Kibaale and directed you - (Laughter)"

Another member continued to demand for answers and oppose the withdrawal of the motion as follows:

"The President directed you, Minister of Local Government; you work under a presidential directive. How can you come here to deceive this Parliament that he directed otherwise?

Mr Speaker, I feel hurt. We have supported this Government 100 per cent. Now our people have seen that this Government is not willing to serve us. (Applause)

...

Is the Minister procedurally right to withdraw a motion now when the President has just directed him to create these two districts?

Mr Speaker, this is a letter from the Minister of Local Government where he has been directing that the creation of these districts starts. It is addressed to the district chairman and here it is. ..."

Mr Speaker, the people of Kibaale are currently watching. We have supported this Government with all our hearts. They are watching you playing with our minds. We are tired of being deceived and lied to as though we are children. (Laughter)

Apparently, the particular Member of Parliament had a following from her constituency sitting in the gallery and so was actually *"playing to the gallery."* As a result of this debate in which many Members of Parliament threatened not to support the withdrawal but to continue the debate and pass the motion in spite of its threatened withdrawal by Government, the debate on the motion to withdraw the motion was suspended till the following week. The Minister returned to Parliament on 18th August 2015. He informed Parliament that on the 17th August 2015, Cabinet resolved to have the 25 districts that were proposed in 2012 created in a phased manner, contrary to what had been proposed in the Motion tabled in 2012.

It appeared like the Minister and the whole of Government were coerced into a position to withdraw the motion to withdraw the motion and instead amend it and re-table it to still create the 25 districts demanded for by the Members of Parliament *"for their people,"* but in a phased manner over a period of 3 years, with effect from 2017. The Minister admitted that the decision was made to go on with the resolution because of the concerns of some Members of Parliament that the districts had been promised by the President and so had to be created. In a coincidence of benefits the amended motion was adopted.

The Hansard for the 18th August 2015 (at page 17496) shows that on that day, after the amended motion was tabled the Deputy Speaker then in the chair called for a debate of the motion as follows:

> *"Hon Members, I propose the motion again for your debate. There was a motion for a resolution of Parliament moved under Article 179 (1) (b) of the Constitution to provide for the creation of new districts. That was the motion proposed and now there is an amended motion to that effect.*
>
> *The initial motion had the committee report which we listened to, but now that motion has been amended in the terms that have been proposed by the*

minister. I now propose this motion for your debate and the debate starts now."

In the midst of the debate, some members thought there should have been a debate on the findings and recommendations in the Committee Report, especially in view of the fact that there was a minority report. Others thought and requested that the districts be created in the next financial year. Yet others were of the view that more districts should have been included in the amended motion. However, this was not possible because the Rules of Procedure required a different course of action. Guidance was given by the Speaker, as reported at page 17502 of the Hansard for 18th August 2015, as follows:

"Honourable members, when a Bill is brought to this House, read for the first time and sent to a committee, when that Bill is coming back to the House, it does not come to debate the report of the committee. It comes to debate the motion for second reading of the Bill where the committee now reports on what their findings are and guides the House and guides the debate. The same applies to motions of this nature, which are referred to committees.

When the committee is ready to come back to the House, it is not the report of the committee that is going to be debated, it is the motion, which was referred to the committee that is going to be debated, which is now informed by the report, majority or minority, whichever is applicable. That is what would inform the debate and the decision would be taken.

When you need to take the recommendations of the committee is when you come to your decision. For example, if the committee had a recommendation in their report – After considering they say, maybe five new districts should be created. When the time comes for decision, for example if there was a decision to be taken on Kagadi and there is an amendment that the committee has recommended on Kagadi, that would now be the time to propose the amendment so that it is handled and voted on and it becomes the position of the House.

...

Therefore, we are not debating reports of committees; we are debating the motion. Now can the motion be amended? The answer is yes and the answer

is also at any time. That motion can be amended at any time of the proceedings. Therefore, we are proceeding correctly."

The debate continued in the afternoon of 18th August 2015 with members raising concerns about the criteria that were employed to create some districts earlier than others. This was in respect of districts that had larger populations than those that were to commence in the next financial year. Members also complained about the inequitable distribution of resources to some of the larger districts as is shown in the speech below:

"Mr Speaker, I would like to put this on record and the minister should note that as we talk, Mubende District is the second biggest district in land area in Uganda and that is only after Kibaale District.

Mubende is also the second biggest district in Uganda in terms of population. It has a population of 688,819 people as per the 2014 census. Among these districts which have been put in the first phase, it is only Kibaale and Kabale which have bigger populations than Mubende District. When it comes to land area it is only Kibaale which is bigger than Mubende. Mr Speaker, we were promised Kassanda District in 2009. It gives me a lot of pain that they are pushing us to 2019. Can the minister be a little scientific and we use the population figures in order to determine which district comes before the other?

As I speak, Mubende District is made up of five counties, five constituencies and it is so huge. His Excellency the President directed the Prime Minister to make sure that these big districts are considered when they are distributing resources but resources have never been distributed equitably.

Let me give one simple example. When they are giving Mubende District university quota, we consistently get 11 students to go to University. My neighbour Gomba, which - [Member timed out]"

Others thought the motion to create new districts was for the benefit of the ruling party and therefore had no kind words for it. One member expressed his views thus:

"Thank you Mr Speaker. I would like to move an amendment that we remove all these districts of 2018 and 2019 and fit them between 2016 and 2017.

My justification is that those of us who are sure that we will be back here cannot spend four years giving out districts. We should be looking at other matters. For those of you who are excited about 2018 and 2019, I would like to make you believe that this will be "air" for you will get ***empewo****. This is in Luganda Mr Speaker, my amendment – (Interruption)"*

Another member raised similar issues, at page 17504, as follows:

"Thank you very much, Mr Speaker. I stand to oppose this motion. The minister, on behalf of government, has confessed and rightly so, that Government is not in a good position to create new districts, at least this year and it is not mandatory that the NRM Government will be in power next year.

The process therefore has become like we are discussing a manifesto of the ruling party because we are having elections next year before the implementation of what we are trying to create.

Mr Speaker, the second point that I would like to make is that the ingredients for the justification of creation of these districts change over time. Things like population are not static. Today, we have the highest rural-urban migration in the history of Uganda. Because of what is happening in the rural areas of Uganda, everybody is coming to town, especially Kampala. As a result the population of Kagadi today may not be the population of the same place tomorrow. Therefore, we are just doing speculation. (sic)

Mr Speaker, earlier on I wanted to rise on a point of procedure as to whether it is procedurally right to have a manifesto of a political parry discussed in the National Assembly. Thank you very much, Mr Speaker."

There were some Members of Parliament who expressed the view that service delivery in areas were districts were created earlier improved as is shown in the speech below, at page 17503, Hansards of 18th August 2015.

"Mr Speaker, I thank you very much. I rise to support the motion of the minister that the districts, as mentioned, be created.

Mr Speaker, I am a beneficiary of the districts that have been created over the years by this government. Bugiri District was curved out of Iganga and I can tell that we used to suffer a lot under Iganga. We got district status in 1997 and we have since moved on and the district is developing.

We have also seen the creation of Namayingo which is also moving very fast in issues of development. There is absolutely no reason why anyone would block Ugandans who wish to be ruled in the manner that they have stated and this is provided for by Article 1 of the Constitution. Therefore, the people of the various districts mentioned: Kagadi, Kakumiro and Omoro should be given district status such that they can determine their own issues at the level."

Concern was also raised about the increase in counties which led to an increase of men in Parliament yet the districts were static leading to less women entering Parliament on the affirmative action district vote. The motion was debated from the time it was presented at 2.45pm up to 6.00pm when it was proposed to have another motion moved to deal with the creation of municipalities in some of the districts that would be created. Parliament adjourned to the 19th August 2015 for the Minister to consult on that new motion.

The debate of the motion continued on 19th August 2015 and it became highly charged and emotive when some Members of Parliament from districts that had been promised funds to have new districts created expressed their views about the delay in creating them. One member rose and made a speech expressing his frustration at failing to secure a new district for his constituents (at page 17540) in the following manner:

"Thank you Mr Speaker. I stand on a matter of procedure. More than 20 years ago, the people of Tororo County demanded for a district. They even went very far that His Excellency the President Yoweri Kaguta Museveni, came and declared a district. After 5 years, he came again and created a political district and people have been patiently waiting; we have even fundraised money to start up an administrative block. They waited and five years passed; the people got annoyed as they though that they had been cursed and as a result, because we had plenty of rats, they ate the rats. (Laughter)

To this day, Mr Speaker, this matter is very serious. It was just as a result of sovereignty of some of the elders (who) thought we would have ethnic

conflict. However, some of us stood very firm. The matter of Tororo District has been brought to this Parliament thrice and the last time Hon Mwesige the minister came here, he said he needed more time to consult. I am even surprised that the Committee on Local Government and Public Service decided to ignore the issue of Tororo District which is on the Hansard, which the minister did not withdraw but only said he needed time to consult.

As I speak there are demonstrations going on in Tororoo County. People have decided to abandon their political differences and are united under one umbrella Tororo District.

...

I would like to thank the members for supporting Tororo and Mr Speaker, I feel like committing suicide on this floor - (Laughter) - because this matter is so serious. What is the use of me being a Member of Parliament if my people cannot get a district! What is the use? For 20 years how can that be? (Laughter) No, am I a member of this country?"

Some Members of Parliament were keen to have the resolution passed on the 19th of August 2015 but the Deputy Speaker proposed that the House considers passing the resolution on another day when there would be better representation in order to meet the voting requirements of Article 179. Article 179 provides that any measure to alter the boundary of a district or create a new district shall be supported by a majority of all members of Parliament. The matter was therefore adjourned to the 3rd September 2015, and at that sitting, a resolution was passed to create the new districts, with an overwhelming majority of 196 out of the 216 members that were present.

It is pertinent to show that the matters complained about by the petitioners were debated during the proceedings on the 19th August 2015. This happened after Members of Parliament demanded that the Minister lays down the criteria upon which the decision to create new district was based. The Minister referred the House to Article 179 (4) of the Constitution as a comprehensive provision for that purpose and then tried to explain its application, in part, at page 17548-17549, as follows:

The criteria is summarised in the Constitution. Now the question is: how do you measure the means of communication? This is a question of fact. How do you look at the geographical features? This is also a question of fact. Kalangala for example did not have the big population that you would want to have. I think by that time they had 16,000 people but because of the geographical barrier – the lake between Masaka where Kalangala was being managed and Ssese Islands – this Parliament found it expedient to create that district and it has worked for the people of Kalangala.

When they talk about the density of population, you can consider the population but population alone cannot be enough. I have just given the example of Kalangala District; if we were to go by the density of population alone, it would never have been a district. If you talk about the wishes of the people, which is also a factor here, how do you measure it? The best way we have been using (sic) in the Ministry to measure the wishes of the people is going by the resolutions of the districts and the sub county councils. This is because it is difficult to measure wishes of the people unless you hold a referendum in these areas and I have not seen us hold a referendum in any part of the country for the purpose of determining a district.

The other objective criteria is to have a radius of 20 miles, in addition to this criterion, which I consider to be subjective, because measuring the wishes of the people is subjective. Geographical features are a question of judgment. Means of communication is a question of judgment. Therefore, the criterion (sic) is written in the Constitution."

However, the Members were not satisfied with this explanation. They were of the view that the criteria were not clear and ought to have been make clearer for them to understand why some districts were not on the list, in spite of having the population that was required to create new districts. One of them offered to guide the Minister as follows:

"Mr Speaker, as we expect to have consensus tomorrow on this matter, probably to help the minister, because he is talking about criteria for the creation of new districts and municipalities, let me give you some facts and figures, which may help the minister.

If you look through the latest statistics from Uganda Bureau of Statistics, you will find that central region has a total population of 9.6 million people. If you look at the eastern region, it has 9.0 or 9.1 million people. The northern

region has 7.2 million people while the western region has a total population of 8.9 million people. Regarding the current criteria given by the minister, central region, which I believe has more communication, more accessibility and probably qualifies in terms of criteria, has only three municipalities so far. The eastern region has seven, northern region has four and the western region, with a population of 8 million has 10 municipalities.

I would also like to request the minister to be mindful of the fact that we read and follow issues. You may recall, and this House is aware, that Kiruhura District was created recently with Oyam, Dokolo and others but we are also aware that Kazo District is among those to be created. I think it is important that we know that each and every one of us represents people who are interested in ensuring that the national cake is fairly shared. When you look at the municipalities alone – I really thank God that our voters do not know these figures. If you tell them that the western region, which has a population... (Member timed out)"

One may wonder why the petitioners raised their complaints about the alteration of the boundaries of Hoima District in court as though they had no representatives in Parliament at the time the impugned resolution was passed. Interestingly, the Hansards for the three days when the motion was debated show the Members of Parliament that rose to speak for or against the motion and most were in support. It is striking that there is no evidence that Members of Parliament from Hoima District objected to the formation of Kikuube District. Instead, at page 17547, there is the speech of the Member of Parliament for Buhaguzi County in Hoima, out of which Kikuube was created. He was quite in a hurry to have the motion passed on the 19th August 2015 and his speech was very brief and to the point when he stated thus:

"Mr Speaker, I tried to catch your eye in vain. I was here yesterday and we debated this matter exhaustively and we appeared to have reached a consensus on this matter, especially to do with the creation of new districts.

We appreciate the concern of the other Members but I listened carefully to the honourable minister and he is in agreement. I think that procedurally colleagues could move a motion or meet the minister and do it the other way around to make sure that we all get what we deserve as members.

Therefore, Mr Speaker, I would like to move that if the House agrees, we vote on this matter, otherwise we will continue debating until tomorrow. Therefore, I would like to move that the question be put to the motion on the creation of the new district. I thank you."

The reaction of the MP for Buhaguzi was not surprising because in his affidavit dated 20th October 2020, Ntare Geoffrey, Research Officer in the Ministry of Local Government, stated that the District Executive Council of Hoima District Local Government, after wide stakeholder consultations passed a resolution to alter the boundaries of Hoima to create Kikuube District. The resolution was contained in Minutes of the Hoima District Local Council 5 meeting held on Thursday 30th September 2010.

The Minutes show that the meeting was attended by 24 Councillors. Minute HDLC/63/2010 was about the *"Report on Splitting Hoima District into 2 and Creation of More Administrative Units."* It was stated that a report was presented to the District Council on the matter and it was debated at length after which the matter was put to a vote. Out of the 24 Councillors present, 18 voted for the creation of what was then referred to as Buhaguzi District, two voted against and three abstained. Evidence was also presented of a Cabinet Minute dated 6th July 2012 in which that body approved the proposal for the creation of new districts, as stated in the motion presented before Parliament for that purpose. It was attached to the affidavit of Ntaro Goeffrey referred to above.

After the resolution was passed on the 3rd September 2015, one of the Members of Parliament from a county in Kibaale out of which Kagadi District, also part of the area that was deemed to form Bunyoro Regional Government, was grateful that it had been resolved to make Kagadi a district. His speech, at page 17709 of the Hansard for the 3rd September 2018, was similar to most of the members who spoke in support of the

creation of new districts. It was in anticipation of the elections in the next cycle.

I therefore find that the motion for the creation of the 25 new districts proposed by the Minister for Local Government in July 2012 was subjected to a fact finding process by the Committee on Local Government and Public Service which produced and presented a report to Parliament. The motion was debated in Parliament at more than three meetings and finally passed with a majority vote of the Committee of the Whole House.

The petitioners further contended that the decision to curve Kikuube District out of Hoima District did not take the viability of the Old Hoima District into account before curving out Kikuube District. Counsel for the petitioners submitted that the decision was made largely based on political expediency and selfish personal interests. He referred us to the petitioners' affidavits in support for the evidence.

In his supplementary affidavit sworn on the 29th June 2018, the 1st petitioner stated that curving Buhaguzi County at the time of the development stage of oil and gas would deprive Hoima District of the royalties accruing from Kingfisher I, II, III and IV Oil Wells, tourism mainly from Kabwoha and the Game Reserve, Bugoma Forest, cultural and historic sites, among others, translating into a loss of US$ 150,000,000. That Hoima would also be deprived of the Aerodromes of Kyehero and Buhaka with an estimated local revenue of UGX 100 million. That employment and business opportunities for local content amounting to UShs 200 million per annum would also be affected. That the economic benefits in terms of local services and tax would be lost from the commercial agricultural plantations of Kisaru Tea Estate and Hoima Sugar Limited in Kabwoya and Kizirafumbi sub counties and Bugambe Tea

Estate, among others. Counsel for the petitioners therefore argued that curving Kikuube out of Hoima was unconstitutional because the decision did not take Article 8A of the Constitution and XII of the National Objectives and Directive Principles of State Policy into account.

The 12th Principle/Objective under the National Objectives and Directive Principles of State Policy states as follows:

"XII. Balanced and equitable development.

i) The State shall adopt an integrated and coordinated planning approach.

ii) The State shall take necessary measures to bring about balanced development of the different areas of Uganda and between the rural and urban areas.

iii) The State shall take special measures in favour of the development of the least developed areas."

Before I consider this question it is important to reiterate the principle that the Constitution has to be read as a whole with no one provision destroying another, and that provisions relating to a subject must be looked at together. The purpose and effect of the provisions must then be considered in order to determine their constitutionality, and/or the actions complained of.

It is also important to consider the purpose of the National Objectives and Directive Principles of State Policy. Clause 1 thereof provides for the implementation of the objectives as follows:

"(i) The following objectives and principles shall guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.

(ii) The President shall report to Parliament and the nation at least once a year, all steps taken to ensure the realisation of these policy objectives and principles."

Article 8A of the Constitution provides that:

"1) Uganda shall be governed based on principles of public interest and common good enshrined in the national objectives and directive principles of state policy.

2) Parliament shall make relevant laws for purposes of giving full effect to clause (1) of this Article."

In **Godfrey Nyakana v. National Environment Management Authority, SCCA No. 2 of 2011,** it was held that the National Objectives and Directive Principles of State Policy are justiciable, especially where they relate to particular provisions of the Constitution. In this case, there are several provisions to consider and Article 8A is only one of them. The alteration of boundaries and creation of districts and other administrative units under Article 179 (4) is another and it has already been considered above.

The affidavits filed in support of the petition give some information about the sources and proposed sources of revenue for Hoima District taken away with Kikuube District in order to persuade us that the decision was contrary to Article 8A (1) of the Constitution. However, they are of course silent about the natural and other economic resources that were left within the new Hoima District. In his affidavit in support of the petition dated 29th June 2018, the 1st petitioner attached Minutes of the Hoima District Local Government for the meeting held on the 17th August 2017.

One of the resolutions made in that meeting was that the creation of Kikuube District should be stayed and instead priority be given to the creation of Hoima Oil City. This court takes judicial notice of the fact that among the cities that were formed in 2019 was Hoima City. This is confirmed by reports from the Parliament of Uganda that with effect from

1st July 2020, Hoima Municipality would become Hoima City.[2] Therefore the desired priority for Hoima was achieved. In view of that development, it cannot be correct to state that curving Kikuube out of the Old Hoima District left the district as a shell incapable of advancing its goals for economic development.

The petitioners complained about other activities like tourism but I believe the main reason for trying to get Kikuube back was to enable Hoima continue benefiting from the existence of the oil wells and the other benefits that would accrue from the development of the industry in that area. However, the petitioners seem to have underestimated the impact of the discovery of oil on the economic development of the whole of the Albertine Graben. According to a publication of the Ministry of Energy and Mineral Development,[3] economic activities relating to the exploration for, production and distribution of oil are mapped on the *"Petroleum Value Chain."* It constitutes of activities Upstream (Licensing, exploration, appraisal, development and production); Midstream (transportation, refining and gas processing; and Downstream (distribution, marketing and sales).

The petitioner's complaint focuses upstream, on the Kingfisher Development Area (KFDA), which covers the Kingfisher fields located in Kikuube District. But according to Uganda National Oil Company, "there are plans for future tie-in of Mputa-Nzizi-Waraga fields in Kaiso-Tonya, Hoima District." (https://www.pau.go.ug/the-kingfisher-development-project)

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[2] "Parliament approves creation of 15 new cities" retrieved on 15/02/2020 from https://www.parliament.go.ug
[3] The Oil & Gas Sector: Frequently asked Questions, May 2019; retrieved on 15th February 2021 from https://www.petroleum.go.ug/media/attachments/2020/03/12/faqs.pdf

The National Oil and Gas Policy for Uganda 2008 recommended refining the oil discovered in-country to supply the national and regional petroleum product demand before consideration of exportation. In order to facilitate achievement of this policy objective, the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act was enacted in 2013 and came into force in July 2013. The Act provides for among others, the legal foundation for the development of a refinery in Uganda and other midstream infrastructure like pipelines and storage facilities. Hoima District not only shares part of the plan for the upstream processes but it also has the biggest part of the midstream processes. It is a well-known fact, and pursuant to section 56 (2) of the Evidence Act, this court takes judicial notice of the fact that the Uganda Oil Refinery Project is based in Hoima District. The location is confirmed by Uganda National Oil Company as Kabaale Parish, Busereka Sub County in Hoima District (UNOC; https://www.pau.go.ug).

Still of even greater economic gain and international significance, it is a well-known fact, and this court takes judicial notice of the fact, that the proposed second International Airport in Uganda is to be in Hoima City. The Uganda Civil Aviation Authority reports that the airport is expected to facilitate the mobilization of equipment for the Uganda Oil Refinery and assist in development of agriculture and tourism in the Western Region (https://caa.go.ug/development-of-kabaale-airport). The airport is strategically located in the Kabaale Industrial Park, the home of the Uganda Oil Refinery.

Regarding the royalties complained about by the petitioners, the Sixth Schedule of the Public Finance Management Act, 2015 provides for the formula for the sharing of revenue from royalties among local governments as is specified in section 75 (6) and (7) thereof, in two parts. Part I provides

the formula for sharing revenue among local governments involved in petroleum production. Part II provides for the sharing of revenue among local governments within the petroleum exploration and production areas of Uganda. Hoima will therefore still benefit from the royalties, both as a District that has the oil wells of Mputa-Nzizi-Waraga fields in Kaiso-Tonya, and also as a neighbour to Kikuube District.

It is therefore clearly evident that the petitioners had limited information before they filed their complaint about the viability or otherwise of the new Hoima District. The information above, is readily available to those who would care to find it. It may be the reason why there is no evidence on the record of Parliament that any of the members of Parliament, either from Hoima district or the other districts deemed to have agreed to form the Regional Government of Bunyoro, protested the creation of Kikuube District during the meetings in which the impugned motion was debated.

Moreover, the results of the consultations carried out on the proposed new districts by the Sectoral Committee on Public Service and Local Government were contained in a report that was presented to Parliament before the debate. They were supposed to inform the debate and it was explained by the Deputy Speaker, that recommendations were supposed to have been drawn out of the report by members during the debate. It is not clear whether the report indeed informed the debate. But for purposes of proving their case in this matter, the least that the petitioners could have done was to verify the facts from Parliament before bringing their petition. Had they done so they would have established that there was a report on the matter and they would have produced it in evidence. The report would have enabled this court to establish whether the Committee delved into the criteria set out in the Constitution for the alteration of boundaries to create new districts or not.

On the contrary, in order to buttress their arguments that the Hoima and Kikuube districts would not be viable, the petitioners chose to bring newspaper reports about the alleged excellent manner in which Hoima District was managed, Minutes of the Hoima District Council in 2017, and letters of the District Chairperson of Hoima to the Minister of Local Government objecting to the splitting of the District into two.

In the Minutes for the meeting held on 17th August 2017 by the Hoima District Local Government Council, attached to the affidavit of the First petitioner dated 27th June 2018, it was stated that there were 10 petitions presented to the Council objecting to the creation of Kikuube District and advocating for the operationalisation of Hoima Oil City instead. The Minutes show that it was resolved by the Council that the creation of Kikuube be stayed and priority be given to the operationalisation of Hoima Oil City.

The letter of the Chairperson of the Council attached to the affidavit of the 1st respondent dated 27th June 2018 shows that the protest to create Kikuube continued with regard to allocation of funds from Government. On the 10th January 2018, the District Chairperson of Hoima District wrote to the Permanent Secretary/Secretary to the Treasury requesting for the consolidation of the figures for Financial Year 2018/2019 for Hoima and Kikuube Districts, votes 509 and 628, respectively. He stated that the decision to reverse the creation of Kikuube District was made after a series of meetings with different stakeholders including the Ministry of Local Government, Bunyoro Kingdom as well as the Minister for Bunyoro Affairs. That the District Council pronounced itself on the matter in its meeting held on the 17th August 2017.

Unfortunately, all these efforts occurred two years after the resolution of Parliament was passed to create the new districts. Parliament has the mandate under Article 179 (4) to alter boundaries and create new districts. The resolution to create the districts was subjected to analysis by a Committee of Parliament which returned its report. The motion was debated according to the Rules of Parliament after which it was subjected to a vote as is required by Article 179 (2) of the Constitution. I therefore find that there is insufficient evidence before this court to justify the petitioners' assertion that Parliament did not comply with the requirements of Article 179 (4) and 8A of the Constitution when it passed the impugned resolution to create Kikuube District.

Finally, it must be considered whether the creation of Kikuube out of Hoima District was based on political expediency and selfish personal interests instead of the necessity for effective administration and the need to bring services closer to the people. It is my view that political expediency and the sharing of national resources are not necessarily always mutually exclusive. In the matter now before us, some Members of Parliament lent credence to the notion that the creation of districts earlier on resulted in faster economic growth in some areas of the country, by facilitating communities to lobby through their representatives for more facilities for social services and other resources for the new districts.

Other Members of Parliament complained that the criteria for determining the number of people in an area to be curved out to form a new district is not clear. The manipulation of boundaries or gerrymandering by the ruling party is advanced as the main reason for the inconsistent creation of new districts. But it is also true that the failure to reduce the size of administrative units and the inequitable distribution of resources results in some districts remaining static with high populations but with limited

resources, which is only partly the reason why adequate services are not provided to citizens. Representation of the people and the sharing of national resources should be balanced, one cannot go without the other.

Nonetheless, it is still evident from the parliamentary debates in this case that the criteria for the creation of new administrative units is not clear and that the focus is laid on issues that are not necessarily geared towards economic development or bringing services closer to the people. A brief recap of the contents of Article 179 (4) would be useful to enable me reach a conclusion on this matter. Article 179 (4) provides that,

> **"Any measure for the alteration of the boundaries of or the creation of districts or administrative units shall be based on the necessity for effective administration and the need to bring services closer to the people and may take into account the means of communication, geographical features, density of population, economic viability and the wishes of the people concerned.**

The criteria that are stated above suggest that first and foremost, it is necessary to establish that there is a need to improve administration, as well as bring services closer to the people. But in order to establish the two paramount factors, the authorities "may" consider the means of communication, geographic factors, density of population, economic viability and the wishes of the people.

The debate in Parliament concerned many different units, each with it peculiarities and needs, population size and political interests. Most proponents focused on the need to improve the delivery of services and the wishes of the people to have their own district administration. But to sum it up, the debate is witness to the fact that many citizens have been led to believe that the creation of new districts leads to faster development. Some have witnessed facilities like hospitals and schools, as well as tertiary

institutions move closer to them on the creation of a district administration in their area, regardless of whether they are effectively resourced or not. In some cases the decision is based on tribal divisions and sentiments. Politicians ride on this to cause more districts to be created and therefore more seats for representation in Parliament and the local government councils.

In view of the absence of specificity and the broadness of the criteria provided for in Article 179 (4), as well as the provisions of Article 8A of the Constitution and the broad spectrum and diversity of the administrative units that were included in the impugned resolution, I am unable to find that the process and the resolution to create the 25 new districts, including Kikuube District, was purely a matter of political expediency and selfish interests. Regardless of the shortcomings attendant to the creation of the districts, it appears the provisions of the Constitution were followed. The process and the resolution therefore cannot be said to have been unconstitutional.

<u>Issue 3:</u> Whether the resolution to create Kikuube District amounted to an amendment of Articles 5(2) and 178 (3), (4) and 13, and the First Schedule of the Constitution, by infection or implication and contrary to Articles 259 (1) and 261 of the Constitution?

Submissions of Counsel

In this regard, counsel for the petitioners submitted that Article 179 (1) and (2) under which Parliament purported to create new districts is subject to the Constitution, including Article 5 (2). Further that Article 5 (2) is not subject to Article 179 (1) and (2) because it is an entrenched Article by virtue of the provisions of Article 261. That as a result, Parliament cannot vary the boundaries of districts specified in Article 5 (2) or increase or

decrease their number without amending the first schedule to the Constitution.

Counsel for the petitioner further submitted that under Article 259 (1) Parliament may subject to the provisions of the Constitution amend by way of addition, variation or repeal any provisions in accordance with the provisions laid down in Chapter 18 of the Constitution, and the procedure is that the Constitution shall not be amended except by an Act of Parliament seeking to amend any of the provisions specified in clause (2) of Article 261. He contended that it is apparent that there was no Act of Parliament presented and passed to amend Article 5(2) and therefore none was debated. That as a result, Parliament was in breach of Article 261 of the Constitution.

Counsel for the petitioners further submitted that Parliament purported to vary the number of districts specified under Article 5 (2) and the boundaries of those districts without the support of a majority of the members of Parliament required by Article 179 (2) of the Constitution and without an amendment of Article 5 (2) through an Act of Parliament as is required by Article 259 and 261. That because Parliament did not comply with the latter, the creation of the new districts was in conflict with and contravened Articles 5(2), 259 and 261 of the Constitution and consequently it was unconstitutional.

Counsel referred us to the decisions in **Attorney General v. Susan Kigula & 417 Others, SCCA No. 003 of 2006** and **Paul Ssemwogerere v Attorney General, SCCA No 001 of 2002** to support his submission that the Constitution should be considered as a whole with no provision destroying the other. That as a consequence of this rule, Article 179 (1) (b) must be read together with Article 5 (2), 178 and 179 (2). That the effect of

the purported alteration of the boundaries of Hoima, and the creation of Kikuube was to amend Articles 5(2) and 178 (3) by implication and infection. That since no Act of Parliament was presented and passed for the purpose, the purported alteration of the boundaries of the original Hoima district and the creation of Kikuube District was unconstitutional, null and void.

The petitioners' counsel went on to refer to the provisions of Article 178(1) and (3) and reiterated that the districts named in the latter, Buganda, Bunyoro, Busoga, Acholi and Lango which are specified in the First Schedule shall be deemed to have agreed to form regional governments with effect from First July 2006. He submitted that the resolution of Parliament to create Kikuube out of Hoima District in effect reduced the size of the original Hoima District. That because Parliament purported to curve Kikuube out of Hoima District, it in effect varied or altered Hoima District which was anticipated and provided for in the First Schedule. That the motion to create Kikuube District by infection and implication purported to vary and or amend Articles 5(2) and 178 of the Constitution.

Counsel for the petitioners further submitted that under Article 259 (2), no amendment of the Constitution shall take place except by an Act of Parliament seeking to amend among others, Article 179 being supported at the second and third readings by not less than two thirds of all members of Parliament having been ratified by at least two thirds of the members of the district council in each of at least two thirds of all the districts of Uganda. That since there is evidence that no Act of Parliament was presented and passed, the resolution of Parliament purported to waive Chapter 18 which is mandatory in amending any provision of the Constitution. Counsel for the petitioners then submitted that the creation of Kikuube District by resolution and not passing an Act of Parliament

affected and infected Article 5 (2) and 178 (3) and was therefore unconstitutional.

In reply, counsel for the respondent submitted that Article 5 provides that Uganda shall consist of the districts specified in the First Schedule and such other districts as may be established in accordance with the Constitution or any other law. That the Constitution and the Local Governments Act permit the alteration of boundaries to create new districts. Further that Article 94 of the Constitution gives Parliament powers to regulate its own procedures, including the procedures of its committees. That the Rules permit Parliament to pass resolutions.

The respondent's counsel further submitted that Parliament did not amend Article 5 (2) of the Constitution. It only altered the boundaries of the districts and created new ones in line with the Constitution. That the submission that Parliament purported to vary the number of districts specified in Article 5 (2) and their boundaries without the support of the majority of members of Parliament as required by Article 179 (2) and without an amendment of Article 5 (2) through an Act of Parliament as is required by Article 259 and 261 is therefore misconceived.

In order to resolve the questions posed under this issue, it must first be determined whether Article 5 (2) of the Constitution and the First Schedule to the Constitution are entrenched provisions of the Constitution. The entrenched provisions of the Constitution are laid down in Articles 260 and 261 of the Constitution. Article 5 (2) is one of those provided for in Article 261. Article 262 of the Constitution provides that:

> **"A bill for an Act of Parliament to amend any of the provisions of the Constitution other than those referred to in articles 260 and 261 of this Constitution, shall not be taken as passed unless it is supported**

at the second and third reading by the votes of not less than two thirds of all members of Parliament."

However, the respondent submits that Parliament was moved under Article 179 of the Constitution to create the new districts implying that there may have been no need to amend Article 178 (3) and the First Schedule of the Constitution.

Article 259 of the Constitution provides as follows:

"Amendment of the Constitution

(1) Subject to the provisions of this Constitution, Parliament may amend by way of addition, variation or repeal, any provision of this Constitution in accordance with the procedure laid down in this Chapter.

(2) This Constitution shall not be amended except by an Act of Parliament—

(a) the sole purpose of which is to amend this Constitution; and

(b) the Act has been passed in accordance with this Chapter."

It must now be established whether the districts specified in Article 178 (3) and the First Schedule required an amendment of the Constitution to be made before their boundaries could be altered to create new districts. The resolution of this issue is again dependent on the interpretation of Article 5 (2), 178 (1) and (3) of the Constitution.

It has already been established that the clause (3) of Article 178 is subject to clause (1) thereof. The districts specified in the clause 3 cannot be incorporated into Article 5(2) unless they comply with the provisions of Article 178 (1). This is specifically provided for in Article 5(2) when it states that Uganda shall consist of the regions administered by regional governments when districts have agreed to form regions as provided for in the Constitution.

The districts placed under Bunyoro Region did not take up the opportunity to form a regional government pursuant to Article 178 (1) and (3) of the Constitution. Though clause 13 of Article 178 provided that regional governments shall commence on First July 2006, there was no time limit within which to form the regional governments specified in the Constitution. But it is evident that by 2012 when the motion to create 25 new districts was first tabled in Parliament, 6 years had elapsed without the specified regions, including Bunyoro, reaching agreements to form regional governments. These districts in clause 178 (3), Hoima and all those districts under the Bunyoro Block in the First Schedule therefore reverted to the same status as the other districts that fall under clause 5 (2) (c) of the Constitution.

Clause 5 (2) (c) provides that Uganda consists of districts specified in the First Schedule and such other districts as may be established in accordance with the Constitution or any other law. Article 179 vests power in Parliament and the local governments to create new districts under section 7 of the Local Governments Act. Because Hoima, and the other districts specified in the First schedule to be part of Bunyoro Region did not move to make their status fall under Article 5 (2) of the Constitution, I find that there was no need for an amendment of Articles 178 (3) and 5 (2) of the Constitution before the alteration of boundaries to curve Kikuube out of Hoima District.

Was the Constitution therefore amended by infection or implication when the 25 new districts were created?

In **Paul K. Ssemowogere & 2 Others v. Attorney General** (supra) the Supreme Court considered whether certain provisions of the Constitution had been amended by implication or infection. The Court referred to the

decision of Twinomujuni, JA, on the principle with approval where he held that:

> *"If an Act of Parliament has the effect of adding to, varying or repealing any provision of the Constitution, then the Act is said to have amended the affected Article of the Constitution. There is no difference whether the Act is an Ordinary Act of Parliament or an Act intended to amend the Constitution. The two are treated the same under Article 137(3) of the Constitution. The amendment may be effected expressly, by implication or by infection as long as the result is to add to, vary or repeal a provision of the Constitution. It is immaterial whether the amending Act states categorically that the Act is intended to affect a specified provision of the Constitution. It is the effect of the amendment that matters. It was stated in the Canadian Supreme Court case of the Queen vs Big M Drug Mart Ltd (1986) LRC332 that,*
>
> > *'Both purpose and effect are relevant, in determining Constitutionality, either an unconstitutional purpose or an unconstitutional effect can invalidate ...'"*

Though the measure alleged to have effected an amendment to the Constitution was not a bill or an Act of Parliament but a resolution of Parliament, the same principles could have applied to it, if it had resulted in the alleged amendment.

The districts named or identified under Article 178 (3) and specified in the First Schedule to the Constitution were not bundled up to become regional governments as a result of the constitutional enactment. The districts were free to either enter into agreements under clause (1) of Article 178 or to opt out. If they did choose to be governed under a regional government, they would then be bound to remain in the schedule as regions, as is provided for by Article 5 (2). Because they did not do so, there was no legal requirement to amend Article 5 (2) because no regions or districts fell under it. I reiterate the view that the absence of regional governments provided for under Articles 178 (3) and 5 (2) actually makes the two provisions redundant.

I therefore find that Article 178 (3) and 5 (2) were not amended by Parliament by implication or infection when it passed the resolution to create the new districts of Kikuube, Kasanda, Bugweri, Kyotera, Kakumiro and Kagadi, which fell under the deemed Bunyoro, Buganda and Busoga Regions under the First Schedule to the Constitution. No breach of Articles 259 and 261 was committed by Parliament. Instead, the resolution to create the new districts was consistent with the Constitution because it was made under Article 179 of the Constitution.

In conclusion therefore this petition fails and the petitioners are not entitled to any of the declarations claimed. The petition is dismissed with no order as to costs because it seems to have been brought in the public interest.

4-5-2021

Irene Mulyagonja

JUSTICE OF APPEAL