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**THE REPUBLIC OF UGANDA,**

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

**CONSTITUTIONAL PETITION NO 54 OF 2013**

**(CORAM: KAKURU, OBURA, MUSOTA, MADRAMA, KASULE, JJA)**

**HON FOX ODOI OYWELOWO} .....PETITIONER**

10

**VERSUS**

**ATTORNEY GENERAL OF UGANDA} .....RESPONDENT**

**JUDGMENT OF JUSTICE CHRISTOPHER MADRAMA, JCC**

The Petitioner commenced in this petition under Article 137 of the Constitution for the following declarations:

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1. A declaration that the adoption/passing by Parliament of the report of the Public Accounts Committee on 12<sup>th</sup> November, 2013 and the observations and recommendations therein into resolutions of Parliament is inconsistent with or in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 42, 44 (c) and 79 (3) of the Constitution, and is *ipso facto* null and void.

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2. A declaration that the observations and recommendations of the impugned report of the Public Accounts Committee are inconsistent with or in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 41, 42, 44 (c), 79 (3), 92, 94, 119, 126 (2) (a) & (c) and 128 (1), (2), (3) & (4) of the Constitution, and it is *ipso facto* null and void.

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3. A declaration that Hon. Mr. Justice Joseph Murangira and Hon. Mr. Justice Ralph Ochan and Mr. Charles Harry Twagira who are shareholders/directors of Beachside Development Services Ltd and the company were denied a right to fair hearing prior to the passing of the

- 5           impugned resolutions in contravention of the *audi alteram partem*  
principle enshrined in Articles 28 and 42 of the Constitution and the  
impugned report is *ipso facto* null and void.
4.       A declaration that the Public Accounts Committee's failure to observe  
rules of natural justice by making a decision against the Petitioner, Hon.  
10       Mr. Justice Joseph Murangira and Hon. Mr. Justice Ralph Ochan and  
Mr. Charles Harry Twagira who are the shareholders/directors of  
Beachside Development Services Ltd and the company without  
evidence was inconsistent with and/or in contravention of Articles 20,  
28 (1) and (6) 41 and 42 of the Constitution and is *ipso facto* null and  
15       void.
5.       A declaration that the Public Accounts Committee and Parliament by  
the observations, recommendations and resolutions purported to veto  
the judgment of the High Court in *Civil Suit No 003 of 2009, Beachside  
Development Services Ltd v National Forestry Authority* and *Court of  
20       Appeal Civil Appeal No 80 of 2009, National Forestry Authority v  
Beachside Development Services Ltd* contrary to Articles 2, 26, 92 and  
128 of the Constitution, are ultra vires and an attempt by Parliament to  
usurp the powers of the judiciary contrary to the doctrines of  
separation of powers, independence of the judiciary and finality of  
25       court judgments and those acts are *ipso facto* unconstitutional, null  
and void.

The Petitioner seeks for consequential orders expunging the impugned  
report from the public records of Parliament and the Republic of Uganda and  
the resolutions of Parliament arising therefrom. Secondly, for a consequential  
30       order for enhanced compensatory and constitutional damages payable  
pursuant to the provisions of Article 126 (2) (c), to the Petitioner, Hon. Mr.  
Justice Joseph Murangira, Hon. Mr. Justice Ralph Ochan and Mr. Charles  
Harry Twagira who are shareholders/directors of Beachside Development

- 5 Services Ltd and the company by the Respondent. Finally, the Petitioner prays for an order for costs of the petition to be provided for.

The facts averred in addition are that pursuant to the provisions of Article 163 of the Constitution, the Auditor General of Uganda submitted a report to Parliament for the financial year ending 30<sup>th</sup> June, 2011 in which it was  
10 reported *inter alia* that government is incurring a lot to compensation costs to companies and individuals for loss of business arising from cancellation of contracts entered into with the government. It was also noted that in a number of cases taxes have not been assessed or collected. The report highlighted examples of some of the compensations claims against  
15 government which included that in **Civil Suit No 003 of 2009; Beachside Development Services Ltd v National Forestry Authority** where Beachside development services limited was awarded a decretal sum of **US\$1,900,000** by Hon. Mr. Justice Joseph Murangira against National Forestry Authority on account of breach of contract between the parties to build an ecotourism  
20 Lodge in Kyewaga Forest Reserve. Subsequently, and in accordance with the 148 (2) of the Rules of Procedure of Parliament, the Public Accounts Committee of Parliament examined the accounts showing the appropriation of sums granted by Parliament and expended by National Forestry Authority to pay the decretal sum *inter alia* in the above civil suit and presented its  
25 report to Parliament inclusive of observations and recommendations against the Petitioner and directors of Beachside Development. The report was adopted by Parliament with minor amendments.

The Petitioner as a shareholder/director of Beachside Development Services Ltd states that he is aggrieved by the following matters which he asserts are  
30 inconsistent with or in contravention of the Constitution of the Republic of Uganda and seeks for the above declarations stated in the judgment namely:

1. That the adoption/passing by Parliament of the impugned report of the Public Accounts Committee on 14<sup>th</sup> November, 2013 and the

5 observations and recommendations therein into resolutions of Parliament is inconsistent with and or in contravention of Articles 2, 26, 28 (1) (2) (c) and 79 (3) of the Constitution.

2. That the observations and recommendations of the impugned report of the Public Accounts Committee are inconsistent with and/or in  
10 contravention of Articles 2, 26, 28 (1) (3) (c) (g), 41, 42, 44 (c), 79 (3), 92, 94, 119, 126 (2), (a) & (c), and 128 (1), (2), (3) & (4) of the Constitution.

3. That the Petitioner, Hon. Mr. Justice Joseph Murangira, and Hon. Mr. Justice Ralph Ochan and the Mr. Charles Harry Twagira, shareholders/directors of Beachside Development Services Ltd and the  
15 company were denied a right to a fair hearing prior to the passing of the impugned resolutions in contravention of the "audi alterem partem" principle enshrined in Article 28 and 42 of the Constitution.

4. That the Public Accounts Committee and Parliament by their observations, recommendations and resolutions purported to veto the  
20 judgment of the High Court in *Civil Suit No 003 of 2009, Beachside Development Services Ltd v National Forestry Authority* and the *Court of Appeal Civil No 80 of 2009, National Forestry Authority v Beachside Development Services Ltd* contrary to Articles 2, 26, 92 and 128 of the Constitution, are ultra vires and an attempt by Parliament to usurp  
25 powers of the judiciary contrary to the doctrines of separation of powers, independence of the judiciary and finality of court judgments.

The petition is supported by the affidavit of Hon. Fox Odoi Oywelowo, a member of the Law Society of Uganda and at that time an elected and sitting member of the 9<sup>th</sup> Parliament of the Republic of Uganda for West Budama  
30 County (hereinafter referred to as the Petitioner) who deposed to the basic facts in support of the petition. The Petitioner, in the affidavit in support of the petition highlighted the fact that the Auditor General of Uganda

5 submitted a report to Parliament in the financial year ending 30<sup>th</sup> June 2010  
which he had read. In that report, the Auditor General *inter alia* reported that  
government is incurring a lot in compensation to companies and individuals  
for loss of business arising from cancellation of contracts entered into with  
government. This included the civil suit and appeal involving Beachside  
10 Development Services Ltd as averred in the petition does contain facts  
already referred to above. The Petitioner deposed that when Beachside  
Development Services Ltd was awarded a decretal sum over US\$1,900,000  
by the High Court in the judgment of Hon. Mr. Justice Joseph Murangira, the  
National Forestry Authority which was defendant, filed an appeal to the Court  
15 of Appeal which upheld the decision of the High Court whereupon it filed a  
second appeal to the Supreme Court in **Civil Appeal No 25 of 2010;**  
**National Forestry Authority v Beachside Development Services Ltd**  
whereupon the parties engaged in protracted negotiations. Pursuant to the  
negotiations, the parties extracted a consent judgment/settlement of all  
20 disputes between the parties. The consent Judgment was attached as  
Annexure "D" to the affidavit. The decree of the Court of Appeal in **Civil**  
**Appeal No 80 of 2009** shows that the decision of the High Court is upheld  
and the appeal was dismissed. The court further set aside interest at court  
rate awarded by the High Court and instead awarded interest at the rate of  
25 20% per annum from the date of the judgment of the High Court until full  
payment. Finally, the Court of Appeal awarded the costs of the appeal to the  
Respondent, Messieurs Beachside Development Services Ltd. Annexure "D"  
referred to in the affidavit in support of the petition shows that it was filed in  
the Court of Appeal and is a consent judgment/settlement between National  
30 Forestry Authority and the Beachside Development Services Ltd and is dated  
28 January 2011. It states that by that consent judgment the parties settled  
Court of Appeal Civil Appeal No 80 of 2009, High Court Central Circuit Civil  
Suit No 3 of 2009 and High Court Commercial Division Civil Suit No 371 of  
2009 which reads as follows:

"CONSENT JUDGMENT/SETTLEMENT

IT IS HEREBY AGREED BY CONSENT OF THE PARTIES to settle the above appeal, High Court Central Circuit Civil Suit No 03 of 2009, and High Court Commercial Division Civil Suit No 371 of 2009 as follows: –

1. The appellant shall pay the Respondent the sum of USD 1,900,000 (United States dollars one million nine hundred thousand only) as follows:
  - (a) US\$650,000 (United States Dollars Six Hundred and Fifty Thousand only) shall be paid immediately upon execution of these Consent Judgment;
  - (b) US\$550,000 (United States Dollars Five Hundred and Fifty Thousand only) shall be paid on or before 31st of December, 2011;
  - 15 (c) US\$500,000 (United States Dollars Five Hundred Thousand only) shall be paid on or before 30th September, 2012;
  - (d) US\$200,000 (United States Dollars Two Hundred Thousand only) shall be offset by the appellant from the decretal sum and applied towards licence fees for 2.6 Hectares of land at Kyewaga Central Forest Reserve for 25 years in accordance with these Consent Judgment;
  - 20 (e) Upon execution of this Consent Judgment, the Appellant shall compute the licence fees payable for the 2.6 Hectares of land at Kyewaga Central Forest Reserve for 25 years in (3) above; any balance over and above the licence fees shall be refunded or applied towards licence fees for any additional land, as the appellant shall in its discretion determine.
  - 25
2. The appellant shall within 2 months from execution of this Consent Judgment issue to the Respondent a licence for a period of 25 years in respect of 2.6 Hectares of land at Kyewaga Central Forest Reserve with access to Lake Victoria shoreline, in accordance with the appellant's ecotourism guidelines.
- 30 3. The licence in (2) above shall be to develop the land as an eco-lodge and eco-tourism facility.
4. The Garnishee Order Nisi issued in High Court Central Circuit (Nakawa) Miscellaneous Application No 646 of 2009 on 24th September, 2009 in respect of the Appellant's bank account Nos 0140007744202, 01430007744201, 0207744201

5 and SDICSO 08248A00170 all at Stanbic bank (U) Ltd corporate branch Kampala;  
and Account Nos 7472120611, 210211093 – 1 and 747 – 203034 – 1 at Bank of  
Uganda, is hereby lifted upon condition that; US\$650,000 ( United States Dollars  
Six Hundred Fifty Thousand only) being the 1st instalment in 1 (a) above is paid by  
10 direct electronic transfer from the Appellants Bank Account stated in the for above  
(same account No 7472120611 at bank of Uganda) to the Respondent's bank  
account No 87 (020) 1434 8300 at Standard Chartered bank, Speke Road Branch  
and appellants bank accounts shall be unconditionally and simultaneously released  
from attachment.

15 5. The terms of this Consent Judgment supersede High Court Commercial Division  
Civil Suit No 371 of 2009 between Beachside Development Services Ltd and  
National Forestry Authority, which is hereby settled.

6. The appellant hereby withdraws Supreme Court Appeal No 25 of 2010.

7. Each party shall bear its own costs in all cases settled in this Consent Judgment...."

20 The consent judgment is endorsed by the executive officers of the parties,  
their counsel and entered as a settlement of the parties by the registrar of  
the Court of Appeal on 28<sup>th</sup> January, 2011.

25 The Petitioner further stated in the affidavit in support of the petition that  
pursuant to Rule 148 (2) of the Rules of Procedure of Parliament, the Public  
Accounts Committee of Parliament examined the accounts showing the  
appropriation of sums by Parliament and expended by National Forestry  
Authority to pay the decretal sum in *Civil Suit No 003 of 2009 between*  
*Beachside Development Services Ltd v National Forestry Authority* and  
presented its report to Parliament with observations and recommendations  
against the Petitioner personally, Hon. Mr. Justice Ralph Ochan and Mr.  
30 Charles Harry Twagira who are the shareholders/directors of Beachside  
Development Services Ltd personally and the company and also made  
remarks about Hon. Mr. Justice Joseph Murangira personally and the report  
was adopted by Parliament on 12<sup>th</sup> November, 2013 wherein the  
observations and recommendations became resolutions of Parliament with

5 minor amendments. The rest of the affidavit of the petition in support of the petition repeats the averments in the petition.

The Respondent in answer to the petition averred that no actions were carried out in contravention of the Constitution of the Republic of Uganda.

10 Further that Parliament and the Public Accounts Committee of Parliament acted in accordance with the Constitution of the Republic of Uganda and the relevant laws of Uganda. The Respondent also contends that the adoption/passing by Parliament of the impugned report of the Public Accounts committee on 14<sup>th</sup> of November 2013 and the observations and recommendations therein into resolutions of Parliament is neither  
15 inconsistent with nor in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 42, 44 (c) and 79 (3) of the Constitution. In reply to the petition, the Respondent contends that the observations and recommendations of the report of the Public accounts committee are not inconsistent with or in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 41, 42, 44 (c), 79 (3), 92, 94, 119, 126 (2), (a) &  
20 (c), and 128 (1), (2), (3) & (4) of the Constitution.

The Respondent avers that there was no denial of the right to a fair hearing prior to the passing of the resolution and therefore there was no contravention of the principles enshrined in Article 28 and 42 of the Constitution.

25 Further that the Public Accounts Committee and Parliament by the resolutions acted within their mandate and so did not purport to veto the judgment of the **High Court in Civil Suit No 003 of 2009** and Court of Appeal **Civil Appeal No 80 of 2009** and so did not contravene Articles 2, 26, 92 and 192 of the Constitution and the acts were not ultra vires or an attempt  
30 to usurp the powers of the judiciary contrary to the doctrines of separation of powers, independence of the judiciary and finality of court judgments.



5 The Respondent contended that there is no question as to interpretation of the Constitution disclosed and the petition should be dismissed with costs. The answer to the petition is supported by the affidavit of Mr. George Kallemera, a State Attorney from the Attorney General's Chambers. The affidavit only repeats the averments in the answer to the petition.

## 10 **Representation**

On 28<sup>th</sup> July, 2020 when the petition was mentioned for hearing, learned Counsel Mr. Alfred Okello - Oryem represented the Petitioner and learned Counsel Jeffrey Atwine Principal State Attorney represented the Respondent.

15 Court directed the parties to address it in written submissions. The Petitioners counsel was directed to file submissions by 4<sup>th</sup> August 2020 and the Respondent to reply by 11<sup>th</sup> August 2020. Any rejoinder was to be filed by 18<sup>th</sup> August 2020 and judgment was reserved on notice. The record discloses that written submissions were filed by the Petitioner's counsel on 4<sup>th</sup> August, 2020. Further, the Respondent's counsel adopted written  
20 submissions filed on 24<sup>th</sup> of July 2020. In proceeding with the resolution of this petition, I have considered the above materials in arriving at the judgment below.

The following issues were agreed to in a joint scheduling memorandum of the parties signed by their respective counsel and filed on court record on  
25 3<sup>rd</sup> February 2014 namely:

1. Whether the petition discloses questions for constitutional interpretation.
2. Whether the adoption/passing of the impugned report of the Public Accounts Committee on 14<sup>th</sup> November, 2013 and the observations  
30 and recommendations therein into resolutions of Parliament was inconsistent with and was in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 42, 44 (c) and 79 (3) of the Constitution;

- 5 3. Whether the observations and recommendations of the impugned report of the Public Accounts Committee was inconsistent with or was in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 41, 42, 44 (c), 79 (3), 92, 94, 119, 126 (2), (a) & (c), and 128 (1), (2), (3) & (4) of the Constitution;
- 10 4. Whether the Petitioner, Hon. Mr. Justice Joseph Murangira, and Mr. Charles Harry Twagira, were denied the right to fair hearing prior to the passing of the impugned resolution is in contravention of "*audi alteram partem*" principle enshrined in Articles 28 and 42 of the Constitution.
- 15 5. Whether the Public Accounts Committee and Parliament by the observations, recommendations and resolutions were contrary to Articles 2, 26, 92 and 128 of the Constitution.
6. Whether the Petitioner is entitled to the remedies sought.

### **Submissions of the Petitioner's counsel**

20 The Petitioners counsel submitted that although the current petition was filed in 2013, another Petition was later filed by Hon. Mr. Justice Joseph Murangira in 2014 and cited as **Constitutional Petition No 07 of 2013**. That the Petitioner also sought declarations and orders similar to the ones sought in this petition and his petition was heard and allowed wherein the court made the following findings:

- 25 1. That this court is mandated under Article 137 (1) to determine any question as to the interpretation of constitutions. The foregoing submissions relate to constitutional provisions alleged to have been contravened and the denial of some allegations contained in the petition. It is therefore the duty of this court to interpret the impugned
- 30 Articles of the Constitution. By so doing, the court will be addressing the question as to whether the impugned provisions were contravened or not. The petition discloses questions for constitutional interpretation.

- 5 2. That Article 128 of the Constitution was contravened by Parliament  
when it adopted and passed item (29) of the impugned report of the  
Public Accounts Committee and the observations and  
recommendations therein into resolutions of Parliament and when it  
10 summoned the Petitioner to appear before the Public Accounts  
Committee in respect of the decision he made in the exercise of judicial  
power.
- 15 3. That as regards Article 2 of the Constitution, it is basically about the  
supremacy of the Constitution and its binding force on all authorities  
and persons throughout Uganda. Any act done in contravention of a  
provision of the Constitution tantamount to undermining its  
supremacy. By Parliament adopting and passing a resolution that  
contravenes Article 128 of the Constitution, it in effect also  
contravened Article 2 of the Constitution.
- 20 4. On the alleged contravention of Article 79 (3) of the Constitution,  
Parliament has mandate under that Article to protect the Constitution  
and promote the democratic governance of Uganda. Parliament acted  
contrary to this constitutional mandate when it adopted and passed  
item (29) of the Public Accounts Committee and the observation and  
recommendations therein into its resolutions. By so doing, Parliament  
25 contravened the fundamental principles that underpin democratic  
governance, namely; the doctrines of separation of powers and the  
independence of the judiciary. Article 79 (3) of the Constitution was  
contravened by the impugned action of Parliament.
- 30 5. That the decision of Parliament to adopt and pass item 29 of the  
impugned report of the PAC and the observations and  
recommendations therein into resolutions of Parliament was done in  
contravention of and is inconsistent with Articles 2, 79 (3) and 128 (1),  
(2) of (3) & (4) of the Constitution and is thus null and void.

- 5 6. That it is clear from Article 128 of the Constitution that the  
independence of the judiciary is guaranteed and no person or authority  
is permitted to control, direct or interfere with the court's or judicial  
officers in the exercise of their judicial functions. PAC is not an  
exception. PAC's purported observations and recommendations that  
10 sought to question how a judicial officer arrived at his decision was an  
attempt to control, direct and interfere with the independence of the  
judicial officer in the exercise of his judicial function. That action of PAC  
and Parliament was inconsistent with Articles 2, 79 () and 128 (1), (3) &  
(4) of the Constitution.
- 15 7. That Article 2 of the Constitution provides for the supremacy of  
Constitution. Every person, authority and organ of government must  
respect it. Under chapter 6, 7 and 8, the Constitution establishes the 3  
organs of government namely, the Executive, the Legislature and the  
Judiciary. Each of these organs has different rules and powers which  
20 should be exercised in accordance with the Constitution and without  
interference from the other, except where permitted by the  
Constitution. The High Court (Hon. Mr. Justice Joseph Murangira) in the  
exercise of his judicial power delivered judgment in High Court Civil  
Suit No 003 of 2009, Beachside Development Services Ltd v National  
25 Forest Authority. It was a final decision in a matter based on the  
consent of parties and an appeal was lodged against it in the Court of  
Appeal vide Civil Appeal No 80 of 2009, National Forestry Authority v  
Beachside Development Services limited. It is against this background  
that PAC made the report and Parliament passed it. The act of making  
30 judgment was a judicial act by the High Court (Hon. Mr. Justice Joseph  
Murangira) which brought him under the ambit of judicial immunity  
conferred by Article 128 (4) of the Constitution.
8. That the observations, recommendations and resolutions by PAC and  
Parliament was an attempt to usurp the powers of the judiciary

5           contrary to the doctrines of separation of powers, the independence of  
the judiciary and the finality of court judgments.

9. That Articles 137 (4) (a) of the Constitution gives this court discretion  
to grant an of order of redress, where upon determination of the  
Petition under clause (3) of that Article it considered that there is need  
10 to do so. That in view of the determinations of the court, there was  
indeed need to grant redress by an award of general damages. The  
negative publication based on unconstitutional parliamentary  
processes did cause inconveniences, anguish and injury to the  
Petitioner which should be atoned for by an award of general damages.  
15 The argument that the Attorney General cannot be held liable for  
publications by independent newspapers is untenable because those  
newspapers reported the proceedings in PAC and what was  
subsequently adopted by Parliament as contained in its report. In the  
result, upon consideration of all the circumstances of the case, an  
20 award of general damages of 50 million shillings would be adequate to  
atone for the injury, anguish and inconveniences suffered by the  
Petitioner.

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

The Petitioner's counsel submitted that the above findings of the  
Constitutional Court disposed of issue 1, and parts of issues 2, 3, 4 and 5 as  
framed in the joint conferencing notes. However, the court did not make any  
30 finding of contravention of Articles 28, 42, 44, 92 and 119 of the Constitution.  
He submitted that in view of the findings of the court, the Petitioner  
abandons his allegation that there was a contravention of Articles 92 and 119  
Constitution. However, the Petitioner maintains that there was contravention  
of Articles 28, 42 and 44 of the Constitution and maintains his allegations of

- 5    contravention of his right to property and a right to be heard under issues 2, 3, 4 and 5 as framed in the joint conferencing notes.

The Petitioner's counsel submitted that this court held that Hon. Mr. Justice Joseph Murangira, a judicial officer could not be summoned by PAC under any circumstances to explain or defend his judicial decision and therefore  
10    rightly declined invitations by PAC to do so and also rightly resisted the proceedings of PAC because they were unconstitutional. In other words, there was place for interpretation and enforcement of Articles 28, 42 and 44 of the Constitution in those circumstances because Parliament acted ultra vires.

15    The Petitioners counsel submitted that the scenario is different for the Petitioner in this case firstly because he was not invited at all by PAC to defend himself before the recommendations were issued by PAC for him to be held liable for influence-peddling, and for his company to refund a decretal award. Consequently, parliament did not invite him at all to defend  
20    himself and the decretal award to his company when it adopted the recommendations of PAC as resolutions of Parliament. The decretal award, in this case money, is property protected by the Constitution. Counsel submitted that the recommendation of PAC which was adopted as a resolution of Parliament, that the award should be refunded, is an assault on  
25    the Petitioner's right to property. Secondly, the affidavit deposed to the violation of his rights and the Respondent did not rebut those depositions. It follows that there was contravention of the Petitioner's right to property, fair treatment under the suit and the non-derogable right to be heard under Article 26, 28, 32 and 44 of the Constitution and the court ought to find so.

30    On issue No 6, the Petitioners counsel prayed for enhanced compensatory and constitutional damages payable pursuant to the provisions of Article 126 (2) (c) Constitution. That the evidence of the Petitioner was that the proceedings of PAC and Parliament were conducted in public in front of

5 national and international media but unilaterally excluded him. Similarly, the  
report of the PAC was unilaterally presented to Parliament, debated publicly  
and adopted with minor amendments into resolutions of Parliament for  
implementation against him and his company without any opportunity to  
defend himself or the company. Since then national and international media  
10 had been awash with stories and reports implicating him and his business  
colleagues namely Hon. Mr. Justice Ralph Ochan, Mr. Charles Harry Twagira,  
the company and Hon. Mr. Justice Joseph Murangira in scandal involving  
**Uganda shillings 4,000,000,000/-** coupled allegations of scam, collusion,  
influence-peddling and fraud. As a consequence, the constitutional rights of  
15 the above mentioned persons were trampled by PAC Parliament and the said  
persons irretrievably lost their social and professional business reputations  
respectively and suffered mental anguish and trauma, for which the  
Petitioner sought enhanced damages and constitutional damages under 126  
(2) (c) of the Constitution on his own behalf and on behalf of the other  
20 persons mentioned above.

Further the Petitioner's counsel submitted that in **Constitutional Petition  
No 07 of 2014 Hon. Mr. Justice Joseph Murangira v the Attorney  
General**, this court found that there was need to grant redress by an award  
of general damages. That the negative publication based on an  
25 unconstitutional parliamentary process caused inconveniences, anguish and  
injury to the Petitioner which should be atoned for by an award of general  
damages. That the argument that the Attorney General cannot be held liable  
for publications by independent newspapers was untenable because those  
newspapers reported the proceedings in PAC and what was subsequently  
30 adopted by Parliament as contained in its report. In the result, upon  
consideration of all the circumstances of the case, an award of general  
damages of **Uganda shillings 50,000,000/=** was found to be adequate to  
atone for the injury, anguish and inconveniences suffered by the Petitioner.  
On the question of costs, the Petitioner's counsel prayed that this court

5 awards the Petitioner damages in a similar fashion and costs of the petition, the same having already been determined and allowed.

With regard to the violation of Articles 26, 28, 2 and 44 of the Constitution, the Petitioner's counsel prayed that this court finds that indeed there was violation by PAC and Parliament and court should allow the petition on these  
10 points specifically with costs.

### **Submissions of the Respondent's counsel**

The Respondent's counsel submitted that with regard to issues Nos 1, 2, 3, 4 and 5, the issues were finally determined in **Constitutional Petition No 07 of 2014; Hon. Mr. Justice Joseph Murangira versus the Attorney General**  
15 and the petition is therefore barred by the doctrine of *res judicata*. He relied on the provisions of section 6 (section 7) of the Civil Procedure Act which provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the parties or between the parties under whom they or  
20 any of them claim, litigating under the same title, in a court of competent jurisdiction to try the subsequent suit or the suit in which the issue has been substantially raised and has been heard and finally decided by the court. He submitted that section 7 of the CPA is an embodiment of the rule of conclusiveness of judgment as to the points decided by the court in every  
25 subsequent suit. He further relied on **Cheborion Barishaki versus Attorney General; Constitutional petition No 4 of 2006** as well as **Semakula versus Susan Magala and 3 others (1979) HCB 90**, for the principles applied in determining whether a suit is *res judicata*.

The Respondent's counsel submitted that the issues raised in the petition  
30 have already been put before the Constitutional Court in **Constitutional Petition No 07 of 2014** (supra) and the petition is therefore barred by the doctrine of *res judicata*. Counsel further laid out the findings of the



- 5 Constitutional Court which were earlier referred to by the Petitioner's counsel and there is no need to repeat them here.

In conclusion, he submitted that the current petition raises the same issues and is challenging the same report namely the Public Accountants Committee report of 12<sup>th</sup> November, 2013 and the observations and  
10 recommendations therein into resolutions of Parliament. The adaption and passing by Parliament of the impugned report of the PAC has already been declared unconstitutional, null and void by the Constitutional Court and the matter is *res judicata*. Counsel invited the court to declare the issue *res judicata* and to dismiss the petition with costs. Counsel further relied on  
15 **Uganda v Oneg Obel; Constitutional Reference No 0024 of 2011** in which the Constitutional Court held that the interpretation of the court of any legal provision Vis-à-vis the Constitution and its legal effects is not limited to the parties concerned in the case in which the interpretation is made. It constitutes a binding pronouncement of the law, subject to a right of appeal  
20 to the Supreme Court. The court cannot therefore hear and determine the same substantial legal issues more than once.

The Respondent's counsel further submitted that in the petition of **Hon. Mr. Justice Joseph Murangira v AG** (supra), it was contended that the aggrieved parties were denied a right to fair hearing prior to the passing of the  
25 impugned resolution in contravention of the principles enshrined in Article 28 and 42 of the Constitution. The issue was substantially dealt with by the Constitutional Court in Hon. Mr. Justice Joseph Murangira v Attorney General (supra) and the court did not find any contravention of Articles 28 (1), 42, 44 (c), 92 and 119 of the Constitution. Secondly, the petition in this matter raises  
30 a question of enforcement of fundamental rights which ought to be handled by the High Court under Article 50 of the Constitution or through an application for judicial review.

5 Thirdly, the jurisdiction of the Constitutional Court has been firmly resolved in **Attorney General v Major General David Tinyefuza; Constitutional Appeal No 1 of 1987** and again in **Ismail Serugo v KCC and Attorney General; Constitutional Appeal No 2 of 1998**. The gist of the holding in the above authorities is that the Constitutional Court has jurisdiction only  
10 under Article 137 of the Constitution to decide questions as to interpretation of the Constitution but is not concerned with enforcement of rights for which parties may seek redress before a competent court under Article 50 of the Constitution.

15 Thirdly, and in the alternative the Respondent's counsel submitted that Mr. Charles Harry Twagira was summoned to appear before the PAC. He appeared before the said committee, presented explanations, documents and gave evidence concerning the subject matter. The Petitioner has not shown any tenet of fair hearing principles that was negated. Mr. Twagira was therefore accorded a fair hearing in accordance with Article 28 of the  
20 Constitution.

Fourthly, the Respondent's counsel submitted that there was no accusation, adverse finding or recommendations by the PAC against Hon. Mr. Justice Ralph Ochan and therefore the committee could not have contravened his right to fair hearing.

25 The Respondent's Counsel invited the court to find that there was no contravention of Articles 28 (1), 42, 44, 32 and 119 of the Constitution as was already held in **Hon. Mr. Justice Joseph Murangira v the Attorney General** (supra).

30 The Respondent's counsel further submitted that in as far as the contention that the committee failed to observe the rules of natural Justice by making a decision against Hon. Mr. Justice Joseph Murangira, Hon. Mr. Justice Ochan, and Mr. Charles Harry Twagira without evidence contrary to Article 20, 28 (1)

5 and (6), 41 and 42, is concerned, it was not a matter for this court to interpret. Proof of such allegation requires a trial where evidence to prove the allegations would be adduced. He submitted that the matter before the court can only be interrogated by the High Court in an ordinary suit or in an application for judicial review.

10 The Respondent further contended that there was more than sufficient evidence for the committee to make the findings it did. For example, the Respondent's counsel referred the court to paragraph 65 of the report where the PAC noted as follows:

15 "the committee observes that whereas BDS had put up 3 incomplete chalets, the consent judgment awarded the amount of US\$551,985 as compensation for 10 chalets that had allegedly been constructed. The committee visited the site on 19th of August 2012 and found no evidence of construction of the purported 10 chalets instead the committee found 1 fish pound on the site."

20 The committee therefore had sufficient evidence to reach the findings it made because it even visited the locus to ascertain the facts on the ground. There was therefore no contravention of Articles 28 (1), 42, 44 (c), 92 and 119 of the Constitution or at all.

#### Issue No 6: **Whether the Petitioners are entitled to the reliefs sought.**

25 The Respondent's counsel submitted that in light of his arguments, the Respondent contends that the Petitioners are not entitled to any of the reliefs sought since the petition discloses no cause of action for interpretation of the Constitution and is barred by the doctrine of *res judicata*. He prayed that the petition is dismissed with costs.

#### **Resolution of petition**

30 I have carefully considered the Petitioner's petition, the answer to the petition, the submissions of counsel as well as the law generally. The petition was brought under Article 137 of the Constitution for declaratory orders

5 which have been set out above and for consequential relief of compensation, general damages and costs.

The facts in this petition are that the Petitioners avers in paragraph 4.1 of the Petition that he is aggrieved by the adoption/passing by Parliament of the impugned report of the Public Accounts Committee on 14<sup>th</sup> November 2013  
10 and the observations and recommendations therein into resolutions of Parliament and it is inconsistent with and or in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 42, 44 (c) and 79 (3) of the Constitution.

In the above paragraph therefore, the petitioner is alleging that the observations and recommendations of the Public Accounts Committee  
15 contravened certain provisions of the Constitution.

Secondly, in paragraph 4.2, the petitioner alleges that the observations and recommendations of the impugned report of the PAC are inconsistent with or in contravention of articles 2, 26, 28, 41, 42, 44, 79, 92, 94, 119, 126, 128 of the Constitution.

20 Thirdly, in paragraph 4.3, the petitioner avers that Hon. Mr. Justice Joseph Murangira and Hon Mr. Justice Ralph Ochan and Mr. Charles Harry Twagira, shareholders/directors of Beachside Development Services Ltd and the company were denied the right to a fair hearing prior to the passing of the impugned resolutions.

25 In paragraph 4.4 the petitioner is aggrieved by the fact that the PAC and Parliament by their observations, recommendations and resolutions purported to veto the judgment of the High Court in HCCS No 003 of 2009, Beachside Development Services Ltd v National Forestry Authority and the Court of Appeal Civil Appeal No 80 of 2009 National Forestry Authority v  
30 Beachside Development Services Ltd contrary to articles 2, 26 and 92 and 128 of the Constitution and are ultra vires and an attempt by Parliament to usurp

5 powers of the judiciary contrary to the doctrine of separation of powers,  
independence of the judiciary and finality of court judgments.

The petitioner seeks certain declarations that I have already referred to. It is  
clear from the judgment of Hon. Justice Joseph Murangira in the High Court  
that the plaintiffs were seeking special damages of US\$ 187,500 and Uganda  
10 shillings 16,674,800/=. Secondly, the Plaintiff's sought general damages for  
loss of prospective business profits as well as costs of the suit. They also  
sought interest at the rate of 25% per annum from the time of filing the suit  
till payment in full. The judgment stipulates that on 5<sup>th</sup> of June 2009 when  
the suit came for hearing the parties executed a consent judgment and  
15 agreed that the suit was settled and what remained was the issue of  
damages. A decree was issued by the registrar on 27<sup>th</sup> August, 2009 as  
follows:

1. The Defendant issues a licence in Kyewagga Central Forest Reserve  
to the Plaintiff for the land measuring 2.6 hectares in accordance to  
20 National Forestry Authority ecotourism guidelines with access to  
Lake Victoria shoreline within two (2) months from today.
2. The Defendant hands over vacant possession of the said land to the  
Plaintiff as soon as the licence is issued.
- 25 3. The damages be awarded to the Plaintiff and be assessed by court.
4. The Plaintiff drops its claims of prospective profits, loss of business  
which was US \$ 8,569,250 (United States Dollars Eight Million Five  
30 Hundred Fifty-Nine Thousand Two Hundred Fifty Shillings).
5. Each party bears its own costs.

5 Damages were supposed to be assessed by the court. The judgment of the High Court was pursuant to the agreed issue left for determination of assessment of damages. On determining the remaining issue, the learned trial judge found that the plaintiff discharged its burden of proving damages in the sum of US\$1,612,171 against the defendant broken down as follows:

10 (a) US\$ 40,000 expended on landscaping and design.

(B) US\$501,985 expended on construction of the chalets.

(c) US\$ 1,020,186 for loss of user for 3 years that is 2007, 2010 and 2009. Judgment was entered on the assessment at US \$ 1,612,171 in favour of the plaintiff with costs and interest at court rate from the date of judgment till  
15 payment. The decree was approved by the parties and the National Forestry Authority, being aggrieved with the assessment of damages lodged a notice of appeal against the judgment of the High Court assessing damages. The Court of Appeal affirmed the decision of the High Court. The decision of the Court of Appeal is that the decision of the High Court is upheld and the  
20 appeal is dismissed. Secondly, the award of interest at court rate by the High Court was set aside and the Court of Appeal substituted therefore an award of interest at a rate of 20% per annum from the date of judgment in the High Court until full payment.

There was a further notice of intention to appeal to the Supreme Court  
25 whereupon the parties executed another consent Judgment withdrawing the intended appeal on terms. The purported withdrawal of the appeal was filed in the Court of Appeal and endorsed by the registrar of the Court of Appeal on 28<sup>th</sup> of January 2011.

The agreement of the parties took another turn in that it was written in the  
30 consent judgment that the appellant shall pay the respondents US\$ 1,900,000 which was broken down as written in the consent. Several other terms were included in the consent judgment far beyond what was

5 determined in the High Court. The consent judgment purported to supersede the judgment of the High Court in assessment of damages. The consent Judgment was endorsed by the registrar and it is written that *"settlement is hereby entered in the above terms this 28th day of January 2011"*

10 The matter became the subject of inquiry by PAC after a report by the Auditor General and subsequently after resolutions of Parliament became the subject matter of this petition.

What is before this court inter alia is whether the same matter was before the Constitutional Court in Joseph Murangira v AG. The matter must concern a  
15 question or questions as to interpretation of the Constitution.

Is there a further question or issue for determination by this court?

Article 137 (1) of the Constitution provides that:

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

20 The first issue raised in the joint conferencing notes of the parties and in the submissions of the Respondent's counsel is:

**Whether the petition discloses questions for constitutional interpretation.**

The issue raised imports the question of whether this court has jurisdiction  
25 to determine the petition if there is no question as to interpretation of the Constitution. I firstly note that in issue 1, by using the phrase; "whether the petition discloses questions for constitutional interpretation", the parties used a misnomer because constitutional interpretation is not exactly  
determination of questions as to interpretation. The expression  
30 "constitutional interpretation" does not reflect precisely the intention of legislature in enactment of Article 137 (1) of the Constitution. Article 137 (1)

5 of the Constitution which gives the Court of Appeal sitting as the Constitutional Court exclusive jurisdiction on the matter mentioned therein deals with "any question as to interpretation of the Constitution". The petition must therefore disclose a question as to interpretation of the Constitution not just a question for constitutional interpretation because the  
10 Constitution may be construed by everybody who wants to apply any of its provisions unless there is a question as to interpretation which may then be determined by the Constitutional Court. One of the leading authorities on the jurisdiction of the Constitutional Court under Article 137 (1) of the Constitution is the decision of the Supreme Court in **Ismail Serugo v**  
15 **Kampala City Council and Attorney General; Constitutional Appeal No. 2 of 1998**, where Wambuzi CJ held that:

In my view for the Constitutional Court to have jurisdiction the petition must show, on the face of it, that interpretation of a provision of the Constitution is required.  
20 It is not enough to allege merely that a Constitutional provision has been violated. If therefore any rights have been violated as claimed, these are enforceable under Article 50 of the Constitution by another competent court.

Further, Prof. Kanyeihamba JSC in **Ismail Serugo v Kampala City Council &**  
25 **Attorney General** (supra) held that the question of jurisdiction should be distinguished from that of cause of action:

However, I am constrained to comment very briefly on some other issues raised by the pleadings in this appeal. In my opinion, the question of cause of action must be distinguished from the matter of jurisdiction. The court may have jurisdiction  
30 while the plaint lacks a cause or a reasonable cause of action and vice versa. In other words, a plaintiff may have a perfectly legitimate and reasonable cause but the court before which the plaintiffs filed lacked jurisdiction, just as the court may have jurisdiction but the litigant before it lacked cause of action...

35 The question for determination is whether the petition raises any question as to interpretation of the Constitution. In the context of this petition, the



5 Respondent's counsel contended that the questions raised in the petition were already determined by the Constitutional Court in **Constitutional Petition No 07 of 2014; Hon Mr. Justice Joseph Murangira v the Attorney General**. He further submitted that the matter is *res judicata* on account of having been determined in the previous petition. He relied *inter*  
10 *alia* on **Cheborion Barishaki v Attorney General; Constitutional Petition No 4 of 2006** to support his submission that the matter before the court in this petition is *res judicata*. Surprisingly, the Petitioner's counsel conceded and submitted that even though the current petition was filed in 2013, and that in **Hon Mr. Justice Joseph Murangira v Attorney General** (supra) was  
15 filed in 2014, the latter was determined earlier in time by the Constitutional Court. On that basis he abandoned some of the declarations sought in the petition and in summary only sought for consequential relief of general damages and costs.

I have carefully considered the matter and it is my holding that where Articles  
20 have been interpreted in the same cause or matter, no further question for interpretation ought to arise or in the very least, where the issues have been raised in the previous petition and the same issues were determined by the Constitutional Court, that determination is binding on all persons, authorities and agencies of government and therefore binding to a wider public than  
25 the parties cited in the petition in which the issue was determined. In other words, the binding nature of the interpretation of the Constitutional Court clarifies on the meaning of any of the Articles of the Constitution considered in the petition where it was contended that a question as to interpretation of the Constitution arises.

30 Further, the phrase *any question as to interpretation of the Constitution*, under Article 137 (1) of the Constitution, means any issue, controversy or dispute as to interpretation of a provision of the Constitution. While the doctrine of *res judicata* under section 7 of the Civil Procedure Act may be

5 rightly confined to the parties to the suit or persons claiming under them, or  
litigating under the same title, questions as to interpretation of the  
Constitution or determination of pure questions of law apply to anybody who  
wants to apply a provision which has been interpreted and specifically applies  
to everybody to whom the law applies. Section 7 of the Civil Procedure Act  
10 provides as follows:

7. Res judicata

No court shall try any suit or issue in which the matter directly and substantially in  
issue has been directly and substantially in issue in a former suit between the same  
parties, or between parties under whom they or any of them claim, litigating under  
15 the same title, in a court competent to try the subsequent suit or the suit in which  
the issue has been subsequently raised, and has been heard and finally decided by  
that court.

In the context of Article 137 (1) of the Constitution in which the Constitutional  
Court determines any question as to interpretation of the Constitution, I have  
20 considered the mandate of the Constitutional Court which is an exclusive  
mandate to determine any question as to interpretation of the Constitution  
and once determined, the determination is binding on anybody to whom the  
Article applies or who wants to apply the Article. The keyword to be  
considered is "any question" and not any "Article" of the Constitution.

25 The Petitioner's counsel sought to list the Articles of the Constitution which  
he contended the Constitutional Court dealt with in the previous petition in  
**Hon Mr. Justice Joseph v Attorney General** (supra) and in my view this was  
erroneous because the Constitutional Court deals with "any question" as to  
interpretation of the Constitution and other questions may be raised in  
30 relation to the same Article or Articles which had been interpreted in another  
context. Therefore, the question of whether the matter is *res judicata* should  
be determined on the basis of whether the same question has been raised in  
the subsequent petition. Further, the expression "subsequent petition" used

5 in this judgment, is applied in relation to determinations by the Constitutional Court and does not refer to the time of filing. A petition filed earlier in time as is the case of the Petitioner in this petition vis a' vis the later filing of the petition of **Hon Joseph Murangira v Attorney General** (supra) does not take away the fact that the decision of the Constitutional Court in  
10 **Hon Joseph Murangira v Attorney General** (supra) is binding on the Petitioner on the same issues raised in earlier filed petition of the current petition which had not yet been determined. The issue of the current petition having been filed earlier than that in **Hon Mr. justice Joseph Murangira v Attorney General** (supra) may also be considered in relation to costs since  
15 the question of whether the matter is *res judicata* and a finding in the affirmative thereon may lead to a dismissal with consequences of costs.

I have further considered the decision of this court in **Cheborion Barishaki v Attorney General; Constitutional Petition No 4 of 2006** and the ruling of this court on the doctrine of *res judicata* under section 7 of the Civil  
20 Procedure Act which is cited therein at page 7 of the ruling. After setting out section 7 which I have reproduced above, the court stated that:

"The provisions of this section is an embodiment of the rule of conclusiveness of judgments, as to the points decided by court in every subsequent suit between the same parties or parties under whom they or any of them claim. In other words, the  
25 section prevents a fresh suit between them for the same relief. *Res judicata* presupposes that there is a definite issue between them, that there is a court or body competent to decide the issue, and that within its competence, the court or tribunal had done so.

Essentially the test to be applied by court when determining the question of *res  
30 judicata* is this: is the plaintiff in the second or subsequent action trying to bring before the court, in another way and in the form of a new cause of action, a matter which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon?

- 5 If the answer is in the affirmative, the plea of *res judicata* applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject matter of litigation and which the parties or their previous exercising reasonable diligence might have brought forward at the time....
- 10 For *res judicata* to apply the subject matter in the subsequent suit must be covered by the previous suit... The parties in the subsequent suit are estopped from showing that the decision on judgment in an earlier suit is incorrect. The court is, therefore, required to give effect to the decision but is not bound to hold that it is right."
- 15 Further, the Court of Appeal of Tanzania at Arusha in **Lotta v Tanaki and others [2003] 2 EA 556** at page 557 considered section 9 which is in *pari materia* with section 7 of the Uganda Civil Procedure Act and held that:
- 20 The doctrine of *res judicata* is provided for in Order IX of the Civil Procedure Code of 1966. Its object is to bar multiplicity of suits and guarantee finality to litigation. It makes conclusive a final judgment between the same parties or their privies on the same issue by a court of competent jurisdiction in the subject matter of the suit. The scheme of section 9, therefore, contemplates five conditions which, when co-existent, will bar a subsequent suit. The conditions are: (i) the matter directly and substantially in issue in the subsequent suit must have been directly and
- 25 substantially in issue in the former suit; (ii) the former suit must have been between the same parties or privies claiming under them; (iii) the parties must have litigated under the same title in the former suit; (iv) the court which decided the former suit must have been competent to try the subsequent suit; and (v) the matter in issue must have been heard and finally decided in the former suit.
- 30 With regard to condition No 1, the matter in issue must have been directly in issue in a previous suit. In my determination *res judicata* under section 7 of the Ugandan CPA is only applicable in the context of Article 137 of the Constitution where the same issue or question as to interpretation of the Constitution has been raised and determined before. The Petitioner's counsel
- 35 attempted to list Articles of the Constitution which were considered. This was erroneous in my view because the same Article can generate another issue

5 as to interpretation in a subsequent Petition. Further, a question which is  
directly in issue does not only have to be between the same parties or parties  
claiming interest and litigating under the same title in the subsequent suit. I  
have therefore confined the determination of whether the matters raised in  
this petition is *res judicata* by considering the questions as to interpretation  
10 of the Articles of the Constitution raised in **Hon Joseph Murangira v  
Attorney General** (supra) and compared it with the questions as to  
interpretation of the Articles of the Constitution raised in this petition. For  
emphasis the questions issues raised have to be questions as to  
interpretation of the Constitution and not questions for enforcement of any  
15 Article of the Constitution. In the **Hon. Joseph Murangira v Attorney  
General** (supra) the following issues were raised for determination of the  
Constitutional Court namely:

1. Whether the adoption/passing by Parliament of the impugned report  
of the Public Accountants Committee of Parliament on 12<sup>th</sup> November,  
20 2013 and the observations and recommendations therein into  
resolutions of Parliament was done in contravention of and is  
inconsistent with Articles 2, 28 (1), 42, 44 (c), 79 (3), 92, 119, 128 (1), (2),  
(3) & (4) of the Constitution.
2. Whether the observations and recommendations of the impugned  
25 report of the Public Accounts Committee of Parliament are inconsistent  
with and were made in contravention of Articles 2, 28 (1) (3) (c) & (g),  
42, 44 (c), 79 (3), 92, 94 and 128 (1), (2), (3) & (4) of the Constitution.
3. Whether the Public Accounts Committee of Parliament and Parliament  
30 by the observation, recommendations and resolutions purported to  
veto the judgment of the High Court in Civil Suit No 003 of 2009,  
Beachside Development Services Ltd versus National Forestry  
Authority, and the Court of Appeal of Uganda in the Court of Appeal  
Civil Appeal No 80 of 2009, National Forestry Authority versus

5 Beachside Development Services Ltd, contrary to Articles 2, 79, 92, 119 and 128 of the Constitution, are ultra vires and an attempt by Parliament to usurp powers of the judiciary contrary to the doctrines of separation of powers, the independence of the judiciary and the finality of court judgments.

10 I have further considered the questions for interpretation sought in **Hon Mr. Joseph Murangira v Attorney General** (supra) and I do not need to repeat them here as I will consider the judgment itself.

In the instant petition under consideration, the following declaratory orders which may be couched as issues for determination, sought in the petition  
15 are:

1. The adoption/passing by Parliament of the impugned report of the Public Accounts Committee on 14<sup>th</sup> November, 2013 and the observations and recommendations therein into resolutions of Parliament is inconsistent with and or in contravention of Articles 2, 26, 28 (1) (2) (c) and 79 (3) of the Constitution.
- 20 2. The observations and recommendations of the impugned report of the Public Accounts Committee are inconsistent with and/or in contravention of Articles 2, 26, 28 (1) (3) (c) (g), 41, 42, 44 (c), 79 (3), 92, 94, 119, 126 (2), (a) & (c), and 128 (1), (2), (3) & (4) of the Constitution.
- 25 3. The Petitioner, Hon. Mr. Justice Joseph Murangira, and Hon. Mr. Justice Ralph Ochan and the Mr. Charles Harry Twagira, shareholders/directors of Beachside Development Services Ltd and the company were denied a right to a fair hearing prior to the passing of the impugned resolutions in contravention of the "audi alterem partem" principle enshrined in Article 28 and 42 of the Constitution.
- 30 4. The Public Accounts Committee and Parliament by their observations, recommendations and resolutions purported to veto the judgment of the High Court in *Civil Suit No 003 of 2009, Beachside Development Services Ltd v National Forestry Authority* and the *Court of Appeal Civil No 80 of 2009, National Forestry Authority v Beachside Development Services Ltd* contrary to Articles 2, 26, 92 and 128 of the Constitution, are ultra vires and an attempt by Parliament to usurp

5 powers of the judiciary contrary to the doctrines of separation of powers,  
independence of the judiciary and finality of court judgments.

The issues in the declarations sought in this petition are the same as those  
sought in **Hon. Joseph Murangira v Attorney General** (supra) at page 3  
and 4 of the judgment of the Constitutional Court in respect of declarations  
10 numbers 1, 2, and 4 in this petition. As far as pleadings are concerned the  
only difference arises from declaration number 3 in this petition that:

The Petitioner, Hon. Mr. Justice Joseph Murangira, and Hon. Mr. Justice Ralph  
Ochan and the Mr. Charles Harry Twagira, shareholders/directors of Beachside  
Development Services Ltd and the company were denied a right to a fair hearing  
15 prior to the passing of the impugned resolutions in contravention of the "audi  
alterem partem" principle enshrined in Article 28 and 42 of the Constitution

The question of whether the above persons named were accorded a hearing  
in terms of a question as to interpretation of Articles 28 (1), 42 and 44 (c)  
were also canvassed in **Hon. Joseph Murangira v Attorney General** (supra)  
20 and the issue is whether those issues survive for interpretation of the  
Constitution in this petition. Herein below is what the Constitutional Court  
declared when it allowed the petition in **Hon. Mr. Joseph Murangira v  
Attorney General** (supra) at pages 29 and 30 of the judgment:

1. The adoption/passing by Parliament of the impugned report of the Public Accounts  
25 Committee on 14/11/2013 and the observations and recommendations affecting  
the petitioner therein into resolutions of Parliament was done in contravention of  
and is inconsistent with Articles 2, 79 (3) and 128 (1) (2) (3) and 4 of the Constitution  
and it is null and void.
2. The observations and recommendations affecting the Petitioner in item 29 of the  
30 impugned report of the Public Accounts Committee of Parliament are inconsistent  
with and were made in contravention of Articles 2, 79 (3) and 128 (1), (2), (3) & (4)  
of the Constitution.
3. The Public Accounts Committee of Parliament and Parliament by their  
observations, recommendations and resolutions purported to veto the judgment

5 of the High Court in *Civil Suit No 003 of 2009, Beachside Development Services Ltd versus National Forestry Authority* and the Court of Appeal of Uganda in *Court of Appeal Civil No 80 of 2009, National Forestry Authority versus Beachside Development Services Ltd* contrary to Articles 2, 79 (3) and 128 of the Constitution, and is ultra vires and contrary to the doctrines of separation of powers, the  
10 independence of the Judiciary and the finality of court judgments and those acts are unconstitutional, null and void.

4. The Respondent shall pay general damages to the Petitioner to the tune of Shs. 50 million.

5. The Petitioner is awarded costs of this Petition since the petition has been  
15 substantially successful. ...

Suffice it to note that in the current petition, the Petitioner's Counsel abandoned any issues as to interpretation of Articles 28, 42, and 44 on the basis of the holding that Parliament acted ultra vires. In effect, any questions as to interpretation relating to a right of hearing or fair hearing were  
20 abandoned on the ground that the report of Parliament was declared ultra vires.

The Petitioner's Counsel submitted that the Petitioner and his company were not invited to attend a hearing and were not given a chance to defend themselves. He submitted that the remaining part of the Petition is for  
25 consequential orders of compensation, general damages and costs to Hon Mr. Joseph Murangira, Hon Mr. Justice Ralph Ochan, Mr. Charles Harry Twagira and the Petitioner.

The decision in **Joseph Murangira v Attorney General** (supra) was issued on 20<sup>th</sup> November, 2017 as a unanimous decision of the court and the  
30 question is whether it determined all the questions as to interpretation raised in that petition as well as in this petition.

Suffice it to observe that the matter in this petition concerns the same impugned PAC report and it refers to the same Auditor General's Report. It



5 further deals with the same resolutions of Parliament. That resolution of  
parliament was expunged from the record and does not exist in law. It ought  
not to be resurrected and dealt with again. For emphasis the Constitutional  
Court in **Joseph Murangira v Attorney General** (supra) nullified the  
adoption and passing by Parliament of the impugned report of the PAC on  
10 14<sup>th</sup> November, 2013 and observations and recommendations affecting Hon.  
Mr. Justice Joseph Murangira and resolutions therein. Secondly, the  
observations and recommendations affecting Hon. Mr. Justice Joseph  
Murangira in Item 29 of the report of the PAC. Thirdly, the observations of  
Parliament relating to **High Court Civil Suit No 003 of 2009, Beachside**  
15 **Development Services Ltd v Uganda Forestry Authority** and **Court of**  
**Appeal Civil Appeal No. 80 of 2009 National Forestry Authority v**  
**Beachside Development Services Limited** were declared null and void,  
leaving those judgments valid.

It follows that the doctrine of *res judicata* applies to the extent that the  
20 questions as to interpretation of the Constitution raised in the above petition  
leading to nullification of the acts of the PAC and resolutions of Parliament  
are the same questions raised in this petition and were resolved or  
determined by the Constitutional Court. The Constitutional Court cannot  
handle them without reviewing the orders in **Joseph Murangira v Attorney**  
25 **General** (supra). To review the orders in **Joseph Murangira v Attorney**  
**General** (supra) will require inviting the parties for a hearing first.  
Nonetheless, the law has been further clarified by the Supreme Court in that  
since the decision of this court in **Hon. Mr. Justice Joseph Murangira v**  
**Attorney General** (supra), the Supreme Court has spelt out how judicial  
30 officers may be held accountable for their judicial acts. This is in **Attorney**  
**General v Nakibuule Gladys Kisekka; Constitutional Appeal No. 02 of**  
**2016 [2018] UGSC 30 (11 July, 2018)**. The relevant facts of the Supreme  
Court decision are that the Respondent had been charged by the Judicial  
Service Commission for professional misconduct. The Respondent objected

5 to the proceedings before the Judicial Service Commission and pleaded her immunity from the process whereupon she petitioned the Constitutional Court and the Constitutional Court *inter alia* held that:

The act and/or conduct of the Judicial Service Commission of preferring charges against the Respondent in respect of acts/or omissions involved in  
10 the recall of a warrant, which are judicial acts is inconsistent with and in contravention of Articles, 2, 20, 28, 42, and 44 of the Constitution of the Republic of Uganda. Secondly, the act/conduct of the Judicial Service commission of lifting the judicial immunity accorded to the Respondent and holding her personally liable for her judicial act of recalling the warrant in the  
15 discharge of her judicial work is inconsistent with and in contravention of Articles, 2, 20, 28, 42, 44, 128 (4) and 173 of the Constitution of the Republic of Uganda. The Attorney General was aggrieved by the ruling and preferred an appeal to the Supreme Court against the decision on the following grounds:

20 1. That the Justices of the Constitutional Court erred in law and in fact in declaring that the act and/or conduct of the (Judicial Service) Commission of preferring charges against the petitioner in respect of acts/or omissions involving the recall of a warrant, which are judicial acts, is inconsistent with and in contravention of Articles 2, 20, 28, 42 and 44 of the Constitution of  
25 the Republic of Uganda.

2. That the Justices of the Constitutional Court erred in law and in fact in declaring that the act and/or conduct of the Commission of lifting the judicial immunity accorded to the petitioner and holding her personally liable for her judicial act of recalling the warrant in the discharge of her judicial functions  
30 is inconsistent with and in contravention of Articles 2, 20, 28, 42, 44, 128 (4) and 173 of the Constitution of the Republic of Uganda.

5 Prof Tibatemwa Ekirikubinza JSC *inter alia* set out some principles after  
review of authorities on the subject of judicial immunity and accountability.  
These include the principle that judges are accountable to the Constitution  
and the law which they must apply honestly, independently and with  
integrity. Secondly, accountability of a person or class of persons is being  
10 answerable for their actions and decisions to some clearly identifiable  
individual or body. She held that the Judicial Service Commission is a clearly  
identifiable body to which judicial officers are accountable. The functions of  
the Judicial Service Commission under Article 147 (1) (d) of the Constitution  
include the function to receive and process people's recommendations and  
15 complaints concerning the judiciary and the administration of justice and  
generally to act as a link between the people and the judiciary. She found  
that whereas judicial officers cannot be subjected to a civil suit for anything  
done in the exercise of his or her judicial discretion, this principle does not  
apply to the Judicial Service Commission. She found that the act of preferring  
20 charges against a judicial officer by the Judicial Service Commission for  
purposes of fulfilling its functions is not unconstitutional.

The law is clear that judicial officers may be subjected to disciplinary control  
by the Judicial Service Commission (JSC) for acts in the exercise of judicial  
functions and the JSC is the body mandated by the Constitution to  
25 investigate any judicial misconduct or disciplinary offence. The decision of  
the Supreme Court sitting on appeal from a decision of the Constitutional  
Court is binding on the Constitutional Court. The Supreme Court having  
made the law clear in **Attorney General v Nakibuule Gladys Kisekka**  
(supra), I find that there is no further question as to interpretation of the  
30 Constitution in this petition and by this court and the law can be enforced by  
the competent authorities as interpreted by the Supreme Court.

In the premises, the current petition raises no further question as to  
interpretation of the Constitution because the word "any question" means

- 5 an issue, a controversy or dispute as to the meaning and scope or application  
of any provision of the Constitution that has to be determined by the  
Constitutional Court. Those questions were not only raised but were  
determined by the Constitutional Court in **Hon Mr. Joseph Murangira v**  
**Attorney General** (supra) and further clarified by the Supreme Court in  
10 **Attorney General v Nakibuule Gladys Kisekka** (supra) as to which body  
judicial officers are accountable to for judicial acts. Any grievances of the  
Petitioner's in the current petition are matters for enforcement of the  
Constitution and there is no further or additional dispute as to interpretation  
of Constitution.
- 15 That being the case, any remaining controversy relating to a claim for the  
award of compensation, general damages and costs for any grievances  
relating to any alleged defamation of character and injury to property rights,  
right to fair hearing etc. which claims are in addition to the award of the High  
Court between **Beachside Development Services Ltd v National Forestry**  
20 **Authority** (supra) and the Court of Appeal decision in **National Forestry**  
**Authority v Beachside Development Services Ltd** (supra) ought to be dealt  
with in a court of competent jurisdiction for enforcement only.

The remaining issue of whether the Petitioner or Beachside Development  
Services Ltd were accorded a hearing let alone a fair one is a matter for the  
25 High Court and does not disclose an issue as to interpretation of the  
Constitution. The doctrine of fair hearing is well trodden and does not need  
elucidation in this Court.

The question or questions of fact as to whether the Petitioner's company or  
its directors were giving a hearing by the PAC or had an opportunity to  
30 appear is not a question as to interpretation of the Constitution but a triable  
issue for consideration of a competent court.

5 The assessment of damages by the High Court was appealed and the appeal was dismissed. A further appeal was preferred to the Supreme Court but withdrawn. The affirmation of the High Court decree still stands and has not been set aside.

10 With regard to the consent judgment in the High Court, it may be set aside only upon application if any grounds exist for vitiating an agreement of the parties. Consent judgments are contracts of the parties. Consent judgments are not appealable and can only be set aside in the court in which they were filed on grounds that may invalidate a contract.

15 Further, the grounds for setting aside consent judgments are not questions for interpretation of the Constitution even if the grounds are disclosed in findings of fact of the PAC, Auditor General or Parliament.

The grounds for setting aside a consent judgment are well trodden. The East African Court of Appeal in **Hirani v Kassam 19 (EACA) 131** also quoted in **Brooke Bond (T) Ltd v Marlya [1975] E.A. 266** at page 269 summarizes the law:

the circumstances in which a consent judgment may be interfered with were considered by this court in *Hirani v. Kassam (EACA), 19 E.A.C.A. 131*, where the following passage from Seton of judgments and orders, 7<sup>th</sup> Edition vol 1 page 124 was approved.

35 } *Prima facie*, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them...and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of court... or if consent was given without sufficient material facts, or in misapprehension or ignorance of material facts, or in general for any reason which would enable court to set aside an agreement between the parties

30 Counsel can bind the parties before a judge by setting out the agreement of the parties. A consent judgment or order can be set aside on grounds that would invalidate an agreement between the parties. In **Purcell v F C Trigell**

5 **Ltd (trading as Southern Window and General Cleaning Co) and another**  
[1970] 3 All ER 671 the parties executed a consent interlocutory order and  
Lord Denning at page 675 stated that:

10 But there is no ground here so far as I can see setting aside this consent order. It  
was deliberately made, with full knowledge, with the full agreement of the solicitors  
on both sides. It cannot be set aside. But even though the order cannot be set  
aside, there is still a question whether it should be enforced.

15 It is further clear that the court may enter a consent judgment or order on  
the basis of the representations of the Advocates who are professionally  
liable for any misinformation. Where a lawyer has instructions of his or her  
client to resolve the matters before court, an agreement reached and  
recorded by the trial Judge on the terms represented by the lawyer in court  
is binding on the lawyer's client and such a lawyer may be liable for  
misrepresentations of the client's terms of agreement represented to court.  
It is a matter of ethics that lawyers act in the interest of their client. A consent  
20 order or decree is a contract of the parties. Buckley LJ in **Purcell v F C Trigell**  
**Ltd** (supra) at page 677 stated that:

In my judgment, this order should be regarded as having a binding contractual  
effect on which the plaintiff was perfectly entitled to insist.

25 Secondly, being an agreement, a consent judgment operates as estoppels  
against a party trying to depart from it. In other words, it can only be set  
aside on the grounds on which an agreement may be nullified. Lindley L.J. in  
**Huddersfield Banking Co. Ltd v Henry Lister & Son Ltd (1895) 2 Ch. D**  
**273** at page 280 stated that:

30 A consent order I agree is an order and so long as it stands it must be treated as  
such, and so long as it stands it is as good an estoppel as any other order.

The correct procedure is to apply to set a consent order or agreement aside  
on the application of an aggrieved party.

5 I agree that Parliament or PAC can investigate the circumstances in which a  
consent order or decree was executed but they cannot review a judgment by  
purporting to call parties and the judicial officer to testify on how the  
decision was reached. The law provides the procedure and forum for review  
of judgments. Where there are circumstances which may make an agreement  
10 suspect for breach of law or policy, the matter can be referred to the  
appropriate authority to move court to set it aside. Further, the facts in this  
matter are peculiar because the final consent was executed by the parties  
after an appeal to the Court of Appeal against a decision of the High Court  
assessing damages by National Forestry Authority had been dismissed. The  
15 record has a dismissal of appeal by the Court of Appeal and affirmation of a  
judgment of Murangira J assessing damages pursuant to a consent decree  
of the parties in the High Court. If that consent decree is set aside, the  
assessment of damages by Murangira J also collapses. If not set aside, the  
remedy left for any aggrieved party is to appeal to the Supreme Court.

20 I have also considered the terms of the consent decree executed by the lawful  
representatives of Beachside Development Services Ltd and National  
Forestry Authority that was filed in the Court of Appeal. This court has time  
and time again held that an appeal cannot be resolved by consent of the  
parties. It can only be withdrawn by consent. It should be noted that the  
25 Petitioner in Paragraph 4 of his affidavit refers to an award of US\$ 1,900,000.  
This is not the award of the High Court in assessment of damages but a  
settlement in the Court of Appeal. In any case, the appeal of National Forestry  
Authority in the Court of Appeal was dismissed though the Court enhanced  
the interest awarded by the High Court. Thereafter, National Forestry  
30 Authority appealed to the Supreme Court and a purported settlement was  
filed in the Court of Appeal settling the matter by withdrawal of the appeal  
filed in the Supreme Court on terms which include an award of US\$  
1,900,000. The dismissal of the Court of Appeal of **Civil Appeal No 80 of**

5    **2009; National Forestry Authority v Beachside Development Services Ltd** was further compromised by the purported agreement of the parties.

Notwithstanding the fact that there was no appeal pending in the Court of Appeal when a "settlement consent" was endorsed by the Registrar, the appeal from a decision of the High Court having been dismissed, the  
10 precedents on such settlements are clear that a settlement of an appeal as varies or sets aside the decision of the lower court is unlawful.

In **Farida Nantale v Attorney General, Registrar of Titles & House of Dawda (U) Limited; Civil Application No 286 of 2014 (arising out of Civil Appeal No 23 Of 2011)** this court held that an agreement should be filed in  
15 or set aside in a court with original jurisdiction. Appeals lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law under Article 134 (2) of the Constitution of the Republic of Uganda and section 10 of the Judicature Act Cap 13 which is couched in similar terms.

In **Farida Nantale vs Attorney General, Registrar of Titles & House of Dawda (U) Limited** (supra) there was a consent order issued by the Registrar of the Court of Appeal. The agreement had been endorsed by the Counsel of the parties on 10<sup>th</sup> June, 2011 and issued under the hand of the Registrar as a consent order on 14<sup>th</sup> June, 2011. The order was set aside as an illegality.  
20 In **Edith Nantumbwe & 3 Others v Miriam Kuteesa; Court of Appeal Civil Appeal No 294 of 2013, [2013] UGCA 23** (18<sup>th</sup> December 2013) the controversy was on the jurisdiction of Registrars issuing orders entered by consent of the parties in the Court of Appeal. The Court considered the point of law as to the jurisdiction of the Registrar of this Court and held that a Registrar has no jurisdiction to hear and finally dispose of an appeal. That the  
25 learned Registrar erred to enter a consent judgment when there was no appeal. The agreement of the parties could only have been filed before a single justice before whom there was a pending application. The consent was  
30 a nullity for want of jurisdiction and jurisdiction cannot be conferred on the



5 Court by agreement of the parties. Further, the court held that a consent judgment is an agreement of the parties and cannot bind or direct persons who are not party to the agreement. The general rule is that an appellate Court will not allow an appeal to be settled by consent as held in **Slaney v Keane [1970] Ch. 245**.

10 In **Bulasio Konde v Bulandina Nankya; Court of Appeal Civil Appeal No 7 of 1980 [UGCA} 1** (14<sup>th</sup> August 1981) the court held that generally, an appeal cannot be allowed by consent of the parties. The court cited with approved the rule of law in **Lees v Motor Insurer's Bureau [1953] WLR 620** where Denning L. J. held that:

15 an appeal could not be allowed by consent, for that would be reversing the judgment of Lord Goddard CJ without hearing the appeal.

While the PAC or Parliament can investigate use or misuse of public funds, the law allows interested parties to set aside a consent judgment on grounds of illegality or having been executed contrary to public policy. Judicial  
20 Officers can be referred to the Judicial Service Commission for investigation of any alleged judicial misconduct.

The consent judgment executed by the parties left the issue for assessment of damages in the High Court. The learned trial judge assessed damages and made an award whereupon an appeal was preferred from his judicial decision  
5 and the appeal was dismissed by three Justices of the Court of Appeal. The consent decree executed by the parties and filed in the Court of Appeal, is ordinarily considered to supersede the judgment in the High Court unless set aside. In any case the High Court decision was not only affirmed but varied by enhancing the rate of interest awarded. The decision of Murangira,  
30 J on assessment of damages was upheld by the Court of Appeal and no further appeal was preferred, the appeal in the Supreme Court having been discontinued by the appellant's agreement to withdraw it. As noted above,

5 the further consent decree in the Court of Appeal after dismissal of the appeal against the High Court decree is an illegality.

From the facts analysed above, there is no further question as to interpretation for this court to consider though we may point out the avenues open to any interested parties.

10 Any challenge to any consent judgment between the same parties can be filed in a court of competent jurisdiction.

The Petitioner having filed this petition earlier than the petition in **Hon Mr. Justice Joseph Murangira v Attorney General** (supra), I would issue a declaratory order that the petition of the Petitioner for enforcement of the  
15 right of hearing is not a question as to interpretation of the Constitution.

The right to a hearing or fair hearing is as old as Administrative Law and does not require interpretation of Articles 28 (1), 42 and 44 (c) of the Constitution by this court.

The remedy against unfair and unjust treatment is to file an action for  
20 enforcement of rights under Articles 42 and 50 of the Constitution in a court of competent jurisdiction and not to sue for interpretation of the Constitution as held in **Charles Kabagambe v Uganda Electricity Board; Constitutional Petition No 2 of 1999**.

The claim for consequential relief pursuant to the expunging of the  
25 impugned report from the record of Parliament are matters of enforcement.

In the premises, this petition stands dismissed as to the questions for interpretation of the Constitution disclosed therein with no order as to costs.

I would further declare that the Petitioner is free on account of having filed the petition prior in time to that in in **Hon Mr. Justice Joseph Murangira v Attorney General** (supra), to have the claims in the Petition for any  
30

- 5 consequential relief as stated therein filed and determined by the High Court on the merits provided a cause of action is disclosed.

Dated at Kampala the 18<sup>th</sup> day of March 2021



Christopher Madrama

- 10 **Justice of the Constitutional Court/Court of Appeal**



THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Kakuru, Obura, Musota, Madrama & Kasule, JJCC)

CONSTITUTIONAL PETITION NO. 54 OF 2013

HON. FOX ODOI OYWELOWO.....PETITIONER

VERSUS

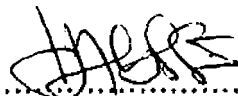
ATTORNEY GENERAL OF UGANDA.....RESPONDENT

JUDGMENT OF HELLEN OBURA, JA/JCC

I have had the opportunity to read in draft the judgment of my learned brother, Hon. Justice Christopher Madrama, JA/JCC in the above petition. I agree with his findings and conclusion that the doctrine of *res judicata* applies to this petition to the extent that the questions as to the interpretation of the Constitution raised in this petition are the same questions that were raised in ***Hon. Mr. Joseph Murangira vs Attorney General; Constitutional petition No. 7 of 2014*** which this Court already heard and determined. In the circumstances, this petition raises no further question as to interpretation of the Constitution.

I also agree with the proposed order and declaration in relation to costs and consequential relief respectively.

Dated at Kampala this.....15<sup>th</sup>.....day of.....March.....2021



Hellen Obura

JUSTICE OF APPEAL/CONSTITUTIONAL COURT



# THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 54 OF 2013

HON. FOX ODOI OYWELOWO ::::::::::::::::::::::::::: PETITIONER

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::: REPONDENTS

CORAM: HON. JUSTICE KENNETH KAKURU, JA/JCC

HON. JUSTICE HELLEN OBURA, JA/JCC

HON. JUSTICE STEPHEN MUSOTA, JA/JCC

HON. JUSTICE CHRISTOPHER MADRAMA, JA/JCC

HON. JUSTICE REMMY KASULE, AG. JA/JCC

## JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA/JCC

I have had the benefit of reading in draft, the judgment by my brother  
Justice Madrama, JA/JCC. He has concisely outlined the  
background and issues for consideration in this petition.

I agree with the decision that this petition is *res judicata* with regard  
to issues No. 1, 2, 3, 4 and 5, which were finally determined in  
**Constitutional Petition No. 07 of 2014 Hon. Justice Murangira  
Vs Attorney General**. The petition is therefore barred by the doctrine  
of *res judicata* as is enacted under **S.7** of the **Civil Procedure Act**.  
This section is an embodiment of the rule of conclusiveness of the  
judgment as to the points decided by the court in every subsequent  
suit. As already stated above, the issues raised in the petition have





already been put before the Constitutional Court in **Justice Murangira Vs Attorney General** (supra).

Therefore, the current petition raises the same issues and is challenging the report of the Public Accounts Committee report of 12<sup>th</sup> November 2013 and the observations and recommendations therein, which were turned into resolutions of Parliament. The adoption and passing by Parliament of the impugned report of PAC has already been declared unconstitutional, null and void by the Constitutional Court. This finding is fortified by the decision in **Uganda Vs Onegi Obel Constitutional Reference No. 0024 of 2011** in which the Constitutional Court held that the interpretation of the court of any legal provision *vis-à-vis* the Constitution and its legal effects is not limited to the parties concerned in the case in which the interpretation is made. It constitutes a binding pronouncement of the law subject to the right of appeal to the Supreme Court. The court cannot therefore hear and determine the same substantial legal issues more than once.

Any issues raised in this petition as regards the enforcement of fundamental rights ought to be handled by the High Court under Article 50 of the Constitution or through an application for judicial review. The Constitutional Court has jurisdiction only under Article 137 of the Constitution to decide questions as to interpretation of the Constitution, but it is not concerned with enforcement of rights under Article 50 of the Constitution. See **Attorney General Major General David Tinyefunza Constitutional Appeal No. 1 of 1987;**



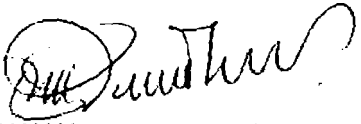
**Ismail Serugo Vs KCC and Attorney General Constitutional  
Appeal No. 2 of 1998.**

In this petition, the petitioner's counsel listed Articles in the Constitution, which he contended were dealt with and are *res-judicata*. It should be made clear that the Constitutional Court deals with "questions" as to interpretation of the Constitution, but not Articles of the Constitution.

In conclusion, I agree that the current petition raises no further question as to interpretation of the Constitution. Any remaining controversy relating to a claim for the award of compensation, general damages for any grievances relating to any alleged defamation of character and injury of property rights, right to a fair hearing and costs ought to be filed in a court of competent jurisdiction for enforcement only.

This petition stands dismissed with the orders as proposed by Madrama JA/JCC.

Dated at Kampala this.....15<sup>th</sup>.....day of ....March.....2021

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Stephen Musota

**JUSTICE OF APPEAL/CONSTITUTIONAL COURT**

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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

**Constitutional Petition No. 54 of 2013**

**Hon. Fox Odoi Oywelowo ::::::::::::::::::::::::::::::::::: Petitioner**

15

**Versus**

**The Attorney General ::::::::::::::::::::::::::::::::::: Respondent**

**Coram: Hon. Justice Kenneth Kakuru, JA/CC**

**Hon. Justice Hellen Obura, JA/CC**

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**Hon. Justice Stephen Musota, JA/CC**

**Hon. Justice Christopher Madrama, JA/CC**

**Hon. Justice Remmy Kasule, Ag. JA/CC**

25

**Judgment of Justice Remmy Kasule, Ag. JA**

I have had the benefit of carefully considering the lead Judgment in draft prepared by my brother the Hon. Justice Christopher Madrama, JA.

30

I agree with the conclusion of my brother that this **Constitutional Petition No. 54 of 2013** raises no further questions as to the interpretation of the Constitution, since the same questions were



substantially resolved upon by this **Constitutional Court in Constitutional Petition No. 07 of 2014, Hon. Justice Joseph Murangira vs the Attorney General of Uganda** in a Judgement  
35 delivered on 20<sup>th</sup> November, 2017.

I also concur that the petitioner in this Petition is at liberty to pursue his remedies as relate to claims for compensation as well as damages and any other reliefs relating to alleged defamation of his character, injury to his property rights as well as violation of  
40 his personal rights through an ordinary suit pursued in the appropriate Courts of law seized with the requisite jurisdiction.

The jurisdiction of this Constitutional Court is restricted to interpreting the Constitution under Article 137 of the Constitution. When it comes to enforcement of rights of a party, then the redress  
45 is to pursue the matter through a competent Court of law pursuant to Article 50 of the Constitution. See: **Attorney General vs Tinyefuza: Supreme Court Constitutional Appeal No. 1 of 1987** and also **Ismail Serugo vs Kampala City Authority and the Attorney General: Supreme Court Constitutional Appeal**  
50 **No. 2 of 1998.**

It has also to be appreciated that, subject to an appeal to the Supreme Court, once the Constitutional Court interprets an Article or any aspect of an Article of the Constitution vis-à-vis any other legal provision of the law, statutory or otherwise, or act or omission  
55 of any authority or of any individual person, that constitutional interpretation constitutes a binding pronouncement of the law as it relates to the Constitution with its legal effects applying and

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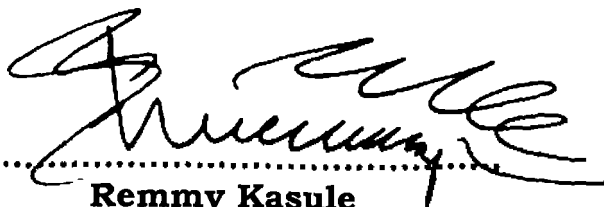
binding upon everyone, and not limited only to the individual parties to that Constitutional Petition or Reference.

60 The Constitutional Court therefore cannot hear and determine by way of interpreting the Constitution the same substantial Constitutional Court therefore cannot hear and determine by way of interpreting the Constitution the same substantial Constitutional legal issues more than once, depending on the  
65 different parties lodging the same issues at different times to the same Constitutional Court. See: **Constitutional Reference No. 0024 of 2011: Uganda vs Oneg Obel.**

In conclusion, I too dismiss this Petition with no order as to costs since the Petitioner lodged his Petition in this Court earlier than  
70 **Constitutional Petition No. 7 of 2014: Hon Justice Joseph Murangira vs the Attorney General** wherein the issues requiring Constitutional interpretation in this petition were resolved upon. It just happened that through the scheduling of the determination of Constitutional Petitions in this Court, over which the petitioner  
75 had no control, Constitutional Petition No. 7 of 2014 was determined earlier than this Constitutional Petition.

Dated at Kampala this .....1<sup>st</sup> day of ...March..... 2021.

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.....  
**Remmy Kasule**  
**Ag. Justice of Appeal**



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**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
**CONSTITUTIONAL PETITION NO. 54 OF 2013**

**HON. FOX ODOI OYWELOWO ..... PETITIONER**

10

**VERSUS**

**ATTORNEY GENERAL ..... RESPONDENT**

**CORAM: Hon. Mr. Justice Kenneth Kakuru, JA/JCC**

**Hon. Lady Justice Hellen Obura, JA/ JCC**

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**Hon. Mr. Justice Stephen Musota, JA/JCC**

**Hon. Mr. Justice Christopher Madrama, JA/JCC**

**Hon. Mr. Justice Remmy Kasule, Ag. JA/JCC**

**JUDGMENT OF JUSTICE KENNETH KAKURU, JA/ JCC**

20 I have had the opportunity of reading in draft the Judgment of my learned brother Christopher Madrama Izama JA/JCC. He has ably set out the issues for determination in this petition. He has also reproduced the submissions of Counsel and the duty and jurisdiction of this Court. I will therefore not belabor to reproduce them here.

25 My understanding of this petition is that, the petitioner complained of not having been granted an opportunity to be heard, by the Public Accounts Committee of Parliament (PAC) and seeks to expunge his name from it's report dated 12<sup>th</sup> November 2013.

30 It is a principle of natural justice embedded in our Constitution that, no one shall be condemned unheard. In practice the right to be heard, is limited to the opportunity to be heard. Therefore, where a tribunal avails to an individual an opportunity to be



5 heard and that individual fails or refuses to appear before it, it cannot be stated that, he or she was denied a right to be heard.

Annexure "A" to this petition is a report of the Public Accounts Committee of Parliament on Government compensation (PAC) in respect of payment to Beachside Development Services LTD, a limited liability company incorporated in Uganda. The  
10 report is in respect of the financial year 2009/2010 and is dated May 2013. The petitioner is a director and shareholder in the company above mentioned.

In his Petition he states as follows:-

15 *3. THAT pursuant to Rule 148 (2) of the Rules of Procedure of Parliament, the Public Accounts Committee of Parliament examined the accounts showing the appropriation of sums granted by Parliament and expended by National Forestry Authority to pay the decretal sum in Civil Suit No. 003 of 2009, Beachside Development Services Ltd versus National Forestry Authority, and Court of Appeal Civil Appeal No. 80 of 2009, National Forestry Authority versus Beachside Development Services Ltd and presented its report to Parliament of observations and  
20 recommendations against your humble Petitioner, the directors of Beachside Development Services Ltd and the company and the report has been adopted by Parliament with minor amendments.*

25 Neither the PAC report nor the Auditor General's report that was discussed therein related to the petitioner.

The report of the PAC, clearly shows at pages 3, 4 and 5 that Mr. Charles Twagira, the Managing Director of Beachside Development Services LTD appeared before the Committee on several occasions and testified.



5 The petitioner must have at all times been well aware of the proceedings at PAC at which the company in which he was a director and shareholder was a subject of investigation. The Managing Director of that company Mr. Twagira was a witness. The petitioner was at liberty to apply to be heard as an affected party had he desired to do so. There is nothing in the petition or on record to show that indeed the  
10 petitioner ever sought to appear before PAC, and that when he did, he was denied an opportunity to do so. I therefore, find no merit in ground 4.3, I would dismiss it and I decline to grant the declarations and orders sought.

I must state from the onset that, Article 2 of the Constitution which relates to the supremacy of the Constitution, Article 26 in relation to protection of property and  
15 Article 92 in relation to retrospective legislation are not applicable in this petition.

The only relevant Article in respect of the facts before us is Article 128 (1), (2), (3) and (4) in respect of the independence of the Judiciary.

Article 128 of the Constitution in relation to power of Parliament and specifically in relation to the report of Public Accounts Committee referred to above was discussed  
20 in *Murangira vs Attorney General Constitutional Petition No. 14 of 2014*. This Court while determining that petition relied on the principle set out in *Gladys Nakibuule Kisekka vs Attorney General, Constitutional Court Constitutional Petition No. 55 of 2013* and held that, a judicial officer could not be summoned to Parliament to explain or defend his or her judicial decision. Further that Parliament had no  
25 authority under the Constitution to inquire into judicial decisions. I do not find it relevant to this petition as the petitioner is not a judicial officer. It is only relevant in as far as it related to the powers of parliament to investigate a judicial decision. In this case a judgment of the High Court in *Beachside Development Services Ltd vs National Forestry Authority (supra)*.





5 The Supreme Court in *Attorney General vs Gladys Nakibuule Kisekka, Constitutional Appeal No. 2 of 2016* set aside the decision of this Court in *Murangira vs Attorney General Constitutional Petition No. 14 of 2014 (Supra)*. It established a principle that judicial independence must go hand in hand with judicial accountability. Further that, judicial officers can be held accountable for their judicial decisions by  
10 appropriate authorities in that particular case, the Judicial Service Commission.

In that regard therefore, this Court's decision in *Murangira petition (supra)* is no longer good law. Parliament or any other arm of government or a government agency can inquire into the propriety of a judicial decision within parameters established by law.

15 I must observe here that, the impugned judgment, *Beachside Development Services Ltd versus National Forestry Authority, High Court Civil Suit No. 003 of 2009* had been arrived at by consent of parties. On the basis of that consent, the High Court assessed and awarded damages.

It is trite law that a Consent Judgment is a contract between the parties to a suit.  
20 What vitiates a contract vitiates a consent Judgment. PAC had a duty and obligation to inquire into terms of a Consent Judgment between a government agency (NFA) and private company in which large sums of money were required to be paid out of the consolidated fund.

Lastly, I observe that, the decree of Court upon which the payment was sought, was  
25 arrived at by consent of parties at the Court of Appeal in *National Forestry Authority versus Beachside Development Services Ltd Court of Appeal Civil Appeal No. 80 of 2009*. This was well after the Court of Appeal had determined that appeal.

This was an illegality. Parties cannot, on appeal, consent to set aside or otherwise vary a Judgment on appeal. See:-

- 30
- *Bulasio Konde vs Bulandina Nankya, Court of Appeal Civil Appeal No. 7 of 1980.*



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- *Edith Nantumbwe Kizito vs Miriam Kuteesa, Court of Appeal Civil Application No. 294 of 2013.*
- *Uganda Broadcasting Corporation vs Sinba (K) Limited and Others, Court of Appeal Civil Application No. 12 of 2014.*

In the result I find no merit in this petition and I would dismiss it.

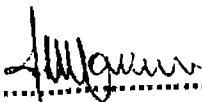
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By unanimous decision this petition stands dismissed with orders as set out in the judgment of Madrama, JA/JCC.

It is so ordered.

**Dated at Kampala** this .....1<sup>st</sup>.....day of .....March..... 2021.

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

