



governance are a reserve of duly registered political parties and organisations and in contravention of Article 72 of the Constitution of Uganda 1995 and by reason whereof the petitioner is aggrieved, interested in and seeks the declarations hereunder.

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2. That the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents under their unregistered political organisation/party under the name and style of “People Power Movement,” People Power-Uganda” and “People Power” used interchangeably; of appointing regional coordinators being a reserve of duly registered political parties and organisations is in contravention of Article 72 of the Constitution of Uganda, 1995 and by reason whereof the petitioner is aggrieved, interested in and seeks the declarations and orders as hereunder;

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3. That the actions of the 3<sup>rd</sup> respondent in establishing and mobilising political activities with a national structure a reserve for political organisation/party (sic), under his unregistered name and style of “The People’s Government” are inconsistent with and in contravention of the provisions of the Constitution of Uganda 1996 and by reason whereof the petitioner is aggrieved, interested in and seeks the declarations and orders as hereunder;

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4. That the omissions of the 4<sup>th</sup> respondent through the established structures of the executive in failing to halt the activities of both the unlawful organisations (vide: People Power Movement, the People’s Government) and the 3<sup>rd</sup> respondent is an abdication of a constitutional mandate, and therefore inconsistent with and in contravention of Article 119 (4) (a) of the Constitution of Uganda 1995 and by reason whereon the Petitioner is aggrieved and seeks the declarations and orders hereunder.

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The petitioner then listed the following orders and declarations that he sought:

- 5 i) A declaration that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in establishing, running and mobilising political activities with a national structure, the reserve of political organisation/party, (sic) under the unregistered name and style of “People Power Movement” are inconsistent with and in contravention of Article 72 (2) of the Constitution of Uganda 1995.
- 10 ii) A declaration that the actions of the 3<sup>rd</sup> respondent in establishing, running and mobilizing political activities with a national structure a preserve for a political organisation/party, under the unregistered name and style of “The People’s Government” are inconsistent with and in contravention of  
15 Article 72 of the Constitution of Uganda 1995.
- 20 iii) A declaration that the omission of the 4<sup>th</sup> respondent through her structures of the executive in failing to halt the activities of both unlawful organisations (vide People Power Movement and The People’s Government”) is an abdication of a constitutional mandate, and therefore inconsistent with and in contravention  
25 of Article 72 of the Constitution of Uganda 1995. Thus the 4<sup>th</sup> respondent be ordered to halt the unlawful activities of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> (sic) until they comply with the requirement of Article 72 of the Republic of Uganda. (sic)

The petitioner also prayed for the costs of the petition and any other declaration, redress and or order as court may deem fit, to halt the

illegal organisations. He filed an affidavit in support of the petition dated 26<sup>th</sup> July 2019 and a supplementary affidavit dated 31<sup>st</sup> July 2019.

The respondents opposed the petition. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed an answer to the petition supported by affidavits which they deposed on  
5 12<sup>th</sup> and 13<sup>th</sup> September 2019, respectively. The 3<sup>rd</sup> respondent filed an answer supported by an affidavit which he deposed on 8<sup>th</sup> August 2019. The 4<sup>th</sup> respondent made no reply to the petition.

### **Representation**

At the hearing of the petition, the petitioner was represented by Mr  
10 Kigula Mahir. The respondents were all absent and were not represented by counsel.

The petitioner filed conferencing notes on 17<sup>th</sup> October 2019 and supplementary submissions on 20<sup>th</sup> December 2019. The 1<sup>st</sup> and 2<sup>nd</sup> respondent had conference notes filed on 14<sup>th</sup> November 2019. The 3<sup>rd</sup>  
15 respondent's conferencing notes were filed on 9<sup>th</sup> December 2019. Court relied on the various notes and submissions to dispose of the petition.

The facts on which the petition was based as stated in the affidavits of the petitioner were that he is aware that the current political system in Uganda is the multiparty political system and it requires that only duly  
20 registered political parties participate in politics. That for the two years prior to the filing of the petition, he knew a group of person led by the 1<sup>st</sup> and 2<sup>nd</sup> respondents holding themselves under the slogans of "People Power Movement," "People Power Uganda" and "People Power."

That on the 24<sup>th</sup> July 2019, the 1<sup>st</sup> and 2<sup>nd</sup> respondents held a news  
25 conference in which they purported to unveil the National Leadership Structure and the intentions that are a reserve of political parties and organisation duly registered. That for the one year prior to filing the

petition, “The People’sG” which operates like a political organisation wanted to constitute what was referred to as the people’s government with ministers purportedly with the objective of providing leadership to Uganda.

5 That the 4<sup>th</sup> respondent who is the representative of government has omitted to prevent the 1<sup>st</sup> to 3<sup>rd</sup> respondents to act within constitutional parameters and the actions of the 1<sup>st</sup> and 2<sup>nd</sup> respondents establishing and running and mobilising political activities with a national structure under unregistered names inconsistent with the constitution. The  
10 petitioner then repeated the statements that he made in the petition as grounds thereof.

In his supplementary affidavit, the petitioner described the style of dress of People Power movement and the activities that they carried out which he said were akin to those of registered political parties and the various  
15 places in which he observed them carry on political activities similar to those of registered political parties. He attached photographs and documents attributed to the activities of People Power.

In their affidavits in answer the 1<sup>st</sup> and 2<sup>nd</sup> respondents stated that the petition and affidavits were full of falsehoods and brought in bad faith,  
20 frivolous and vexatious and amounted to abuse of court process and they would move the court to strike it out. That the petition was brought against them as individuals, and not as organisations as envisaged under Article 72 (2) of the Constitution. Further that the petition and the remedies sought would curtail and unconstitutionally and  
25 undemocratically limit their freedom to associate and that of other Ugandans as envisaged by Article 29 (1) of the Constitution.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents further averred that the petition was meant to impose a political party dictatorship upon them and other Ugandans

which the court should not sanction. That the petition lacks merit to warrant the granting of the orders and declarations sought. That all that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were doing was to come together in association with other Ugandans while emphasising their power as Ugandans under Article 1(1) of the Constitution. The allegations that they were running an unregistered political party were denied. They denied owning any organisation, political or otherwise and asserted that the activities challenged by the petitioner do no undermine multiparty democracy but they enhance and promote their rights to participate in politics as individuals or in association with others. That as a result, the petitioner is not entitled to any of the orders and declarations that he seeks.

The 3<sup>rd</sup> petitioner's affidavit listed what he considers to be abuses and violations of the Constitution of Uganda from 2001 to the date of the petition. He asserted that the long list of abuses, usurpations, inactions, blatant contempt, concerted illegitimate actions and endless efforts were intended to undermine, subjugate, amend, overthrow and abrogate the constitutional order established in 1995 and return the country to pre-1986 days of despotism, human rights abuses, illegitimate rule, unresolved elections and political violence. That as a patriotic Ugandan committed to the rule of law he has exercised his duty to resist such efforts and with others create their own lawful avenues, including conglomeration of pressure groups to restore power to the people of Uganda.

The 3<sup>rd</sup> respondent further averred that he is a law abiding citizen who wishes to ensure that the rule of law takes root and his pursuit of constitutionalism has been relentless since 1982 and is an ideal to which he has a lifelong commitment. That the idea of the people of Uganda participating in the People's Government where positions of

service and responsibility are not national civic or state offices is legitimate and constitutional; looking up to leaders who do not occupy national civic or state offices is not unconstitutional and is the legitimate right of any citizen in Uganda.

5 He further averred that his conduct does not violate Articles 72 (2), 98 (1), 113 (1) and 114 (1) of the Constitution; neither does his conduct jointly with others. That the registration or non-registration as a political party or organisation is not a pre-requisite for Ugandans who prefer to coalesce around any political idea. Further that there is no bar  
10 to citizens of Uganda identifying with any politician, political or other group, political party or organisation, pressure group or body of persons supporting such politician, political or other group or otherwise to regularly engage in political activities in Uganda.

That Article 29 (1) (d) of the Constitution guarantees citizens of Uganda,  
15 including him to associate, the right to freedom of assembly and democratisation together with others, as long as they are peaceful and unarmed. That this is not illegal, neither is propagating of ideas without being a registered political party or organisation. That the idea of the People's Government is not a political party or organisation but it is  
20 coalescing of actions of continued defiance against acts of illegality, abuse of process and breach of the law and or any form of unconstitutional behaviour. Further that it is the constitutional duty of every citizen to denounce and defeat any attempt to breach or subvert the Constitution of Uganda.

## 25 **Issues**

In his conferencing notes, the petitioner identified 4 issues for the determination of this court as follows:

1. Whether People Power Movement/People Power/People Power Uganda; and The People's Government are organisations.

2. Whether the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, under their organisation styled as People Power Movement/People Power/People Power Uganda, of mobilising political activities and membership, sponsoring a political agenda, offering a platform to candidates for elections to political offices, participation in governance and appointing regional coordinators are inconsistent and contravene Article 72 (2) of the Constitution of Uganda.

3. Whether the actions of the 3<sup>rd</sup> respondent under his organisation The People's Government of participation in political activities, declaring himself as the people's president, appointing cabinet and ministers are inconsistent and contravene Articles 72 (2), 98 (1), 103 (1) and 114 (1) of the Constitution of Uganda, 1995.

4. Whether the 4<sup>th</sup> respondent's failure to halt the activities of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents contravene Article 119 (4) (a) of the Constitution of Uganda, 1995.

In their conferencing notes, the 1<sup>st</sup> and 2<sup>nd</sup> respondents raised 2 preliminary points of law as intimated in their pleadings as follows:

1. The petition is improperly before court, bad in law and frivolous and vexatious.

2. The petition was brought against the wrong parties.

Order 6 rule 28 of the Civil Procedure Rules provides that

**“Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either party, a point of law**



**may be set down for hearing and disposed of at any time before the hearing.”**

I propose to dispose of the points of law first since both parties filed submissions with respect to both points raised in the pleadings.

5   **Submissions of Counsel**

With respect to the first point of law, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondent submitted that the petition was improperly before court because it did not raise any questions for constitutional interpretation. That jurisdiction of this court is provided for in Article 137 of the  
10   Constitution and this was the position expounded in the case of **Ismail Serugo v Kampala City Council & Attorney General, Constitutional Appeal No. 2 of 1998**. He also referred to the decision of this court in **Jude Mbabali v. Edward Kiwnuka Ssekandi, Constitutional Petition No. 28 of 2012**.

15   On the basis of the decision he cited, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents explained that the petition could not be sustained because the petitioner complained about the actions of the respondents. That as a result, there was no question for constitutional interpretation and so the petition does not merit the intervention of this court.

20   In reply, counsel for the petitioner submitted that the preliminary objection was misplaced and based on a misinterpretation of the authorities cited by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondent. He asserted that the facts in the petition before us can be distinguished from those in the cases that counsel relied on to support his objection.

25   The petitioner’s counsel referred us to the case of **Baku Raphael Obudra & Another v. Attorney General, Supreme Court Constitutional Appeal No. 1 of 2003**, specifically the decision of Tsekooko, JSC, who held that a cause of action is disclosed if the

petitioner alleges the act or omission complained of and cites a provision of the Constitution which is alleged to have been contravened by the acts or omissions complained of and then prays for a declaration. He referred us to the decision of Kanyeihamba, JSC in the same case where  
5 he held that in a constitutional petition brought under Article 137 (3) of the Constitution, a cause of action is disclosed if the petitioner alleges the act or omission complained of and cites the provision of the Constitution which has been contravened and prays for a declaration.

Counsel for the petitioner then went on to enumerate the acts of the  
10 respondents and how they contravened provisions of the Constitution to support his arguments. He tried to distinguish the facts in the case of **Ismael Serugo** (supra) and stated that in that case the petitioner did not show the provision of the Constitution which had been contravened. All he sought was for the court to enforce his fundamental human  
15 rights. He argued that the petition before court does not seek to enforce fundamental human rights but seeks to interpret Articles 72 (2), 98 (1), 103 (1), 113 (1) and 114 (1) of the Constitution. He further argued that the case of **Mbabali Jude** (supra) can also be distinguished because he sought remedies from this court that would have otherwise been  
20 pursued in an election petition.

Counsel for the petitioner concluded that counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents clearly misunderstood the two authorities that he relied upon. That there need not be an Act of Parliament cited in order for this court to interpret the Constitution. Further that Article 137 (3) (b)  
25 grants jurisdiction to this court to entertain a petition for interpretation where a person alleges that an act or omission of an individual contravenes the provisions of the Constitution.

## Resolution of the 1<sup>st</sup> preliminary point of law

It appears from his submissions that the petitioner's counsel understands a cause of action to be the same thing as the jurisdiction of the court. I came to that conclusion because counsel relied on the  
5 following passage in the case of **Baku Raphael Obudra** (supra)

10 *"... in a number of cases decided by this court, the Court has held the view that normally in constitutional petitions brought under Article 137 (3) of the Constitution, a cause of action is disclosed if the petitioner alleges the act or omission complained of and cites a provision of the constitution which is alleged to have been contravened by the act or omission complained of and then prays for a declaration."*

He reproduced a passage on the same subject from the same case in the judgment of Kanyeihamba, JSC, where he stated that:

15 *"...this court has expressed the view that in constitutional petitions under Article 137(3) of the Constitution, a cause of action is disclosed if the petitioner alleges the act or omission complained of and cites the provision of the Constitution which has been contravened and prays for a declaration."*

The two concepts, cause of action and jurisdiction, are however different  
20 and they were distinguished by the Supreme Court in its ground breaking decisions, including **Attorney General v. Major General David Tinyefuza, Constitutional Appeal No 01 of 1997**. In that case, Wambuzi, CJ, set out the basis for the distinction between the two drawn from Mulla on the Code of Civil Procedure, Volume 1, 14<sup>th</sup> Edition  
25 at page 106, where it is stated that:

30 *"A cause of action' means every fact, which if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant, it must include some act done by the defendant since in the absence of such act no cause of action can possibly accrue. It is not*

*limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. ...”*

The learned Chief Justice then concluded with his own definition at page 21 of that judgment, that “... *any violation or threats to violate the rights or privileges granted under the law would constitute a cause of action.*”

With regard to the term “*jurisdiction*,” Wambuzi CJ once again referred to Mulla on Civil Procedure at page 225 where it is stated that:

10       *“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted and may be extended or restricted by like means. If no restriction or limit is imposed the jurisdiction is unlimited.”*

15       Given the two interpretations above, a party may have a cause of action when the court to which he has taken his grievance has no jurisdiction to entertain his or her cause. In such circumstances, the court cannot continue to entertain the matter. For purposes of jurisdiction of this court therefore, in **Attorney General v. Major General David Tinyefuza** (supra), Article 137 (2)  
20       (b) of the Constitution was interpreted to limit the jurisdiction of this court as follows:

25       *“It is my considered view that in respect of the second claim the respondent had a cause of action based on the Constitution, the National Assembly (Powers and Privileges) Act and some other laws but the Constitutional Court had no jurisdiction to entertain the claim because its resolution does not depend on the interpretation or construction of any provision of the Constitution but of those other laws. To the extent that those rights and privileges are guaranteed by the Constitution their violation or threatened violation must be resolved by another competent*  
30       *Court.”*

In **Ismael Serugo v. Kampala City Council, Constitutional Appeal No. 02 of 1998**, the Supreme Court (Kanyeihamba, JSC) reviewed its

decision in **Attorney General v David Tinyefuza (supra)** and stated thus,

5        *There is a number of facets to the decision of the Supreme Court in that case. Nevertheless, when it comes to that Court's view of the jurisdiction of the Court of Appeal as a Constitutional Court, its decision in that case is that the Constitutional Court has no original jurisdiction merely to enforce rights and freedoms enshrined in the Constitution in isolation to interpreting the Constitution and resolving any dispute as to the meaning of its provisions. The judgment of the majority in that case, [Wambuzi, C.J., Tsekooko J.S.C., Karokora J.S.C., and Kanyeihamba J.S.C], is that*  
10        *to be clothed with jurisdiction at all, the Constitutional Court must be petitioned to determine the meaning of any part of the Constitution in addition to whatever remedies are sought from it in the same petition. It is therefore erroneous for any petition to rely solely on the provisions of*  
15        *Article 50 or any other Article of the Constitution without reference to the provisions of Article 137 which is the sole Article that breathes life in the jurisdiction of the Court of Appeal as a Constitutional Court.*

This court has consistently followed these decisions, so that where a party raises complaints about the actions of an individual or group  
20        which he or she alleges contravenes provisions of the Constitution but the provisions of the Constitution are clear about the rights guaranteed, this court has no jurisdiction to grant declarations and orders, unless there is a provision of the Constitution for the court to interpret.

In this case, the petitioner's allegations are very clearly about  
25        contravention of the provisions specific provisions of the Constitution and he seeks redress in the form of declarations of this court. In **Attorney General v Tinyefuza (supra)** Karokora, JSC clarified the position of such cases when he stated thus:

30        *"Clearly the jurisdiction of the Constitutional Court is confined to interpretation of the Constitution under clauses (1) and (3) of Article 137 of the Constitution. And unless any allegation made under Article 50 (1) of the Constitution requires interpretation of the Constitution, Article 137 (3) would not be called in aid to resolve grievances brought under Article 50 (1) of the Constitution."*

I am well aware of the fact that the petitioner did not bring his grievances to this court under Article 50 of the Constitution. Neither did he refer to it. Nonetheless, I am of the view that this is a matter that would have been best disposed of under Article 50 of the Constitution and in such cases the dispute is filed in the High Court, not this court.

Having found so, there is no need to dispose of the second preliminary point of law raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents because Order 6 rule 29 of the Civil Procedure Rules provides that:

**“If, in the opinion of the court, the decision of the point of law substantially disposes of the whole suit, or of any distinct cause of action, ground of defence, setoff, counterclaim, or reply therein, the court may thereupon dismiss the suit or make such other order in the suit as may be just.”**

The petition ought to be dismissed since this court has no jurisdiction to entertain it. The petitioner may file his petition before the appropriate court, if he so wishes.

In conclusion, the petition is dismissed and I make no order as to costs since it appears to have been brought in the public interest.

  
Irene Mulyagonja

**JUSTICE OF APPEAL/CONSTITUTIONAL COURT**

27-04-2022

**THE REPUBLIC OF UGANDA,  
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA  
CONSTITUTIONAL PETITION NO 16 OF 2019**

**NTARE ADENS RUTARO} .....PETITIONER**

**VERSUS**

- 10      **1. JOEL SSENKYONYI}  
2. ROBERT KYAGULANYI SENTAMU}  
3. BESIGYE KIZZA}  
4. ATTORNEY GENERAL} .....RESPONDENTS**

**CORAM:**

15      **HON. MR. JUSTICE RICHARD BUTEERA, DCJ**

**HON. MR. JUSTICE KENNETH KAKURU, JCC**

**HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JCC**

**HON. MR. JUSTICE CHRISTOPHER MADRAMA, JCC**

**HON. LADY JUSTICE IRENE ESTHER MULAYGONJA, JCC**

20                      **JUDGMENT OF JUSTICE CHRISTOPHER MADRAMA, JCC**

I have had the benefit of reading in draft the judgment of my learned sister Hon. Lady Justice Irene Mulyagonja, JCC and I agree with the facts and issues set forth therein and the summary of submissions of Counsel. I however, came to a different conclusion on the issue of whether there is a question or questions as to interpretation of the Constitution.

I respectfully came to a different conclusion from that of my learned sister Hon. Lady Justice Irene Mulyagonja, JCC, that there are no questions as to interpretation of the Constitution disclosed in this petition sufficient to give this court jurisdiction to determine the issues in the petition on the merits.

30      Secondly, and in my judgment, the matter is not for enforcement under

5 article 50 of the Constitution that ought to be filed in a court of competent jurisdiction such as the High Court because I find that there are substantial questions as to interpretation of the Constitution that ought to be determined on the merits. For purposes of resolution of those issues, I would reproduce the facts and issues as set out in the petition only for ease of reference.

The Petitioner's petition is for declarations under article 137 (1), (2), (3) and (7) of the Constitution of the Uganda that:

1. The actions of the first and second Respondents in establishing an unregistered political organization/party, under the names and style "People Power Movement", "People Power Uganda" and "People Power" used interchangeably and mobilising political activities and membership with a view of influencing political process, sponsoring political agenda and offering a platform to candidates for election to political offices and participating in the governance are a reserve of duly registered political parties and organizations and in contravention of articles 72 (2) of the Constitution of Uganda 1995. Thus, the first and second Respondents be ordered to halt their activities under "People Power Movement", "People Power Uganda" and "People Power" until compliance with articles 72 (2) of the Ugandan Constitution.

2. The actions of the first and second Respondents under their unregistered political organization under the names and styles of "People Power Movement", "People Power Uganda" & "People Power" used interchangeably; of appointing regional coordinators being a reserve of duly registered Political Parties and Organisations is in contravention of article 72 (2) of the Constitution of Uganda 1995. Thus, the first and second Respondents be ordered to halt their activities under "People Power Movement", "People Power Uganda" and "People Power" until compliance with article 72 (2) of the Ugandan Constitution.



- 5 3. The actions of the third Respondent in establishing, planning and mobilising political activities with a national structure, a reserve for a political organization/party, under his unregistered name and style of "the People's Government" are inconsistent with and in contravention of the provisions of the Constitution of Uganda 1995. Thus, the third Respondent be ordered to halt his activities under People's Power Government until compliance with article 72 (2) of the Ugandan Constitution.
- 10
4. The actions of the third Respondent in holding himself out as the "People's President" and appointing cabinet ministers under his unregistered political party/organization styled as "the People's Government" contravenes 98 (1), article 103 (1) article 113 (1) & article 114 (1) of the Constitution of Uganda 1995.
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5. The omission of the fourth Respondent through her established structures of the Executive in failing to halt the activities of both unlawful organizations (People Power Movement, the People's Government) is an abdication of a Constitutional mandate, and therefore inconsistent with and in contravention of Article 72 of the Constitution of Uganda 1995. Thus, the fourth Respondent be ordered to halt the unlawful activities of the first, second and third Respondents until they comply with the requirement of article 72 (2) of the Constitution of the Republic of Uganda.
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- 25
6. The Petitioner also prays for further declarations, redress or order as the court may deem fit to halt the illegal actions.

The petitioner gives the facts in support of the petition in an affidavit dated 26<sup>th</sup> of July 2019. The facts are that he is aware that the current political system in Uganda is the multiparty political system which requires only duly registered political parties to participate in politics. In the last 2 years (prior to 2019) he states that he knows a group of persons led by the first and second Respondents holding themselves under the slogans "People Power Movement", "People Power Uganda" & "People Power" that he believed then

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5 was only a pressure group. On 24<sup>th</sup> of July 2019, the first and second Respondents held a news conference where they unveiled a national leadership structure with intentions that are a reserve for political parties and organizations which are duly registered. Secondly, he stated that for the last one year (prior to 2019 July), the third Respondent has purportedly  
10 constituted "the People's Government" which he operates like a political organization and went to constitute what he refers to as "People's Government" with cabinet and ministers with the objective of providing leadership to Uganda according to a list Annexure "B" showing the People's cabinet.

15 Further the Petitioner asserts that the fourth Respondent who is the representative of Government has omitted to cause the first, second and third Respondents to act within Constitutional parameters. He asserts that the actions of the first and second Respondents in establishing, running, and mobilising political activities with a national structure, a reserve for a  
20 political organization/party, under their unregistered name and style of "People Power Movement" are inconsistent with and in contravention of the provisions of the Constitution of Uganda 1995. Further, the third Respondent's actions of holding himself out as the People's President and constituting a Government with Cabinet and ministers, a reserve of the  
25 President of Uganda duly elected by the people in a national electoral process, contravenes the Constitution and created Constitutional and democratic chaos. The Petitioner states that the omission of the fourth Respondent through the established structures of the Executive in failing to halt the activities of both unlawful organizations and the third Respondent's  
30 act of holding himself out as a People's President is an abdication of a Constitutional mandate and therefore inconsistent with and in contravention of the provisions of the Constitution of Uganda 1995.

In a further supplementary affidavit dated 3<sup>rd</sup> of July 2019, the Petitioner asserts that the first and second Respondents together with the  
35 membership of their unregistered political organization symbolically identified themselves and are recognised by donning red garments, red

5 berets with a circular badge engraved with the words "People Power – Our  
Power". He states that he is fully aware that the second Respondent has  
been using his unregistered political organization styled interchangeably as  
"People Power Movement", "People Power Uganda" and "People Power" to  
10 participate in political activities by way of offering a platform to candidates  
for election to political offices.

This was with particular reference to Mr. Kasiano Wadri Ezati with a view  
to having him elected to a political office as a member of Parliament.  
Secondly, they actively gave a platform and campaigned for one of the  
contestants Mr. Asuman Basarilwa with a view to having him elected to  
15 political office as a member of Parliament.

Thirdly, the second Respondent was using the unregistered organization  
during the Jinja Municipality East constituency bye-election on 15<sup>th</sup> March  
2018 when he offered a platform and actively campaigned for one of the  
contestants Mr. Paul Mwiru with a view to having him elected as a member  
20 of Parliament. He asserts that these activities contravene article 72 (2) of  
the Constitution of Uganda 1995.

Further, the Petitioner asserts that the third Respondent and his  
unregistered organization continues to occupy multiparty space by issuing  
political statements, holding what he states to be "state of the people's  
25 address" and conducting their own Parliamentary sessions with a view of  
influencing Ugandan politics amounting to participation in politics in  
contravention of the Constitution of Uganda. Lastly, the Petitioner asserts  
that the first, second and third Respondents under their unregistered  
organization undermined the multiparty political system in Uganda.

30 The first and second Respondents filed a joint answer to the petition in  
which they state as follows:

That the petition is brought in bad faith, is frivolous, vexatious and amounts  
to an abuse of court process.

5 Secondly, that the petition is improperly before the court in as far as it is brought against individuals as opposed to an organization or organizations as envisaged under article 72 (2) of the Constitution of the Republic of Uganda.

10 Thirdly, the first and second Respondents stated that the sum effect of the petition and the remedies sought is to unconstitutionally and particularly curtail and limit the Respondents and other Ugandans' freedom of Association as envisaged under article 29 (1) (c) of the Constitution of the Republic of Uganda.

15 Alternatively, and without prejudice the first and second Respondents contend that the petition is devoid of merit to warrant granting the declarations or orders sought and it ought to be dismissed with costs. Further, the first and second Respondents contend that the group of concerned citizens from all walks of life including the first and second Respondents crusade for good governance and the rule of law emphasizing  
20 article 1 (1) of the 1995 Constitution. They further asserted that Petitioner cannot be aggrieved by the stated activities and if it is proved, the grievance is self-inflicted and the Respondents are not to blame. Last but not least, the first and second Respondents contend that the Petitioner is not entitled to any of the remedies prayed for in the petition.

25 In support of the first and second Respondent's answer to the petition, the first Respondent Mr. Joel Ssenyonyi filed an affidavit dated 12<sup>th</sup> September 2019 which primarily repeats the averments in the answer to the petition on oath. Additionally, he asserts that it is not true that only duly registered parties can participate in political activities and he is aware that individuals  
30 are free to participate in politics inclusive of contesting for and becoming members of Parliament as independents.

In further reply to the supplementary affidavit of the Petitioner, he asserts that what he has done is not in contravention of any provision of the Constitution or any other law in Uganda and it was the furtherance of his  
35 right to associate as provided for under article 29 of the Constitution. He

5 asserts that he is aware that the second Respondent does not own any organization, whether registered or unregistered called "People Power". He simply associated with the second Respondent individually and personally because he believes like the second Respondent that Uganda power belongs to the people.

10 He further contends that the second Respondent was in Arua as an individual to drum support for Hon. Kassiano Wadri who was contesting for election as an independent candidate. He denies that there is an organization called "People Power" owned by the second Respondent. Further, Hon. Asuman Basarilwa contested as a Justice Forum (JEEMA)

15 candidate and Paul Mwiru contested as an FDC candidate. Further, the second Respondent is a member of Parliament for Kyadondo East constituency as an independent candidate. The assertion that the activities undermined the multiparty political system in Uganda is false. The Association is to promote the right of Ugandans to participate in politics as

20 individuals or in association with others.

In further support of the answer to the petition, the second Respondent Hon. Robert Kyagulanyi Sentamu filed an affidavit dated 19<sup>th</sup> 2019 in which he confirms the averments in the answer to the petition on oath. Further, he asserts that he and the first Respondent and several other Ugandans come

25 together in association while emphasising the power of Ugandans under article 1 (1) of the Constitution of the Republic of Uganda 1995 that "power belongs to the people". He further states that it is false that only duly registered parties can participate in politics. That whatever he has ever done is in furtherance of his right to associate as provided for under article

30 29 (1) (e) of the Ugandan Constitution. Further he does not own any organization, registered or unregistered called "People Power". He only associated with the first Respondent individually and personally because he believes that power in Uganda belongs to the people. He was also in Arua as an individual to support the independent Candidacy of Hon Kassiano

35 Wadri. He repeats the averments in the affidavit of the first Respondent that I do not need to repeat here.

5 The third Respondent's answer to the petition is that the petition is an abuse  
of the court process, a wastage of the precious time of this court, public  
funds and resources and raises no issues for interpretation of the  
Constitution. He denies the unconstitutional acts alleged in the petition  
whether by himself or the other Respondents. In addition, the third  
10 respondent stated that he is a citizen of Uganda and entitled to enjoy all  
rights accorded to citizens as well as the duties of citizens of Uganda like  
other citizens. Further that he is committed to Constitutional order where  
citizens of Uganda are empowered to enjoy their rights fully and to be  
government through their will and consent expressed *inter alia*, through  
15 regular, free and fair elections and this caused the third respondent, out of  
conviction, to participate in an armed struggle between 1981 and 1986 in  
Uganda. Following that struggle, a Constitutional order was established in  
Uganda which culminated in the 1995 Constitution of Uganda and the third  
respondent participated in debating and having it promulgated.

20 The third respondent states that he is a law abiding citizen who has been  
and remains for most of his adult life tirelessly committed to the pursuit,  
protection, fostering, realization, propagation and preservation in Uganda,  
of true and full democracy and the rule of law, good governance and the  
common good, accountability in public office, national unity and harmony as  
25 well as the unrelenting defense of the Constitution of Uganda. The third  
respondent avers that over the years and particularly since 1995, he has  
observed and has been dismayed by continued, sustained, insidious acts of  
suspension, abrogation and amendment of the 1995 Constitution of Uganda  
through various acts of persons holding political power in Uganda. The third  
30 respondent was nominated as a presidential candidate sponsored by the  
Forum for Democratic Change (FDC) in the late 2015 and was then arrested  
in May 2016 and charged with treason, for disagreeing with the results of  
the election and calling for an audit of the same. Further the third  
respondent states that through abuse of his rights and illegal detention he  
35 experienced between March to May 2016, considering the illegal detention  
under which he was placed for the entire 10 days allowed for the filing of a

5 petition. Since 2001, the third respondent has also been tormented,  
harassed, incarcerated and suffered at the hands of security forces of  
Uganda for choosing to exercise his inherent rights. Subsequent to the  
declaration of the 2016 presidential elections official results with which he  
did not agree, the third respondent, in exercise of his rights and duties as a  
10 citizen of Uganda, together with other like-minded vigilant citizens of  
Uganda, who were dismayed at the continued violations of the 1995  
Constitution of Uganda coalesced around the duty on each citizen to defend  
the Constitution. Further in the line with Part XXIX (f) of the National  
Objectives and Directive Principles of State Policy and articles 1 (1), 1 (3), 1  
15 (4), 2 (1), 3 (1) and 3 (4) of the 1995 Constitution of Uganda, the third  
respondent is Constitutionally permitted, singly or with others, in defense  
of the 1995 Constitution, to resist any persons seeking to overthrow,  
suspend, abrogate or amend the 1995 Constitution of Uganda. The  
establishment by vigilant citizens of Uganda of a coalescing point commonly  
20 referred to as the "the people's government", to focus on preservation and  
protection of the 1995 Constitution and the Constitutional order it brought  
Uganda is an act in furtherance of the duty to uphold, preserve, protect and  
defend the 1995 Constitution of Uganda.

The third respondent further asserts that together with other citizens of  
25 Uganda, he is under a duty to ensure and promote rule of law and  
Constitutional governance in Uganda, to defy any act, conduct, omission,  
design, plot, plan or activity which seeks to or is aimed at undermining,  
removing or otherwise unlawfully curtailing the freedom of the people of  
Uganda, including the unlawful retention of political power and control of  
30 the Government of Uganda in violation of the principles in the Constitution.

Further he asserts that every citizen has the right and duty together with  
others to form, create, operate or otherwise coalesce around organizations,  
groups, bodies, persons or ideas to pursue and ensure Constitutional order  
in Uganda and any such groupings need not be first registered as political  
35 parties or organizations.

5 The third respondent asserts that the insidious overthrow, suspension,  
abrogation or amendment of the 1995 Constitution of Uganda and acts  
intended to undermine the text and spirit of the Constitution, particularly in  
light of Uganda tumultuous political history has taken many forms and has  
been exhibited through various acts and omissions perpetrated by the  
10 Executive Arm of Government and its organs against the Judiciary,  
Parliament and citizens of Uganda. The acts include invasion and violation  
of the Courts of Judicature by security forces at various times; massive  
rigging of elections at many levels; state inspired disobedience and  
rubbishing of court orders and decisions; regular but illegal re-arrest of  
15 citizens of Uganda who were set free on bail by various courts; operation of  
torture chambers commonly regarded as safe houses; interference with the  
independence of the Parliament of Uganda and physically assaulting  
members of Parliament taking a stand in defense of the 1995 Constitution of  
Uganda to force through illegitimate amendments thereto; arrest, torture  
20 and massacre of citizens of Uganda; regular harassment, intimidation,  
abducting and incarceration of persons perceived to be political opponents  
of the current Government of Uganda; criminalizing the opposition  
generally; providing inadequate budgetary allocations to Constitutional  
bodies, agencies and arms to undermine their Constitutional mandates or  
25 control and curtail their acts; failure to hold LC elections and other acts  
listed in the answer to the petition.

Last but not least the third respondent asserts that the engagement in any  
alternative policy agenda formulation on national issues through any  
organization, group, body or person, whether registered or unregistered as  
30 political parties or organizations is the right and duty of every citizen and is  
protected by the Constitution through articles 1, 3, 8A, 17, 20, 21, 29, 38 and  
45 jointly and severally. For the reasons provided, third respondent asserts  
that the petitioner is not entitled to any of the reliefs sought in the petition.

The answer to the petition of the third respondent is supported by the  
35 affidavit of Col (Rtd) Dr. Kizza Besigye dated 8<sup>th</sup> August, 2019. The affidavit  
substantially repeats the averments in the answer to the petition on oath.



5 He further details several acts of the executive arm of government which he states are unconstitutional. Further, he asserts that article 29 (1) (d) of the Constitution guarantees citizens of Uganda, including him, to associate through freedom of assembly and demonstration together with others so long as it is peaceful and unarmed. Further, coalescing around an idea, whether political or not, with others is not illegal, neither is the propagating of such an idea without being registered as a political party or organization. He asserts that the idea of people's government is not a political party organization and the people's government does not operate as a political party or organization. Rather, it is the coalescing around of acts of continued defiance against the acts of illegality, abuse of process and breach of the law and or any form of unconstitutional behavior. That it is the Constitutional duty of every citizen, including the third respondent, to denounce and defeat any attempts to breach or subvert the Constitution of Uganda. Lastly, articles 72 (2), 98 (1), 103 (1), 113 (1) and 114 (1) of the Constitution are not superior to Articles 1 (1), (2), 2 (1) 3 (1) (2) and 3 (4) of the Constitution.

I have carefully considered the first question of whether this court has jurisdiction in the matter. My learned sister reached a different conclusion that the petition does not disclose questions as to interpretation of the Constitution and is for enforcement of the Constitution. This was in resolution of a preliminary point of law. Having resolved the preliminary point of law in the affirmative, there was no need to proceed to resolve the second preliminary point or consider the petition on the merits. The two preliminary points of law framed by the parties are that:

- 30 1. Whether the petition is improperly before the court, bad in law and frivolous and vexatious.
2. Whether the petition was brought against the wrong parties.

It is under the first preliminary point that the question was whether this court has jurisdiction to entertain the petition. I do not need to reproduce the submissions of Counsel on the preliminary point as this was covered in

5 the lead judgment. What I can say is that the grounds of the petition that I  
have outlined above raise a substantial question about whether an  
unregistered organization can get involved in activities which are stated to  
be the activities of a political party organization under article 72 (2) of the  
Constitution by moving under Article 1 and 3 of the Constitution which  
10 enshrine the principle of sovereignty of the people and the right of defence  
of the Constitution. It is further significant that the Respondents indicated  
that they participated in the support of individual candidates who run as  
independent contestants for the post of member of Parliament. I agree with  
the principles outlined by my learned sister Hon. Lady Justice Irene  
15 Mulyagonja, JCC in determining whether a petition discloses a cause of  
action as well as whether this court has jurisdiction. A cause of action is  
disclosed where the petition makes an allegation that a law, or act or  
omission or anything done under the authority of a law is inconsistent with  
a provision of the Constitution. On the other hand, the Constitutional court  
20 only has jurisdiction where it is disclosed that there is a question as to  
interpretation of the Constitution. A question as to interpretation is a  
controversy about interpretation and therefore is concerned with a dispute  
about the meaning of statutory words even if it is related to the scope, or  
application, thereof.

25 The question is therefore whether the petition discloses any question as to  
interpretation of the Constitution. There are three areas involving  
substantial questions as to interpretation of the Constitution. The first area  
is whether the "People Power Movement" as described in the affidavit is an  
unregistered organization which was operating contrary to article 72 (2) of  
30 the Constitution. The question of whether it is an organization it is a question  
of fact and therefore not prima facie, a question as to interpretation of the  
Constitution. Secondly, there is an issue as to whether the organization is a  
pressure group whose members are entitled to freedom of Association  
under article 29 (1) of the Constitution. The first second and third  
35 respondents handled the question of freedom of Association together with  
the assertion that they had a right to defend the Constitution based on the

5 fact that all power belongs to the people under article 1 (1) of the  
Constitution. Secondly, the fact that article 1 (2) provides that all authority  
in the state emanates from the people of Uganda shall be governed through  
their will and consent. Thirdly, they also justified their activities on the basis  
that the alleged several unconstitutional acts of the government and  
10 therefore they assert that they have a right to defend the Constitution under  
article 3 of the Constitution. I have further considered the fact that article  
72 (2) of the Constitution provides that an organization shall not operate as  
a political party organization unless it conforms to the principles laid down  
in the Constitution and it is registered. Further, it is provided that Parliament  
15 shall by law regulate the financing and functioning of political organizations.  
It follows that the question arises as to whether under a multiparty political  
system, other persons who are not registered in terms of an organization,  
may carry out some of the activities under a multiparty political system.  
Additionally, what is being considered is whether the freedom of  
20 Association, is not circumscribed by the requirement for registration of a  
political party organizations and any other political organization. I find it  
further critical to make a distinction between a political party organization  
and any other political organization. Do the respondents, who are agitating  
for change, fall under any other political organization?

25 The further issue is whether their organization is a pressure group  
compliant with article 29 (1) of the Constitution that enshrines the Freedom  
of Association. In addition to the doctrine of Freedom of Association that is  
well trodden, the subsidiary question is whether the Freedom of  
Association is free from regulation or whether it can be regulated by law  
30 and by Parliament. Would regulation of the Freedom of Association be an  
infringement of article 29 rights? What if the regulation is prescribed by the  
Constitution itself?

In addition to the first question, having found that there are substantial  
questions as to interpretation, there is an issue of the characteristics of a  
35 multiparty political system as to whether independent candidates may be  
fielded by pressure groups or other political party organizations under the

5 doctrine of the freedom of Association. This is a historical problem in terms  
of definition of the Movement political system vis-a-vis the multiparty  
political system and their attributes. I have further deemed it necessary to  
consider the historical development of the Constitutional law on this aspect  
10 in which apparently the multiparty political system has been touched by an  
amendment allowing individual merit and independent candidates to run for  
office. This falls squarely to the determination of the characteristics of a  
multiparty political system that presumably is supposed to operate through  
the political organizations rather than through individuals or organizations  
which are not registered. Further, there is a question as to the right of  
15 individuals to associate and in my opinion this cannot be considered in  
isolation of the issue of whether Parliament has a right to regulate political  
organizations under article 72 of the Constitution by the promulgation of the  
Political Organizations Act. Despite the freedom of Association, is it proper  
for Parliament to prohibit persons from associating for purposes of  
20 campaigning and fielding candidates even if they do not belong to any  
political organization or political party?

The second preliminary issue as to whether it was proper to sue the  
Respondents as individuals. I would resolve the preliminary issue in favour  
of the Petitioner as the organization described is not registered and  
25 admittedly so and therefore it is the individuals who were allegedly  
spearheading the organization who can be sued in their individual capacity  
for the activities described in the petition. While article 72 (2) of the  
Constitution prohibits organizations which are not registered from  
operating, it is a cardinal rule of the procedural law that a nonentity cannot  
30 be sued as it has no capacity to be sued, no capacity to pay fees, no capacity  
to comply with any orders such as an order of costs issued against it. It  
follows that it is only the individuals who use the name of an organization  
whether it is not registered who may be held liable for activities done in the  
name of an unregistered organization. As I noted earlier, the question of  
35 whether the organization exists or existed is a question of fact that can be  
established from the affidavit evidence before the court. It is however not a  
question as to interpretation of the Constitution which questions only arise

5 from considering the fact of operating as an organization without  
registration by also purporting to carry out activities under articles 1 and 3  
of the Constitution and in the name of defence of the Constitution itself.  
Article 72 (2) of the Constitution does not only deal with the registration of  
political parties and organizations but also imposes conformity to the  
10 principles laid down in the Constitution. The principles laid out in the  
Constitution include principles under the multiparty political system  
enshrined in article 71 of the Constitution.

For the above reasons, I would find that there are substantial questions as  
to interpretation of the Constitution that should be determined on the merits  
15 and I would proceed to determine those questions.

The issues framed for consideration and the following:

1. Whether People Power Movement/People Power/People Power  
Uganda; and the People's Government are organizations?
2. Whether the actions of the first and second Respondents, under their  
20 organization styled People Power/People Power Movement/People  
Power Uganda, of mobilising political activities and membership,  
sponsoring a political agenda, offering a platform to candidates for  
election to political offices, participation in Government and  
appointing regional coordinators are inconsistent and contravenes  
25 Article 72 (2) of the Constitution of Uganda.
3. Whether the actions of the third Respondent and his organization the  
People's Government of participating in political activities, declaring  
himself as the People's President, appointing cabinet and ministers  
are inconsistent and contravenes Articles 72 (2), 98 (1), 103 (1) and 114  
30 (1) of the Constitution of Uganda, 1995.
4. Whether the fourth Respondent's failure to halt the activities of the  
first, second and third Respondents contravenes Article 119 (4) (a) of  
the Constitution of Uganda, 1995.

### **Submissions of Counsel**

5 Issue number 1 as to whether the People Power Movement/People  
Power/People Power – and the People's Government are organizations was  
considered as a question of fact. In fact, the third respondent's counsel  
contended that it does not raise any question as to interpretation of the  
Constitution. The question of whether the petition raises questions as to  
10 interpretation of the Constitution was considered preliminarily and I have  
handled the question of fact in my judgment.

Secondly, the first and second respondent's counsel considered issue  
number 2 as it is related to the petition against the first and second  
respondents alone. They did not make any submissions on issue number 3  
15 which concerns the third respondent only. For his part, the third  
respondents counsel submitted on issue number 3. Both counsel for the  
first and second respondents and counsel for the third respondent  
addressed the court on issue number 4.

#### Issue 2:

20 **Whether the actions of the first and second Respondents, under their  
organization styled People Power/People Power Movement/People  
Power Uganda, of mobilising political activities and membership,  
sponsoring a political agenda, offering a platform to candidates for  
election to political offices, participation in Government and  
25 appointing regional coordinators are inconsistent and contravenes  
Article 72 (2) of the Constitution of Uganda.**

In the conferencing notes of the petitioner filed on court record on 17<sup>th</sup>  
October 2019, the petitioner's counsel relies on the facts which are stated in  
the petition as well as in the affidavit in support and in rejoinder. The  
30 petitioner's counsel submitted that article 72 (2) of the Constitution of the  
Uganda makes it mandatory for any organization which desires to operate  
as a political party or organization to mandatorily conform to principles laid  
down in the Constitution and such an organization should also be  
registered. He submitted that section 2 of the Political Parties &  
35 Organisations Act defines a political organization to mean any association

5 or organization of persons the object of which include the influencing of  
political process or sponsoring a political agenda, whether or not it seeks  
to sponsor or give a platform to a candidate for election to a political office  
or to participate in the governance of Uganda at any level. A political party  
is further defined separately from a political organization and means a  
10 political organization whose objects include the influencing of the political  
process or sponsoring a political agenda, whether or not it also seeks to  
sponsor or offer a platform to a candidate for election to a political office or  
to participate in the governance of Uganda at any level.

The Petitioner's counsel submitted that the participation of the second  
15 respondent in all the three elections in Bugiri, Jinja and Arua were also  
graced by his "red army" People Power/People Power Movement/People  
Power Uganda. The petitioner's counsel contended that it was not by  
coincidence that Mr. Kasiano Wadri, Mr. Asuman Basalirwa and Mr. Paul  
Mwiru later became appointed as regional coordinators for the same  
20 organization. The petitioner's counsel submitted that the participation of the  
said organizations and such other unregistered organizations in politics and  
governance of Uganda by influencing political processes, campaigning for  
and sponsoring candidates, or offering platforms to persons seeking to be  
elected to political offices and participation in the governance of Uganda,  
25 sponsoring a political agenda undermined the growth of multi-party politics  
of Uganda. Counsel relied on **George Owor v Attorney General and another;  
Constitutional Petition No 38 of 2010** for the proposition that the petition is  
extremely important for the people of Uganda because it raises very  
pertinent issues that must be answered in light of forthcoming national  
30 Parliamentary elections in which a sizeable number of sitting members of  
Parliament offered themselves and have been nominated for election to the  
next Parliament of Uganda. In **George Owor v Attorney General and another**  
(supra) it was held *inter alia* that:

35 Determination is necessary if Uganda's current political system if a multi-party  
democracy is to have any meaningful survival and orderly growth.

5 Further counsel relied on **Consolidated Constitutional Petitions No 16, 21, 25, 19 & 25 of 2013** where this court held that:

“article 83 (1) (2) in the 1995 Constitution targeted, *inter alia*, the problem of MPs crossing the floor of Parliament. But is the evil or the mischief merely crossing the floor? Crossing the floor, in our view is, only part of the problem. The mischief is much wider. The purpose of incorporating the article in the Constitution was to protect a multi-partism in particular.”

The petitioner’s counsel submitted that the authorities outlined the significance the Constitutional court places on the need to protect the growth of multi-party politics. He contended that the participation of unregistered political organizations not only undermined the growth of multi-party politics but also will cause political chaos as political players individually cannot be accountable. He invited the court to consider the extent of political chaos likely to be caused by participation of unregistered political parties by considering that the membership of the people Power/people power movement/people power listed in Annexure “A” to the petition undisputedly includes members of Parliament elected on tickets of different duly registered political parties. These members of Parliament were elected by their manifesto as well as a political agenda of their respective parties, and were bound to respect the same for the rest of the term of office. He contended that the same members in Parliament are active members holding regional coordinator roles in an unregistered political organization whose political agenda is a statement annexed to the affidavit in support of the petition as Annexure “A”. He submitted that it is settled law that if a member of Parliament elected on a party ticket crosses the floor to join another political party or leaves the party to be an independent, such a person loses his seat in Parliament and the same is declared vacant. The petitioner’s counsel submitted that the logical question is whether such a member of Parliament remains validly elected on a party ticket when he or she has divided loyalty between his party and unregistered political organization?



5 Counsel further relied on **Consolidated Constitutional Petitions Number 16, 21, 25, 19 & 25** of 2013 (supra) holding that expelled party members in Parliament after their expulsion, would leave the numerical strength of the parties they left and its representation on Parliamentary committees adversely affected. The petitioner's counsel submitted that the holding  
10 shows the importance of loyalty and control of members of Parliament by their political parties in a properly functioning multi-party system. This should be considered in light of elected members of Parliament joining the unregistered political organizations symbolising a danger awaiting the growth of multi-party political systems in Uganda.

15 The petitioner's counsel submitted that under section 6 (1) of the Political Parties and Organizations Act it is provided that a political party or organization in Uganda shall be registered in accordance with the law and shall pay such fees as may be prescribed. That the requirement for registration is mandatory. In **Dr. James Rwanyarare and 8 Others v Attorney General; Constitutional Petition No 7 of 2002**, the Constitutional court held  
20 that any organization which hopes to compete for political power and be accountable to the country and its members should be a body corporate. Further they held that the condition for registration is quite a reasonable one that applies to all political organizations and is not a derogation to any  
25 rights and freedoms granted by the Constitution. Further that if parties hope to start operating, the Constitution requires that they should register. Counsel further relied on the characteristics of a multiparty political system as enshrined in article 71 of the Constitution.

Further it was held that an organization which hopes to take political power  
30 under the Constitution should be representative of the people of Uganda. The requirement will also prevent the registration of opportunistic political parties and organizations. The petitioner's counsel submitted in conclusion that by carrying out activities which are reserved for registered parties, the first and second respondents and their organization known as People  
35 Power/People Power Movement/People Power Uganda contravened article

5 72 (2) of the Constitution since it is not registered and does not conform to the principles laid down in article 71 (1) of the Constitution of Uganda.

In reply the first and second respondent's counsel submitted that the first and second respondents have not contravened any provision of the Constitution of Uganda or any other law in carrying out their activities. He submitted that contrary to what the petitioner asserted, the first and second respondents were doing what they were Constitutionally entitled to do. Under article 29 (1) (e) of the Constitution of Uganda, the first and second respondents are entitled to freely associate. Counsel submitted that a finding that the acts are unconstitutional in itself unconstitutionality and undemocratically limits the respondents and other Ugandans' freedom of association as envisaged under that article. Further still, a finding that the activities of the first and second respondents are unconstitutional will have an effect of imposing a political party dictatorship upon them and other Ugandans at large, something that this Hon. court cannot sanction. In the premises the first and second respondents counsel concluded that the activities are only in the exercise of rights provided by the same Constitution within the known restrictions.

As far as article 29 (1) (e) of the Constitution is concerned, every person shall have the right to freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations. The respondent's counsel submitted that the only possible restrictions to the right of freedom of association is provided for under article 43 of the Constitution and limitations to activities of the first and second respondents which are permitted by article 43 would not be unconstitutional. However, the first and second respondents have not prejudiced any fundamental or other human rights of others or the public interest (which are the only exceptions for restriction of their freedom of association rights). The first and second respondents counsel further submitted that under the **International Covenant on Civil and Political Rights** to which Uganda is a signatory, the right to freedom of association and any other grounds on which it may be restricted are set out

5 in article 22 of the convention. Article 22 (2) thereof provides that no  
restriction may be placed on the exercise of this right other than those  
which are prescribed by law and which are necessary in a democratic  
society in the interest of national security or public safety, public order, the  
10 protection of public health or morals or the protection of the rights and  
freedoms of others. It follows that the restriction to the freedom of  
association is only permissible on clearly defined lines or grounds as stated  
above.

On the allegation of contravention of the Constitution or the effect on the  
political space in Uganda in that it undermines multi-party politics and may  
15 cause chaos in the multiparty politics of Uganda, the first and second  
respondents counsel submitted that the claims of the petitioner are false  
and do not fall within the exceptions provided for under article 43 of the  
Constitution to limit the rights and freedoms of the first and second  
respondents to associate with each other as they have been doing.

20 The first and second respondents counsel further submitted that it would  
be an absurdity for this court to find that under the current political system,  
only duly registered political parties can participate in politics. He submitted  
that this is not only false but also an absurdity. Under the Constitution, a  
person is free to participate in politics under any political party and they can  
25 seek election to any political position under a particular political party.  
Further under articles 72 (4) of the Constitution pursuant to section 16 of  
the Constitution (Amendment) Act, 2005, any person is free to stand for  
election as a candidate independent of a political organization or party. He  
submitted that in Uganda in addition to carrying out politics under a political  
30 party, one can also participate in politics as an independent candidate (or  
as an independent). Further there is no bar to a person or group of persons  
doing politics as individuals or working together with other persons either  
as individuals or as a political party. He contended that the petitioner's  
petition in effect seeks to stop the first and second respondents from  
35 carrying out any political activities before joining or belonging to a political  
party and it would also in effect prohibit the respondents from associating

5 with any individuals or persons who belong to registered political parties.  
He prayed that the above position should not be sanctioned by this Hon.  
court.

In the reply to the citation of **George Owor v Attorney General and another; Constitutional Petition No 38 of 2010** by the petitioner, the first and second  
10 respondents counsel submitted that the authority did not restrict the  
carrying out of political activities to members belonging to a registered  
political party as the petitioner wants this court to believe or do. Further,  
while they agreed that there is need to strengthen multiparty politics in  
Uganda, that should not mean that association and participation by  
15 individuals with other individuals or political parties should be stifled.

With regard to the contention that the first and second respondents  
drummed support for individual candidates, the answer of the second  
respondent is that the second respondent does not own any organization  
called "People Power". As a matter of fact, the second respondent contested  
20 and was elected as an independent candidate and the support to the other  
contestants was done as individuals although the slogan that joined them  
was a people power slogan. It follows that the actions of the first and second  
respondents are not inconsistent with article 72 (2) of the Constitution or  
any other provision of the Constitution of Uganda and prayed that this court  
25 finds so.

### **Issue 3**

**Whether the actions of the third respondent under his organization,  
the people's government, of participation in political activities,  
declaring himself as the People's president, appointing cabinet and  
30 ministers are inconsistent and contravene Articles 72 (2), 98 (1), 103  
(1) & 114 (1) of the Constitution of Uganda, 1995.**

The Petitioner's Counsel submitted that the Petitioner faults the third  
Respondent for establishing an unregistered organization styled as "The  
People Government" and using the same to participate in political activities,

5 for declaring himself a People's president as well as appointing cabinet and  
ministers under his organization styled as the People's government.  
Counsel relied on article 98 (1) of the Constitution which provides that there  
shall be a President of Uganda who shall be the Head of State, Head of  
10 Government and Commander-In-Chief of the Uganda People's Defence  
Forces and the Fountain of Honour. Secondly, under article 103 (1) of the  
Constitution of Uganda it is provided that the election of the president of  
Uganda shall be by universal adult suffrage through a secret ballot. Counsel  
further submitted that the fact that the third respondent refers to himself  
as the People's president and not the president of Uganda is semantics in  
15 that under article 1 (1) & (2) of the Constitution, it is provided that all power  
belongs to the people who shall exercise their sovereignty in accordance  
with the Constitution. Secondly, all authority of the state emanates from the  
people of Uganda and the people shall be governed through their will and  
consent.

20 The petitioner's counsel submitted that the import of the provisions is that  
the President of Uganda exercises Executive power on behalf of the people  
of Uganda in whom all power is vested. It follows therefore that the  
President of Uganda is the People's President governing under the consent  
and mandate conferred through elections. Therefore, for the third  
25 respondent to call himself and hold himself out as People's president and  
claiming to have the mandate of the people when he did not have the  
mandate through winning an election. Counsel further pointed out that the  
third respondent admitted having participated in the elections of 2016 as a  
presidential candidate and disagreeing with the results declared by the  
30 Electoral Commission. Counsel concluded that the act of the third  
respondent of declaring himself the People's president contravenes  
provisions of articles 98 (1) & 103 (1) of the Constitution of Uganda.

On the question of appointment of cabinet and ministers, the petitioners  
counsel relied on the evidence contained in Annexure "B" to the affidavit in  
35 support of the petition that makes a list of the persons appointed by the  
third respondent's organization styled the People's government. That

5 structure has the third respondent as the President, Erias Lukwago as the  
deputy president, Salaamu Musumba as the Prime Minister and Semujju  
Nganda as the Deputy Prime Minister. He pointed out that cabinet ministers  
shall be appointed by the president with the approval of Parliament under  
10 article 113 (1) of the Constitution. Secondly, article 114 (1) of the Constitution  
enables the president with approval of Parliament to appoint other  
ministers to assist cabinet ministers in the performance of their functions.

Counsel submitted that the law requires all players to be accountable to the  
law and to the public and if the third respondent's precedent is to be  
followed, it would create anarchy and utter abrogation of the Constitution  
15 that he claims to uphold. The petitioner's counsel submitted that the actions  
of the third respondent in a democratic society governed by law are most  
unfortunate and should not be condoned. Further the actions violate and  
contravene the provisions of articles 103 (1), 113 (1) & 114 (1) of the  
Constitution of Uganda, 1995.

20 **In reply, the third Respondent's Counsel** submitted that **Objective Number I**  
of the **National Objectives and Directive Principles of State Policy** provides  
for a number of objectives and principles that shall guide all organs and  
agencies of the state, all citizens, organizations and other bodies and  
persons in applying or interpreting the Constitution or any other law and in  
25 taking and implementing any policy decisions for the establishment and  
promotion of a just, free and Democratic society. Among them, are the  
political objectives.

The third respondents counsel also prayed that this court considers  
**Objective II on Democratic Principles** because it states that the state shall  
30 be based on Democratic principles which empower and encourage the  
active participation of all citizens at all levels in their own governance.  
Secondly, all political and civic associations aspiring to manage and direct  
public affairs shall conform to Democratic principles in the internal  
organization and practice. Thirdly, civic organizations shall retain their  
35 autonomy in pursuit of their declared objectives.

5 The third respondent's counsel submitted that there is no legal bar to  
citizens of Uganda identifying with any citizen, politician, political or other  
group, political party organization, pressure group or body of persons or  
supporting such a citizen, politician, political or other group or otherwise to  
regularly engage in peaceful political activities in Uganda. The third  
10 respondent's counsel submitted that article 29 (1) (d) of the Constitution  
guarantees citizens of Uganda, including the third respondent, the right to  
freedom of assembly and demonstration together with others so long as  
they are peaceful and unarmed. Further, he submitted that acts in defence  
of the Constitution are noble, are required and expected of every citizen of  
15 Uganda inclusive of the third respondent. Coalescing around the idea of  
defence of the Constitution whether on a political or nonpolitical matter,  
singly or with others is not illegal or unconstitutional. Joining forces with  
other like-minded activists regarding any idea whether political or not and  
propagating such idea without being a registered political party or  
20 organization is not prohibited. He contended that the rallying point being  
referred to as "The People's Government" is not a political party or  
organization and the People's government does not operate as a political  
party or organization but is a grouping of like-minded activists exercising  
their respective and collective rights over various matters of public  
25 concern, including Constitutional orderliness. He contended that the idea of  
the People's government is an act of abiding by article 3 of the Constitution  
to peacefully, publicly and in a concerted manner raise awareness and  
oppose acts of illegality, abuse of process and breach of law and any form  
of unconstitutional behaviour by those holding political power. Carrying out  
30 that duty is noble and conscientious, and is an attempt to generate  
alternative viewpoint debate, on matters of national and Constitutional  
significance in Uganda.

On the declaration as the People's president, the reply of the third  
respondent is that article 98 (1) of the Constitution caters for a president of  
35 Uganda who shall be the head of state, as stipulated in that article. However,  
the words "president" and "Uganda" as used in the Constitution are defined

5 by article 257 (1) (v) (ee) of the Constitution to mean the president of Uganda  
and Uganda means the Republic of Uganda the third respondent's  
contention is that he is referred to as the People's president and not a  
president of Uganda and therefore there was no contravention of article 98  
10 (1) of the Constitution. There is no Constitutional or legal bar to any person  
in Uganda referring to himself or herself as the "People's president".  
Counsel invited the court to consider the words "president of Uganda" as  
used in article 98 (1) together with the definition under article 257 of the  
Constitution to reach a conclusion. The words "People's President" do not  
appear in any article of the Constitution. It was further erroneous for the  
15 petitioner's counsel to refer to the President of Uganda as the "People's  
president".

The third respondent's counsel further submitted that the third respondent  
could only have contravened article 98 (1) if he proclaimed himself as the  
"president of Uganda". Further the word "president" is in ordinary use in  
20 Uganda and is used by several societies. Therefore, what is material is how  
the word "president" is qualified.

In relation to the submission of the petitioner that by virtue of article 1 (1) &  
(2) of the Constitution, the "President of Uganda" is the People's president,  
the third respondent's counsel does not agree and states that as far as free  
25 speech, free expression and freedom of conscience and belief is concerned,  
a person can refer to himself or herself in any way they wish so long as  
there is no legal bar to make such a reference. Further, the issue of  
contravention of article 1 (1) & (2) does not arise in the petition and the  
petition should be confined to the pleadings.

### 30 **The appointing of cabinet and ministers by the third Respondent**

With reference to article 113 (1) of the Constitution of Uganda which  
empowers the president to appoint cabinet ministers as well as article 114  
(1) of the Constitution of Uganda which empowers the president to appoint  
Assistant cabinet ministers all with the approval of Parliament respectively,  
35 the words "minister" and "Government of Uganda" are defined by article 257



5 of the Constitution. On the other hand, all the persons alleged to have been  
appointed by the third respondent are vigilant Ugandans who coalesced  
around the duty on each citizen of Uganda to defend the Constitution of  
Uganda after observing an insidious and concerted effort to overthrow,  
suspend, abrogate or amend and therefore actively undermine the  
10 Constitution of Uganda through various acts. In other words, the third  
respondent and other persons acted in defence of the Constitution. The third  
respondent's counsel submitted that when a person or group of persons is  
acting to defend or restore the sanctity of the Constitution through public  
statements, assigning responsibilities to individuals or any other public  
15 activities made possible by virtue of fundamental rights and freedoms  
under article 21 and 29 of the Constitution and as demanded by article 3 of  
the Constitution, such person or persons are not operating as a political  
party or organization. Rather, such persons are acting as a Constitutional  
defence team and seeking to restore power to the citizens or to awaken  
20 them to their Constitutional duty. Looking up to leaders who do not occupy  
national, civic or state offices is not unconstitutional and is the legitimate  
right of any citizen of Uganda. Mirroring civic offices by name, industry or  
service area is aimed at demystifying those offices for the people of Uganda  
rather than to take over state or civic offices in an unconstitutional manner  
25 and is an act in empowering the population to defend the 1995 Constitution.  
Further the third respondent denied that he is mobilising political activities  
or membership into the People's government as alleged. The third issue  
therefore ought to be answered in the negative as the acts of the third  
respondent not violate or contravene articles 72 (2), 98 (1), 103 (1) and 114 (1)  
30 of the Constitution of Uganda.

#### **Issue 4**

**Whether the 4th respondent's failure to halt the activities of the first,  
second and third respondents contravene Article 119 (4) (a) of the  
Constitution of Uganda, 1995.**

5 The petitioner's counsel relied on **Consolidated Constitutional Petitions Nos 16, 21, 25, 19 & 25 of 2013** where the court held that the Attorney General is a principal legal adviser of government and mandated to advise government and all government organs and public institutions including the legislature.

10 Counsel submitted that the actions of the first, second and third respondents offend the Constitution, the Political Parties and Organisations Act and have caused and continue to cause social disorder and political chaos. Therefore, the 4th respondent should have advised the responsible organs of government to halt their illegal and unconstitutional actions referred to above. He submitted that the failure of the 4th respondent to  
15 halt the activities of the respondent contravene article 119 (4) (a) of the Constitution. Lastly, he prayed that for the good of social order and the growth of multi-party politics in Uganda, this Hon. court be pleased to grant all the prayers in the petition.

20 In reply the first and second Respondent's Counsel submitted that having submitted that the activities of the first and second respondents are not in any way in contravention of any provision of the Constitution of Uganda, it follows that there was nothing for the 4th respondent to halt. In summary the first and second respondents counsel submitted that the petition as against the first and second respondents is without any merit and ought to  
25 be dismissed with costs to the respondents.

Further the third Respondents Counsel submitted that submitted that the Attorney General has no powers to interfere with, curtail or halt the enjoyment of the rights of citizens exercising their Constitutional duty to protect the Constitution.

30 Further the third respondent's counsel submitted that the petitioner faults the Attorney General for not halting the alleged unconstitutional activities of the first, second and third respondents. And the question, was how the Attorney General could act to halt these alleged unconstitutional activities if they have not been declared unconstitutional since by seeking  
35 interpretation in this court, the petitioner is clearly acknowledging that the

5 matters are not clear? He contended that if there was a judgment that the  
petitioner has with the Attorney General which the Attorney General  
refused to enforce, then the Attorney General could perhaps be faulted. He  
contended that none is provided or cited and submitted that the Attorney  
General in a superior overarching position as the chief legal adviser of  
10 government who sees nothing wrong with the alleged unconstitutional  
actions of the first, second and third respondents and has not acted because  
those actions are within the four corners of the Constitution of Uganda. In  
summary he prayed that the issues are all resolved in the negative and the  
petition lacks merit and ought to be dismissed with costs.

15

### **Resolution of issues:**

I have carefully considered the Petition and the evidence in support thereof  
20 as well as the answers to the petition and evidence in support thereof  
together with the submissions of counsel, and the law generally.

The principles applied by courts for interpretation of the Constitution are  
well trodden. Amissah JP of the Court of Appeal of **Botswana in Dow vs.**  
**Attorney General [1992] LRC (Const) page 623 at page 632** stated as follows:

25 A written Constitution is the legislation or compact which establishes the state  
itself. It paints in broad strokes on a large canvas the institutions of the state;  
allocating powers, defining relationships between such institutions and between  
the institutions and the people within the jurisdiction of the state, and between  
the people themselves. The Constitution often provides for the protection of the  
30 rights and freedoms of the people, which rights and freedoms have thus to be  
respected in all future state action. The existence and powers of the institutions  
of state, therefore, depend on its terms. The rights and freedoms, where given by  
it, also depend on it. No institution can claim to be above the Constitution; no  
person can make any such claim. The Constitution contains not only the design  
35 and disposition of the powers of the state, which is being established but embodies

5 the hopes and aspirations of the people. It is a document of immense dimensions,  
portraying, as it does, the vision of the people's future. The makers of the  
Constitution do not intend that it be amended as often as other legislation; indeed,  
it is not unusual for provisions of the Constitution to be made amendable only by  
10 special procedures imposing more difficult forms and heavier majorities of the  
members of the legislature. By nature, and definition, even when using ordinary  
prescriptions of statutory construction, it is impossible to consider the  
Constitution of this nature on the same footing as any other legislation passed by  
the legislature which is itself established, with powers circumscribed, by the  
Constitution....

15 It is clearly important to consider the Constitution as unique and capable of  
generating its own canons of interpretation. According to Schreiner JA in  
**Dow v Attorney General** (Supra) at page 685:

20 There are dicta in judgments of this court and others which declare that the  
Constitution should justifiably receive a slightly different approach to  
interpretation than ordinary legislation.

The fact that a Constitution is a unique document calling for principles of  
interpretation of its own was stated by the Privy Council in **Minister of Home  
Affairs and another v Fisher and another** [1979] 2 All E.R. 21 at 26 per Lord  
Wilberforce that:

25 ... The second would be more radical: it would be to treat a Constitutional instrument  
such as this as sui generis, calling for principles of interpretation of its own, suitable  
to its character as already described, without necessary acceptance of all the  
presumptions that are relevant to legislation of private law.

30 The Privy Council agreed with the proposition that a Constitutional  
instrument calls for principles of interpretation of its own suitable to its  
character. Further, in **State v Makwanyane and Another** [1995] 1 LRC 269  
Chaskalson P of the South African Constitutional Court observed that:

35 We are concerned with the interpretation of the Constitution, and not the  
interpretation of ordinary legislation. A Constitution is no ordinary statute. It is  
the source of legislative and executive authority. It determines how the country  
is to be governed and how legislation is to be enacted. It defines the powers of  
the different organs of state, including Parliament, the Executive, and the Courts

5 as well as the Fundamental Rights of every person which must be respected in exercising such powers.

Sir Rupert Cross in **Statutory Interpretation; London Butterworth's 1976** at pages 29 reproduces excerpts of the statements of Lord Reid on principles of statutory interpretation which are relevant and are that:

10 "In determining the meaning of any word or phrase in a statute the first question to ask is what is the natural or ordinary meaning of the word or phrase in its context in the statute. It is only when the meaning leads to some result which cannot reasonably be supposed to have been the intention of legislature that it is proper to look for some other possible meaning of the word or phrase. (*Pinner v Everett*, [1969] 15 3 All E.R. 257 at 258).

"Then [in case of doubt] rules of construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants, not our masters. They are aids to construction, presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at 20 all relevant circumstances and decide as a matter of judgment what weight to attach to any particular 'rule'." (*Maunsell v Olins*, [1975] A.C. 373 at 382, *Maunsell v Olins and another* [1975] 1 All ER 16 at 18)

"It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision 25 cannot reasonably bear. If they are capable of more than one meaning, then you can choose between those meanings, but beyond that you must not go." (*Jones v Director of Public Prosecutions*, [1962] AC 635, at page 688.)

The above rules of statutory interpretation require that the first effort in interpretation is ascertaining the natural or ordinary meaning of the word 30 of phrase in a statute. Where this is clear and unambiguous, there is no reason to go any further, for instance, by considering judicial precedents on statutory interpretation. However, where the meaning after ascertainment cannot reasonably be supposed to have been the intention of legislature, an effort is made to look for some other possible meaning of the word or 35 phrase. It is only in the second stage where the meaning is in doubt that the rules of construction are relied upon. The rules of construction are aids to interpretation only. Where the articles of the Constitution are clear and

5 unequivocal or unambiguous, no question as to interpretation of the Constitution arises and the matter should be for enforcement.

10 The Constitutional court of Uganda in **Thomas Kwoyelo alias Latoni v Uganda; Constitutional Petition No 036 of 2011 (Reference)** summarized some of the principles applied by courts in interpretation of the Constitution as follows:

- a. The Constitution is the supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent or in contravention of the Constitution is null and void to the extent of the inconsistency (article 2 (2) of the Constitution).
- 15 b. The entire Constitution has to be read together as an integral whole and no particular provision destroying the other, but each sustaining the other.
- c. The words of a written Constitution prevail over all unwritten conventions, precedents and practice.
- 20 d. Not one provision of the Constitution is to be segregated from the others and to be considered alone but all the provisions bearing on a particular subject are to be brought into view and be interpreted to effectuate the greater purpose of the instrument.
- 25 e. It is a cardinal rule of interpretation of statutes that the first effort in interpretation should be to ascertain the natural or ordinary meaning of a word or phrase that may be in issue.

30 I emphasize paragraphs (c) and (e) in the immediate preceding section above because as noted earlier, a Constitution has to firstly be construed on the basis of its language and with that in mind, I would proceed to the resolution of the issues.

### **Issue 1**

**Whether the People Power Movement/People Power/People Power Uganda; and the People's Government are organizations.**

5 I have carefully considered the first issue and it is a question of fact as to whether the entities mentioned are organizations. The question of law is what is meant by the word "organization" in the context of Articles 71 and 72 of the Constitution. The petition is very clear that the organizations referred to are not registered organizations but an association of persons with  
10 emblems and slogans and an agenda. The agenda *inter alia* admitted by the first, second and third respondents is an effort to defend the Constitution of the Republic of Uganda against what they allege is the unconstitutional actions of the government of the Republic of Uganda or even the abrogation of the Constitution by certain persons described in the Petition. The first and  
15 second Respondents Counsel left the issue of whether it is an organization for determination of the court. The fact that it is an organization is an admitted fact. The word "organization" is an ordinary English word and is defined by the **Cambridge International Dictionary of English**:

a group of people who work together in a structured way for a shared purpose

20 It is clear from the affidavit of the Petitioner that a group of people variously referred to as "People Power Movement/People Power/People Power Uganda, and the People's Government are organizations because they are run by a group of people with a shared purpose. These purposes included campaigning for candidates to run for the office of member of Parliament  
25 of Uganda and the purpose of moving under articles 1 and 3 of the Constitution to defend the Constitution of the Republic of Uganda through their activities.

Article 257 of the Constitution does not define the word "organization". The word "organization" appears in the context of article 72 (2) of the  
30 Constitution in that it is stipulated that an organization shall not operate as a political party or organization unless it conforms to the principles laid down in the Constitution and it is registered. There are two categories of organizations in this context. The first category is a political party and the second category is a political organization. What is a political organization  
35 is not defined and leaves a lot to be desired because of the requirement to have it registered. I would hesitate to define an organization outside the

5 context of article 72 (2) of the Constitution. The term "political parties and  
organizations clearly appears in the context of article 71 of the Constitution  
and article 71 describes the multiparty political system. Political systems  
are provided for by article 69 of the Constitution and particularly article 69  
(2) provides that the political systems referred to in article 69 (1) of the  
10 Constitution are the Movement Political System; the Multiparty Political  
System and thirdly, any other democratic and representative political  
system. Subsequently, the movement political system is provided for in  
article 70 and the multiparty political system is provided for in article 71 of  
the Constitution respectively. It is in article 71 of the Constitution which gives  
15 the elements of a multiparty political system that the word political parties  
and organizations is mentioned. What is clear is that article 71 (1) and  
paragraphs (a), (b), (c), (d) and (e) specifically deal with political parties  
only. On the other hand, it is stipulated in article 71 (f) that no person shall  
be compelled to join a particular party by virtue of belonging to an  
20 organization or interest group. The word "organization" is not qualified. It is  
only article 71 (2) that refers to political organizations and stipulates that  
Parliament shall by law prescribe the code of conduct for political  
organizations and political parties and provide for the establishment of a  
National consultative forum for political parties and organizations with such  
25 functions as Parliament may prescribe. The language of the legislature is to  
use the conjunctive "and" when dealing with political parties and  
organizations. A political organization is therefore similar to a political party  
and fall under the same category as a political party. The word  
"organization" as used in article 71 (2) is not used alone but is used in  
30 conjunction with the word "political" and in context it is used as "a political  
organization". Therefore, the word organization does not mean any  
organization but means a political organization. Similarly, article 72 of the  
Constitution deals with the right to form political organizations. What is  
material being that article 72 deals with the right to form political  
35 organizations rather than the freedom of association which includes the  
freedom to join any political or civic organization. This rhymes with the  
definition of a political organization that I have referred to above. It is a



5 group of people with a common purpose and therefore they must have  
objectives for forming the organization and specifically a "political  
organization". The requirement for registration therefore has to be  
considered in light of the fact that it is formed for a particular purpose or  
purposes which have the necessary elements of a political party or  
10 organisation.

The evidence adduced in the particular circumstances of this petition by the  
petitioner has not been rebutted. Annexure "A" to the affidavit of Ntare  
Adens Rutaro sworn on 26<sup>th</sup> of July 2019 and filed on court record the same  
day is a document dated 24<sup>th</sup> of July 2019 which I shall quote in part as it  
15 states:

PEOPLE POWER - UGANDA

24<sup>th</sup> JULY 2019

The People Power Movement was founded on the basis of article 1 of our  
Constitution, which stipulates that Power belongs to the people of Uganda.

20 This power was however usurped by our current leaders, hence making it difficult  
for the people to hold their leaders accountable and to determine the affairs of  
their country.

Not only did the people lose their power, institutions too lost their power and  
authority, making it difficult for them to function independently and execute their  
25 mandate.

Instead of big institutions, we have a big personality, something People Power  
intends to rectify by returning this Power to the people, empowering and  
strengthening the institutions so that they can deliver to the people of Uganda.

30 In this quest, People Power has been on a journey to structure as a functional  
movement. Today we unveil to the nation our team of leaders.

We have structured the country into regions, each having a team of coordinators  
with a team leader at the helm. The regional coordinators will have below them  
district coordinators, then parish coordinators, and finally village coordinators.  
The regional coordinators will be accountable to a leadership council, led by Hon.  
35 Robert Kyagulanyi Ssentamu. The leadership council will consist among others,

5 the team leaders from each of the regions, plus other leaders. The leadership council will always be guided by an advisory council, made up of some elders and eminent Ugandans. Here below is the team of the regional coordinators; ...

10 I do not have to reproduce the list of leaders listed after the above quote and who are described as regional coordinators. There are 20 regions of Uganda which are listed and in addition are listed; certain categories of coordinators which include the Youth Wing; Institutions; Women's Wing; PWD's; Arts & Entertainment; Informal Sector, and the Diaspora. Each of the categories has between 4 and 9 members or regional coordinators each. The document is signed by the first respondent.

15 Clearly, Annexure "A" discloses the details of an organization called "People Power – Uganda" whose objectives includes returning power to the "people". Secondly, the document shows that the persons involved in the organization intended to form a structure and a functional movement. It also has a statement of the problem that they want to rectify. There is no doubt  
20 in my mind that the document is or is meant to be the basis of a political organization. Thirdly, the document clearly stipulates that the organization intends to return power to the people. The organization sets out the hypothesis it operates on which is that the power of the people as enshrined in article 1 of the Constitution has been usurped by the current leaders in  
25 Government (by 24th of July 2019). I would therefore not hesitate in finding that Annexure "A" discloses, the objectives and structure of a political organization with an agenda to participate in the politics of Uganda and to be able to influence elections so as to fulfil their agenda to return power to the people they defined as "the people".

30 I would in the premises, answer issue number 1 in the affirmative though it is not a question as to interpretation of the Constitution but a question of fact, that is a necessary fact, to determine the rest of the issues. I find that the first, second respondents operate or intended to operate a political organization though it is not a registered political party or political  
35 organization.

5     **Second issue**

10           **Whether the actions of the first and second Respondents, under their organization styled People Power/People Power Movement/People Power Uganda, of mobilizing political activities and membership, sponsoring a political agenda, offering a platform to candidates for election to political offices, participation in Government and appointing regional coordinators are inconsistent and contravene article 72 (2) of the Constitution of Uganda.**

15           I have carefully considered the second issue and obviously it is a requirement stipulated in the Constitution under article 72 (2) that a political organization is supposed to be registered and further it must conform to the principles stated under article 71 of the Constitution of the Republic of Uganda. The fact that the organization called "People Power" as signified by Annexure "A" is a political organization has already been determined. Secondly, the fact that it has not been registered is also an admitted fact and has been proved. Obviously, the question is, whether because that is not controversial, there is any issue as to interpretation of the Constitution. The question as to interpretation of the Constitution relates to the assertion of the petitioner that the activities of the said organization are the reserve of political parties and organizations which are registered and failure to comply with the requirement for registration contravenes articles 72 (2) of the Constitution. On the other hand, the counterargument of the respondents variously is that whether the respondents' organizations are registered or not, the individuals who have been sued have a freedom of association enshrined in article 29 (1) of the Constitution of the Republic of Uganda. Pursuant to that freedom of association, the respondents are entitled and all other citizens are entitled to carry out political activities inclusive of supporting candidates and activism in defence of the Constitution.

**Duties and Rights of Citizens under articles 1 and 3 of the Constitution**

5 I have carefully considered the assertion of the respondents variously that  
they were acting in defence of the Constitution. Indeed, in respect of the first  
and second respondents, this is expressly stated in Annexure "A" to the  
affidavit in support of the petition sworn by the petitioner. From those  
premises, the respondents asserted that they moved under article 1 and  
10 article 3 of the Constitution. This introduces a controversy of whether the  
freedom of association as enshrined in article 29 (1) of the Constitution is  
not circumscribed by article 72 (2) of the Constitution on the basis that the  
respondents were operating a political organization. Further interesting is  
the submission that the provisions of articles 1, 2 and 3 override any other  
15 provisions of the Constitution.

I have carefully considered the argument based on principles of  
interpretation advanced by counsel for the third respondent that the court  
should abide by the National Objectives and Directive Principles of State  
Policy in interpreting the relevant provisions concerned in this petition.  
20 Particularly, the third respondent's counsel invited this court to consider  
the Democratic principles enshrined in Objective No II. Objective No 2  
provides as follows:

II. Democratic principles.

(i) The State shall be based on democratic principles which empower and  
25 encourage the active participation of all citizens at all levels in their own  
governance.

(ii) All the people of Uganda shall have access to leadership positions at all levels,  
subject to the Constitution.

(iii) The State shall be guided by the principle of decentralisation and devolution  
30 of governmental functions and powers to the people at appropriate levels where  
they can best manage and direct their own affairs.

(iv) The composition of Government shall be broadly representative of the  
national character and social diversity of the country.

5 (v) All political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organisations and practice.

(vi) Civic organisations shall retain their autonomy in pursuit of their declared objectives.

10 I have carefully considered the above principles and the fact that the state shall be based on Democratic principles which encourage the active participation of all citizens at all levels in their own governance, has to be considered upon perusal and consideration of articles 1, 2 and 3 of the Constitution on how the participation of citizens is supposed to be  
15 implemented. This may be read in conjunction with article 29 (1) on the freedom of association submitted by the respondent's counsel. Secondly, the fact of access to position of leaderships at all levels, depends on the method of access because the stated principle is subject to the Constitution. Thirdly, the fact that all political and civic associations have to conform to  
20 Democratic principles in their internal organizations and practice is not material except when considered in terms of article 71 of the Constitution which declares the principles applicable in a multiparty democratic system. Last but not least, the fact that civic organizations shall retain their autonomy in pursuit of their declared objectives merely indicates that they  
25 shall not be subject to interference but does not indicate how the civic organizations shall be registered or formed. It would therefore be necessary to consider the relevant parts of the Constitution that deal with the Democratic principles even if guided by the democratic principles for purposes of interpretation of those articles which are relevant.

30 In that regard article 1 of the Constitution of the Republic of Uganda provides that:

1. Sovereignty of the people.

(1) All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.

5 (2) Without limiting the effect of clause (1) of this article, all authority in the State emanates from the people of Uganda; and the people shall be governed through their will and consent.

(3) All power and authority of Government and its organs derive from this Constitution, which in turn derives its authority from the people who consent to  
10 be governed in accordance with this Constitution.

(4) The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections of their representatives or through referenda.

Article 1 (1) stipulates that all power belongs to the people who shall  
15 exercise their sovereignty in accordance with the Constitution. It follows that the sovereignty of the people shall be exercised in accordance with the Constitution and the provisions which are relevant to the exercise of sovereignty of the people has to be brought into view in order to make it a complete article consistent with its wording. This is made clearer by article  
20 1 (2) of the Constitution which refers to the limiting effect of clause (1) of article 1 and states that all authority in the state emanates from the people of Uganda and the people shall be governed through their will and consent. Further, the will and consent of the people is supposed to be expressed by determining who shall govern the people and how they shall be governed  
25 through regular, free and fair elections of their representatives or through referenda. Obviously, provisions relating to how people should be governed in terms of the political system chosen by the people through free and fair elections of their representatives or referenda as prescribed by the Constitution is relevant. It is not sufficient to assert that all power belongs  
30 to the people without considering how the power of the people is to be exercised. Article 1 is very clear that the peoples power shall be exercised in accordance with the Constitution and the Constitution provides that the people shall express their will and consent on who shall govern them and how they shall be governed through regular, free and fair elections of their  
35 representatives or through referenda. The state derives authority from the people and all power and authority of Government emanates from the people. The people have residual authority to change that through free and

5 fair elections or through referenda as prescribed by the Constitution. The  
power of the people can also be exercised through a right to recall elected  
representatives for instances in Parliament before expiry of their term of  
office under article 84 of the Constitution. In brief, Articles 1 (1), (2), and (3)  
10 of the Constitution give the source of authority of the state and the source  
of authority and power of Government. It states that the people consent to  
be governed through exercise of their will. That will, is expressly stated to  
be expressed, through the ballot paper in regular, free and fair elections or  
through referenda. Article 1 (4) of the Constitution is about how the will of  
15 the people is exercised and how that consent is obtained. In short, article 1  
(1) expresses the sovereignty of the people of Uganda and how it is  
expressed. To emphasize article 1 (1) is to emphasize the right of all  
Ugandans individually and the right of all political parties and organizations  
to vote for leaders of their choice in regular, free and fair elections. That  
may as well be civic education of the citizens as it cannot be the preserve  
20 of a political party or organization or individuals. It is a right to educate  
Ugandans that they should exercise their sovereignty by voting regularly in  
free and fair elections or through referenda people or parties of their choice  
so that they are governed through their will or consent. When their elected  
representatives are overthrown or power is retained unconstitutionally not  
25 according to the determination of courts of judicature, then article 3 (4) in  
desperate circumstances can be invoked by any individual.

This petition deals with the question of how people should be governed as  
far as the submissions of the respondents are concerned. The petitioner  
asserts that to be involved in the political space in a multi-party democracy,  
30 the respondents are supposed to register their organization as commanded  
by article 72 (2) of the Constitution. The controversy is therefore not  
resolved without considering the relevant provisions governing the  
representatives of the people and how they are elected. Underlying this  
effort is the clear assertion of all the respondents that the Constitution has  
35 been abrogated and therefore they were acting in defence of the  
Constitution. Quoting article 3 of the Constitution is not for idle minds.

5 Article 3 of the Constitution places a duty on the citizen and calls upon  
citizens to restore constitutional order after a coup d'état or overthrow of a  
constitutionally elected Government. It does not apply to campaigns for  
elective offices. It is only invoked when the constitutional order is  
overthrown and people have seized power or retain power  
10 unconstitutionally. The use of article 3 of the Constitution based on serious  
allegations has to be examined in the context of articles 1 and 3 of the  
Constitution. Article 3 of the Constitution provides as follows:

3. Defence of the Constitution.

15 (1) It is prohibited for any person or group of persons to take or retain control of  
the Government of Uganda, except in accordance with the provisions of this  
Constitution.

(2) Any person who, singly or in concert with others, by any violent or other  
unlawful means, suspends, overthrows, abrogates or amends this Constitution or  
any part of it or attempts to do any such act, commits the offence of treason and  
20 shall be punished according to law.

(3) This Constitution shall not lose its force and effect even where its observance  
is interrupted by a government established by the force of arms; and in any case,  
as soon as the people recover their liberty, its observance shall be reestablished  
and all persons who have taken part in any rebellion or other activity which  
25 resulted in the interruption of the observance shall be tried in accordance with  
this Constitution and other laws consistent with it.

(4) All citizens of Uganda shall have the right and duty at all times—

30 (a) to defend this Constitution and, in particular, to resist any person or  
group of persons seeking to overthrow the established Constitutional  
order; and

(b) to do all in their power to restore this Constitution after it has been  
suspended, overthrown, abrogated or amended contrary to its provisions.

35 (5) Any person or group of persons who, as required by clause (4) of this article,  
resists the suspension, overthrow, abrogation or amendment of this Constitution  
commits no offence.



5 (6) Where a person referred to in clause (5) of this article is punished for any act done under that clause, the punishment shall, on the restoration of this Constitution, be considered void from the time it was imposed, and that person shall be taken to be absolved from all liabilities arising out of the punishment.

10 There are allegations and assertions by the first, second and third respondents inclusive of submissions of counsel which claim that there was abrogation of the Constitution of the Republic of Uganda and unconstitutional amendment of its hallowed provisions. Annexure "A" to the affidavit of the petitioner gives the true nature of the allegation. The third Respondent does not mince words in his assertions about abrogation of the  
15 Constitution. The organizations variously referred to in this petition under which the respondents operate have to be understood in the context of the circumstances referred to in the affidavit in support of the petition as well as the various affidavits filed in opposition to the petition. The serious assertions in annexure "A" to the affidavit of the petitioner and the affidavit  
20 in reply of the third respondent is that there is no Constitutionally elected Government implying inevitably that the act of defence of the Constitution falls within the duties of a citizen under article 3 (4) of the Constitution of the Republic of Uganda. The proposition is that all citizens are free to defend the Constitution.

25 The concept of freedom of association and the assertion that the organizations was in pursuit of that freedom has to be understood in terms of the objectives of the association that are manifest in the evidence before court. Before delving into that, I would refer to the various affidavits filed by the respondents in justifying their objective of mobilising and associating to  
30 restore good governance and the Constitutional order.

I need to state from the outset that the allegations do raise questions as to interpretation of the Constitution as they relate to rights of parties to rise individually or collectively in defence of the Constitution. The freedom of association has to be understood in the context of articles 1, 3, 29 (1), 69, 70,  
35 71, 72 and 74 to properly determine the nexus between the freedom of association as well as the operations of a political organization as to

5 whether the freedom of association is circumscribed by the Constitution  
itself under article 72 (2) or not and this court has jurisdiction to consider  
the questions as to interpretation which arise. The court also has to  
determine whether the requirement to register would be a derogation from  
the freedom of association which derogation from the liberty of freedom of  
10 association is not permissible under article 43 of the Constitution or  
whether article 43 permits the derogation. The question is whether the  
requirement to register political organisations would stifle the freedom of  
association? With those issues in mind, I would refer to the various  
affidavits on the issue of the assertions about violation of the Constitution  
15 by the respondents and the fact of associating for purposes of restoring the  
Constitutional order through their activism or expressing the peoples  
power under article 1 (1) of the Constitution.

I will start with the affidavit of the petitioner Mr. Ntare Adens Rutaro sworn  
on 26<sup>th</sup> July 2019 and filed on court record the same day and paragraphs 6  
20 and 7 thereof which state as follows:

6. That on 24<sup>th</sup> July 2019, the first and second respondents held a news conference  
where they purportedly unveiled a National Leadership Structure with intentions  
that are a reserve for political parties and organizations duly registered. (Refer  
to annex "A" for the press statement introducing a leadership structure of the  
25 organization.)

7. That for the last one year, the third respondent, has purportedly constituted  
"The People's Government" which he operates like a political organization and  
went to constitute what he refers to as People's government with a cabinet and  
ministers purportedly with objectives of providing leadership to Uganda. (Refer  
30 to annex "B" showing the people's cabinet.)

The petitioner attached Annexure "A" which I have already referred to above  
as well as annex "B" showing the people's cabinet constituted by the third  
respondent. In their answer to the petition in paragraph 10 thereof the first  
and second Respondent assert as follows:

35 10. The first and second respondents aver and contend that all they are a group  
of concerned Ugandans from all walks of life, including the first and second

5 respondents, who crusade for good governance and the rule of law and emphasise Article 1 (1) of the 1995 Constitution.

The first respondent Mr. Joel Ssenyonyi in his affidavit in support of their answer to the petition sworn on 12<sup>th</sup> September 2019 and filed on court record on 17<sup>th</sup> September, 2019 and paragraph 15 thereof states as follows:

10 15. That in reply to paragraphs 5, 6, 9 and 13 of the petitioner's affidavit in support of the petition, and paragraphs 2 and 3 of the petitioner supplementary affidavit, whatever I have done is neither in contravention of any provision of the Constitution of Uganda or any other law obtaining in Uganda. Whatever I have done and I am doing is in furtherance of my right to associate as provided for  
15 under Article 29 (1) (e) of the 1995 Uganda Constitution (as amended).

In paragraph 17 he states that he associated with the second respondent individually and personally because he believes, like the second respondent does, that in Uganda power belongs to the people. He further asserts that there is no organization known as "People Power" that is owned by the  
20 second respondent.

For his part Hon. Robert Kyagulanyi Sentamu, in an affidavit sworn to at Kampala on 13<sup>th</sup> September, 2019 and filed on court record on 17<sup>th</sup> September, 2019 states in paragraph 10 of his affidavit in support of the answer to the petition that:

25 10. That all that I and the first respondent and several other Ugandans are doing is coming together in association, while emphasising our power as Ugandans under Article 1 (1) of the Constitution of the Republic of Uganda, 1995 that, "power belongs to the people".

Further in paragraph 15 of the said affidavit he states as follows:

30 15. That in reply to paragraphs 5, 6, 9 and 13 of the petitioner's affidavit in support of the petition, and paragraphs 2 and 3 of the petitioner's supplementary affidavit, whatever I have done is neither in contravention of any provision of the Constitution of Uganda or any other law obtaining in Uganda. Whatever I have done and I am doing is a furtherance of my right to associate as is provided for  
35 under Article 29 (1) (e) of the Uganda Constitution.

5 Further Hon. Robert Kyagulanyi Sentamu denies any ownership of any organization, registered or unregistered called "People Power". He asserts that he associated with the first respondent individually and personally because he believes like the first respondent does that in Uganda power belongs to the people.

10 In the affidavits, there is no denial of Annexure "A" or the press statement as contained in the affidavit of the petitioner.

For his part, the third respondent in answer to the petition and in the affidavit in support of the answer to the petition is more specific about the aspect of the defence of the Constitution that are detailed in the answer to  
15 the petition as well as in the affidavit. Particularly I would highlight paragraphs v - xiv of the answer to the petition:

v. The third respondent was nominated as a presidential candidate sponsored by the Forum for Democratic Change in late 2015 and was then arrested on May 10<sup>th</sup> 2016 and charged with treason, for disagreeing with the results of the election  
20 and calling for an audit of the same.

vi. The third respondent was, through arrests and other illegal detention he experienced in March to May 2016 denied the opportunity to challenge the outcome of the said election, considering the illegal detention under which he was placed for the entire 10-day period allowed for the filing of a petition. Since 2001,  
25 the third respondent has also been tormented, harassed, incarcerated and suffered at the hands of security forces of Uganda for choosing to exercise his inherent rights.

vii. Subsequent to the declaration of the 2016 Presidential Elections Official Results with which he did not agree, the third respondent, in exercise of his rights and duties as a citizens of Uganda, together with other like-minded and vigilant citizens of Uganda, who were dismayed at the continuous violations of the 1995 Constitution of Uganda coalesced around the duty on each citizen to defend the  
30 Constitution.

viii. The exercise of the duty to defend the 1995 Constitution of Uganda is not  
35 dependent on registration as a political party or political organization and neither is the decision before or after coalescing, to debate, concretise and offer solutions

- 5 to the population by encouraging the population to act in defence of the 1995 Constitution of Uganda.
- ix. In line with Part XXIX (f) of the National Objectives and Directive Principles of State Policy and Articles 1 (1), 1 (3), 1 (4), 2 (1), 3 (1) and 3 (4) of the 1995 Constitution of Uganda the third respondent is Constitutionally permitted, singly or with  
10 others, in defence of the 1995 Constitution, to resist any persons seeking to overthrow, suspend, abrogate or amend the 1995 Constitution of Uganda.
- x. The establishment by vigilant citizens of Uganda of a coalescing point commonly referred to as "The people's government", to focus on preservation and protection of the 1995 Constitution and the Constitutional order it brought Uganda  
15 is an act in furtherance of the duty to uphold, preserve, protect and defend the 1995 Constitution of Uganda.
- xi. Every citizen of Uganda, including the petitioner, is under a solemn duty, particularly in view of the tumultuous political history of Uganda and the desire to ensure and promote rule of law and Constitutional governance in Uganda, to  
20 defy any act, conduct, omission, design, plot, plan or activity which seeks to or is aimed at undermining, removing or otherwise unlawfully curtailing the freedom of the people of Uganda, including the unlawful retention of political power and control of the Government of Uganda in violation of the principles in the Constitution.
- xii. Every citizen is enjoined to be patriotic and loyal to Uganda and to promote its well-being, and in so doing, is empowered, singly or together with others to form, create, operate or otherwise coalesce around organizations, groups, bodies, persons or ideas to pursue and ensure Constitutional order in Uganda and any such groupings need not first be registered as political parties or organizations.  
25
- xiii. The insidious overthrow, suspension, abrogation or amendment of the 1995 Constitution of Uganda and acts intended to undermine the text and spirit of the 1995 Constitution of Uganda, particularly in light of Uganda's tumultuous political history has taken many forms and has been exhibited through various acts and omissions perpetrated by the Executive Arm of Government and its organs  
30 against the Judiciary, Parliament and citizens of Uganda. The acts in question include invasion and violation of the Courts of Judicature by security forces at various times; massive rigging of elections at many levels; state inspired disobedience and rubbishing of Court orders and decisions; regular but illegal re-arrest of citizens of Uganda who are set free on bail by various courts; operation  
35

5 of torture chambers commonly regarded as safe houses; interference with the  
independence of the Parliament of Uganda and physically assaulting Members of  
Parliament taking a stand in defence of the 1995 Constitution of Uganda to force  
through illegitimate amendments thereto; arrest, torture and massacre of  
10 citizens of Uganda; regular harassment, intimidation, abducting and incarceration  
of persons perceived to be political opponents of the current Government of  
Uganda; criminalising the opposition generally; providing inadequate budgetary  
allocations to Constitutional bodies, agencies and arms to undermine their  
Constitutional mandates or control and curtail their acts; failing to hold LC  
15 elections as and when they fell due; raising and publicly funding militia and  
paramilitary Armed Forces such as Kiboko Squad, Kalangala Action Plan, Crime  
Preventers, Boda Boda 2010 etc.; negative involvement of security forces and  
intelligence services in national elections; massive bribery and intimidation  
during elections; use and abuse of state resources and facilities to among others,  
20 run political party activities; abuse of budgetary allocations and corruption; abuse  
and misuse of national finances and Constitutional institutions which are required  
to operate independently; and many others as shall be provided at the hearing.

xiv. Engagement in any alternative policy agenda formulation on national issues  
through any organization, group, body or person, whether registered or  
unregistered as political parties or organizations is the right and duty of every  
25 citizen and is protected by the Constitution through Articles 1, 3, 8A, 17, 20, 21, 29,  
38 and 45 jointly and severally.

Clearly the first and second respondents claim to have moved under article  
1 (1) of the Constitution of the Republic of Uganda which states that all power  
belongs to the people who shall exercise their sovereignty in accordance  
30 with the Constitution. They also assert their freedom of association under  
article 29 (1) (e) of the Constitution. In addition, when considered together  
with Annexure "A" to the affidavit of the petitioner which is a press release  
signed by the first respondent, the purpose for associating in the third  
respondents answer to the petition is included in the objectives of the  
35 organization called "People Power – Uganda."

It is therefore proven that the first and second respondents were involved  
in activities pursuant to their belief that power had been usurped by the  
current leaders of Uganda and whereupon they formed an organization to  
actively pursue programs to hold leaders accountable and to restore "the

5 people's power" as enshrined in article 1 (1) of the Constitution. Obviously  
the structure and terms of Annexure "A" discloses a political agenda as well  
as an association of persons. The question is whether this association of  
persons can be defined as a political organization under Article 29 (1) (e)  
and 72 (2) of the Constitution which organisations have to be registered. In  
10 addition, I consider the issue of the limits of the freedom of association.

For his part, these third respondent clearly asserted that there was  
unconstitutional taking power by the leaders in power. This brings into view  
article 3 of the Constitution. Article 3 of the Constitution of the Republic of  
Uganda and particularly article 3 (4) of the Constitution which is cited in the  
15 answer to the petition by the third respondent only comes into operation  
after any person singly or in concert with others by any violent or other  
unlawful means, suspends, overthrows, abrogates or unconstitutionally  
amends the Constitution or any part of it or attempts to do any act, that is  
considered taking over and retaining control of the Government of Uganda  
20 not in accordance with the Constitution as stipulated in article 3 (1) and (2)  
of the Constitution. In that context, article 3 (4) of the Constitution can only  
be invoked by all citizens to restore the Constitutional order irrespective of  
the means used to do so.

I cannot comment about the grounds for saying that the Constitution was  
25 overthrown or that certain leaders are retaining power unconstitutionally  
the question before the court revolves on whether the third respondent as  
well as the first and second respondents were running a political  
organization that ought to be regulated. Secondly, whether it was within  
their freedom of association to coalesce around the idea of the power of the  
30 people enshrined in article 1 (1) of the Constitution as well as to take action  
in defence of the Constitution. I will not comment about the action or actions  
that the respondents had deemed necessary to be taken. The only question  
before this court is whether they had to be registered or not and whether  
they were within their freedom of association which is a fundamental  
35 freedom.

5 The freedom of association guaranteed under Article 29 (1) (e) of the Constitution provides that every person shall have the right to:

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

10 Article 29 (1) (e) of the Constitution gives every person a right or freedom of association with other persons which right includes the freedom to form and join association or unions, including trade unions and political and other civic organizations. The ordinary meaning of the above words is that it confers a right to form and join and therefore there should be no  
15 restrictions to the freedom to join associations or to form and join associations or unions, including trade unions and political and other civic organizations. I emphasise the right to join or form rather than the objectives for forming or joining though jurisprudence in this area is either way.

20 The Supreme Court of Canada in **Re Public Service Employee Relations Act [1987] 1 S.C.R. 313** per Dickson C.J. considered the distinction between rights and freedoms at page 361 when he stated that:

25 "Although these two terms are sometimes used interchangeably, a conceptual distinction between the two is often drawn. "Rights" are said to impose a corresponding duty or obligation on another party to ensure the protection of the right in question whereas the "freedoms" are said to involve simply an absence of interference or constraint. This conceptual approach to the nature of "freedoms" may be too narrow since it fails to acknowledge situations where the absence of government intervention may in effect substantially impede the  
30 enjoyment of fundamental freedoms..."

At 363:

35 In my view, while it is questionable that s. 2 (d) at a minimum, guarantees the liberty of persons to be in association or belong to an organization, it must extend beyond a concern for associational status to give effective protection to the interest which the Constitutional guarantee is directed. In this respect, it is important to consider the purposive approach to Constitutional interpretation...



5 This court has already, in some measure set out the basic approach to be taken in interpreting the *Charter*...

10 This court expressed the view that the proper approach to the definition of the rights and freedoms guaranteed by the *Charter* is a purposive one. The meaning of the right or freedom granted by the *Charter* was to be ascertained by an analysis of the purpose of such a guarantee; it was to be understood, in other words, in light of the interest it was meant to protect.

15 In my view this analysis is to be undertaken, and the purpose of the right of freedom in question is to be sought by reference to the character and the larger objects of the charter itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concept enshrined, and where applicable, to the meaning and the purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*.... At the same time, it is important not to overshoot the actual purpose of the right or freedom in question, but to recall that the charter was not enacted in a vacuum, and must therefore, as this court's decision in law **Society of Upper Canada versus Skapinker, [1984] 1 S.C.R. 357**, illustrates, be placed in its proper linguistic, philosophic and historical context

25 At page 365:

"in my view, the "fundamental" nature of freedom of association relates to the central importance to the individual of his or her interaction with fellow human beings. The purpose of the constitutional guarantee of freedom of association is, I believe, to recognise the profoundly social nature of human endeavours and to protect the individual from state centred isolation in the pursuit of his or her ends.....

"Freedom of association is most essential in those circumstances where the individual is liable to be prejudiced by the actions of some larger and more powerful entity, like the government or an employer."

35 At page 366:

40 "What freedom of association seeks to protect is not associational activities *qua* particular activities, but the freedom of individuals to interact, with support, and be supported by, their fellow humans in the varied activities in which they choose to engage. But this is not an unlimited Constitutional licence for all group activity. The mere fact that an activity is capable of being carried out by several people together, as well as individually, does not mean that the activity acquires Constitutional protection from legislative prohibition or regulation."

5 I am in agreement with the above excerpts from the judgment of Dickson C.J.  
to the extent that freedom of association when understood in the context of  
the Constitution does not extend to freedoms to do anything but is subject  
to limitations. The association one forms or the association that one joins  
must be a lawful association or have a lawful and constitutional purpose. I  
10 have carefully considered the submission of the third respondent's counsel  
that the state cannot derogate justifiably from the freedom by for instance  
ensuring that all political organizations are registered as this would stifle  
the operations of a multi-party political system. Article 43 of the  
Constitution gives a general limitation on fundamental and other human  
15 rights and freedoms and provides that:

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

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

20 (2) Public interest under this article shall not permit –

(a) political persecution;

(b) detention without trial;

(c) any limitation of the enjoyment of the rights and freedoms prescribed by this  
chapter beyond what is acceptable and demonstrably justifiable in a free and  
25 Democratic society, or what is provided in this Constitution.

It is a presumption of law flowing from article 79 (1) of the Constitution  
which gives the function of Parliament to make laws on any matter for the  
peace, order, development and good governance of Uganda; that all laws  
are enacted in the public interest. By stating under article 43 (2) (c) that any  
30 limitation of the enjoyment of the rights and freedoms prescribed by this  
chapter beyond what is acceptable and demonstrably justifiable in a free  
and democratic society, or what is provided for in this Constitution, the  
Constitution clearly provides that limitation may be placed on the enjoyment  
of rights and freedoms that are acceptable and demonstrably justifiable in  
35 a free and Democratic society. Secondly, limitation of the enjoyment of the

- 5 rights and freedoms are permissible if the limitation to a right or freedom is contained in the Constitution itself.

### **Political Organisations under the Multi-Party System of Governance**

10 The freedom to form or join associations is a guaranteed freedom but does not extend to carrying out operations of a political party or organization without conforming to the principles stated in article 71 of the Constitution and without registration. The purpose of registration is demonstrated by article 71 in that members of the national organs of a political party shall be regularly elected by citizens of Uganda and political party shall be required by law to account for the source and use of their funds and assets. Article 15 71 (2) gives Parliament the mandate to prescribe the code of conduct for political organizations and political parties. Article 72 of the Constitution therefore limits the freedom of association as a political organization unless there is conformity with the principles in article 71 as well as registration of the political organization. Moreover, the context of article 71 20 of the Constitution is its placement in chapter 5 headed "*Political Systems*." Article 69 deals with envisaged political systems. Article 70 defines the Movement Political System and Article 71 defines the Multi-Party Political System. Article 72 deals with the right to form political organisations. Article 73 deals with regulation of Political Organisations and article 74 of 25 the Constitution deals with change of political system.

In **Collymore and Another v Attorney General of Trinidad and Tobago [1969] 2 All ER 1207**, the Privy Council with the Court of Appeal of Trinidad and Tobago holding that freedom of association is a separate right of association which does not cover the freedom to pursue the objects for which the 30 association is formed.

Lord Donovan agreed with the lower court holding that:

Sir Hugh Wooding CJ put the matter thus:

"In my judgment, then, freedom of association means no more than freedom to enter into consensual arrangements to promote the common

5 interest objects of the association group. The objects may be any of many.  
They may be religious or social, political or philosophical, economic or  
professional, educational or cultural, sporting or charitable. But the  
freedom to associate confers neither right nor licence for a course of  
conduct or for the commission of acts which in the view of Parliament are  
10 inimical to the peace, order and good government of the country."

... It therefore seems to their Lordships inaccurate to contend that the abridgment  
of the right to free collective bargaining and of the freedom to strike leaves the  
assurance of "freedom of association" empty of worth-while content.

15 In **Canadian Egg Marketing Agency vs Pineview Poultry Products Ltd, and  
Frank Richardson operating as Northern Poultry [1990] 3 S.C.R 157** the  
Supreme Court of Canada per Iacobucci and Bastarache JJ held at page 228  
that the purpose of article 2 (d) of the Canadian Charter is to protect the  
associational aspect and not the purpose of the association:

20 However, underlying the cases on section 2 (d) is the proposition that freedom of  
association protects only the associational aspect of activities, not the activity  
itself. If the activity is to be protected by the Constitution, that protection must be  
found elsewhere than in section 2 (d).

At page 231:

25 Although the various judgments in the *Alberta Reference* are not at one on the  
precise scope of freedom of association, they all agree that it remains essential  
to distinguish between associational aspect of the activity and the activity itself.

The conclusion is that the freedom of association maybe subject to  
regulation. For instance, it is better to form and register a political  
organization to carry out an agenda of one's choice within the regulatory  
30 law.

On the other hand, article 3 (4) of the Constitution does not require  
registration of any organization because it deals with action by citizens to  
restore the Constitutional order if need be by force of arms. In short article  
3 (4) of the Constitution allows an insurrection against persons who have  
35 unconstitutionally taken power or retained Power. The Peoples Power

5 under article 1 of the Constitution concerns power vested in the people of  
Uganda which can only be exercised through regular free and fair elections  
of all representatives irrespective of their political party association. It is  
the people to choose which persons from which parties or political  
organisations they want to represent them. This right extends to the right  
10 to restore elected Government after the Government has been overthrown  
by force of arms or unconstitutional means.

For that reason, the framework for bidding for political power through  
elected representatives in a movement system or a multi-party political  
system is important. This petition revolves around the question of whether  
15 the activities of the respondents were regulated or not in terms of article  
72 of the Constitution. I would quote article 72 of the Constitution before its  
amendment in 2005 before considering the amendments in context. Article  
72 (2) of the Constitution provides as follows:

72. Right to form political organizations.

20 (1) Subject to the provisions of this Constitution, the right to form political parties  
and any other political organizations is guaranteed.

(2) An organization shall not operate as a political party or organization unless it  
conforms to the principles laid down in this Constitution and it is registered.

(3) Parliament shall by law regulate the financing and functioning of political  
25 organizations.

It should be recalled that Article 29 (1) (e) enshrines the liberty of freedom  
to form or join a political or other civic organization. Under article 72 (2) an  
organization shall not operate as a political party or organization unless it  
conforms to the principles laid down in the Constitution and it is registered.  
30 Clearly the relevant organizations as mentioned in the Petitioner's petition  
were not registered and this is not in dispute. The dispute was whether they  
are political organizations and I have resolved the issue in the affirmative  
after considering annexure A to the affidavit of the petitioner and the  
response of the first, second and third respondents. Secondly, the question  
35 is whether the organization conforms to the principles laid down in the

5 Constitution. Obviously, where the organization is not a registered  
organization, it does not have to conform to any principles laid down in the  
Constitution because it does not qualify for consideration or operation  
under that article if it is not a political organization. This as held, is a  
question of fact and partly a question of law considered by checking the  
10 attributes and activities of the organization. The principles under article 71  
of the Constitution relate to the multiparty political system. Those  
principles apply to registered parties and political organizations. For ease  
of reference article 71 of the Constitution of the Republic of Uganda 1995  
before amendment of the Constitution provides as follows:

15 71. Multiparty political system.

A political party in the multiparty political system shall conform to the following  
principles—

- (a) every political party shall have a national character;
- (b) membership of a political party shall not be based on sex, ethnicity, religion  
20 or other sectional division;
- (c) the internal organization of a political party shall conform to the democratic  
principles enshrined in this Constitution;
- (d) members of the national organs of a political party shall be regularly elected  
from citizens of Uganda in conformity with the provisions of paragraphs (a) and  
25 (b) of this article and with due consideration for gender;
- (e) political parties shall be required by law to account for the sources and use  
of their funds and assets;
- (f) no person shall be compelled to join a particular party by virtue of belonging  
to an organization or interest group.

30 Article 71 of the Constitution is self-explanatory and there is no need to  
elaborate on the principles governing political parties and other political  
organizations. What is important in that article is that it prescribes the  
principles of the multiparty political system. I further emphasise that  
annexure “A” refers to the creation of a functional movement system. A

5 movement system can be a political ideology that can be promoted by a political organization. Before proceeding further with any analysis, it should be noted that article 71 of the Constitution was amended by the Constitution (Amendment) Act, 2005 by section 15 thereof which renumbered articles 71 as article 71 (1) and inserted clause (2) to article 71 and clause 2 now reads  
10 as follows:

(2) Parliament shall by law prescribe the code of conduct for political organizations and political parties and provide for the establishment of a national consultative forum for political parties and organizations with such functions as Parliament may prescribe.

15 For purposes of the classification of political systems, it is necessary to consider the multiparty political system vis-a-vis the movement political system. The movement political system by the time of promulgation of the Constitution of the Republic of Uganda was provided for by article 70 of the Constitution which stipulates as follows:

20 70. Movement political system.

(1) The movement political system is broad-based, inclusive and nonpartisan and shall conform to the following principles—

(a) participatory democracy;

(b) democracy, accountability and transparency;

25 (c) accessibility to all positions of leadership by all citizens;

(d) individual merit as a basis for election to political offices.

(2) Parliament may—

(a) create organs under the movement political system and define their roles; and

30 (b) prescribe from time to time any other democratic principle of the movement political system, as it may consider necessary.

One of the cardinal principles of the movement political system is that it is nonpartisan. In other words, it does not subscribe to any particular political organization. Instead, it is broad-based, inclusive and nonpartisan.

5 Secondly, it operates on the principle of accessibility to all positions of  
leadership by all citizens. Thirdly, individual merit is the basis for election  
to elective offices. The three principles I have singled out are important  
because they show a marked difference from the multiparty political  
system. In contrast, a multiparty political system *inter alia* stipulates that  
10 the internal organization of a political party shall conform to the democratic  
principles enshrined in the Constitution. In short it is the political party or  
organization which should present candidates for purposes of election to  
political offices such as member of Parliament to foster their ideology and  
agenda. This is through holding elections within the political organization or  
15 party for purposes of fielding candidates to contest for elective offices. A  
multiparty political system subscribes to the ideology that different parties  
or political organizations will be able to compete for elective offices and  
therefore such registered organizations are entitled to field candidates to  
elective offices which may be competed for by various political  
20 organizations.

By 1995, the Constitution clearly prescribed that the political system may be  
changed. This is prescribed in article 74 of the Constitution which provides  
that:

74. Change of political systems by referenda or elections.

- 25 (1) A referendum shall be held for the purpose of changing the political system—
- (a) if requested by a resolution supported by more than half of all members of Parliament;
  - (b) if requested by a resolution supported by the majority of the total membership of each of at least one half of all district councils; or
  - 30 (c) if requested through a petition to the Electoral Commission by at least one-tenth of the registered voters from each of at least two-thirds of the constituencies for which representatives are required to be directly elected under article 78(1)(a) of this Constitution.
- 35 (2) The political system may also be changed by the elected representatives of the people in Parliament and district councils by resolution of Parliament



5 supported by not less than two-thirds of all members of Parliament upon a petition to it supported by not less than two-thirds majority of the total membership of each of at least half of all district councils.

(3) The resolutions or petitions for the purposes of changing the political system shall be taken only in the fourth year of the term of any Parliament.

10 In 2005, the Constitution (Amendment) Act, 2005 and section 16 thereof amended article 72 of the Constitution by providing that:

Article 72 of the Constitution is amended by inserting after clause (3) clauses (4) and (5) which reads as follows:

15 (4) Any person is free to stand for an election as a candidate, independent of a political organization or political party.

(5) Parliament, shall by law, regulate the manner of participation in and financing of elections by individuals as independent candidates.

Obviously, the Constitution (Amendment) Act, 2005 introduced the right of individual persons who do not subscribe to any political organization or political party to stand for election as a candidate. In theory, an independent candidate does not have to conform to or subscribe to any political party in the multiparty political system. Secondly, in theory, it reintroduced elements of the movement political system after Ugandans had changed the political system from the movement system to the multiparty political system. The elements of the movement political system which was reintroduced by the amendment is the accessibility of all positions of leadership in elected offices to all citizens and individual merit as a basis for election to political office. In other words, by the amendment of the Constitution, the Constitution now does not forbid, for example, half of the members of Parliament or more to run on individual merit without subscribing to the constitution or ideology of any political party or organization.

Granted, article 74 of the Constitution allows Ugandans to adopt any political system of their choice provided the change of political system is brought about by referenda or elections. Article 74 (1) provides that a

5 referendum shall be held for the purposes of changing the political system  
if it is requested for by a resolution supported by more than half of all  
members of Parliament. A political system may also be changed if  
requested for by a resolution supported by the majority of the total  
membership of each of at least one half of all district councils in Uganda or  
10 if requested through a petition to the Electoral Commission by at least 1/10<sup>th</sup>  
of the registered voters from each of at least two thirds of constituencies  
for which representatives are required to be directly elected. Thirdly, the  
prevailing political systems may also be changed by the elected  
representatives of the people in Parliament and district councils through  
15 resolution of Parliament supported by not less than two thirds of all  
members of Parliament upon a petition to Parliament supported by not less  
than two thirds majority of the total membership of each of at least half of  
all district councils. Last but not least, such a resolution or petition for  
changing political systems shall be taken only in the fourth year of the term  
20 of any Parliament.

Article 71 of the Constitution of the Republic of Uganda 1995 is couched in  
mandatory language and states that a political party in the multiparty  
political system shall conform to certain principles. These principles cannot  
be changed without adherence to article 74 of the Constitution because  
25 political systems and the principles governing the political systems were  
clearly stipulated in articles 70 for the movement political system and  
article 71 for the multiparty political system respectively. Individual merit  
for purposes of competing for political office was not included in the  
multiparty political system under article 71 of the Constitution. By enacting  
30 an amendment in the Constitution (Amendment) Act, 2005 and section 16  
thereof to amend article 72, which article in effect amends article 71, this  
could only be done under article 74 because it is a change of political  
system. It introduces individual merit and makes it possible for the majority  
of members of Parliament or even the minority to be independent of any  
35 multiparty political system or political party or organization under that  
system. I accept the submissions of the Petitioners Counsel and the

5 authorities he cited and I find that individual merit has the potential to water  
down the multiparty political system of governance. It should further be  
noted that the multiparty political system as provided for under article 71  
gives the characteristics of a multiparty political system. It *inter alia*,  
provides that every political party shall have a national character. However,  
10 an individual need not have a national character. Secondly, article 71  
provides that the internal organization of a political party shall conform to  
the democratic principles enshrined in the Constitution. In contrast, an  
individual does not have to be elected by anybody to contest for any elective  
office. Such an individual, does not need the consent of anybody unlike a  
15 candidate in a political organization who has to be elected in the primaries  
to offer himself or herself as a candidate for election as a member of  
Parliament. Further, article 71 (d) of the Constitution provides that  
members of the national organs of the political party shall be regularly  
elected from citizens of Uganda in conformity with the provisions of article  
20 71 of the Constitution. Independent candidates do not have to be regularly  
elected nor do they have to contest in primaries unlike their counterparts  
in the multiparty political system. Moreover, it is possible for a candidate  
who lost in primaries in a political organization or party to give himself or  
herself another chance to run as an independent candidate. This would  
25 definitely water down the multiparty political system by allowing individual  
citizens to contest for the same elective offices without conforming to any  
democratic principles governing political party organizations thereby also  
undermining democracy in the registered political party or organization.  
This also fundamentally mixes the multiparty political system with the  
30 movement political system which operates on the specified principles  
under article 70 of the Constitution.

The Constitution (Amendment) Act, 2005 in the preamble thereof indicates  
that the amendment of the Constitution was in accordance with article 261.  
However, a reading of the other articles of the Constitution clearly indicates  
35 that article 72 which introduced the amendment allowing individual merit or  
independents to contest for office in a multiparty political system deals with

5 the right to form political organizations and not the principles by which  
political parties are to conform to under article 71 of the Constitution. For  
emphasis article 72 of the Constitution clearly guarantees the rights to form  
political parties and other political organizations and secondly it stipulates  
10 unless it conforms to the principles laid down in the Constitution and it is  
registered.

Further, Article 260 of the Constitution sets out amendments to the  
Constitution which require a referendum. Secondly, article 261 sets out  
amendments to the Constitution which require approval by district councils.  
15 For ease of reference, I will out the two articles before concluding the issue  
of whether the amendment to the principles governing the multiparty  
political system required a referendum or any other mode of amendment  
provided for in the Constitution. Article 260 of the Constitution provides as  
follows:

20 260. Amendments requiring a referendum.

(1) A bill for an Act of Parliament seeking to amend any of the provisions specified  
in clause (2) of this article shall not be taken as passed unless—

(a) it is supported at the second and third readings in Parliament by not less than  
two-thirds of all members of Parliament; and

25 (b) it has been referred to a decision of the people and approved by them in a  
referendum.

(2) The provisions referred to in clause (1) of this article are—

(a) this article;

(b) Chapter One—articles 1 and 2;

30 (c) Chapter Four—article 44;

(d) Chapter Five—articles 69, 74 and 75;

(e) Chapter Six—article 79(2);

(f) Chapter Seven—article 105(1);

5 party. Secondly, this was done by enabling Parliament to regulate the mode  
of participation and financing of elections by individuals seeking political  
office as independent candidates. Such independent candidates do not have  
to belong to any political organization or political party. Inasmuch as the  
amendment was made to article 72, it has the effect of amending article 71  
10 which gives the attributes of the multiparty political system. Article 71 does  
not include individual candidates but solely provides for the running of  
political party organizations or parties and their internal workings.  
Moreover, article 72 of the Constitution in the head noted states that it is  
about the right to form political organizations. This is not about the right of  
15 any individual to independently stand for election as the attributes of a  
multiparty political system are already catered for under article 71 of the  
Constitution. There was by amendment introduced in article 72 (4) and (5),  
a change in the political system which affects the classification or definition  
of the multiparty political system under article 69 as well as article 71 of the  
20 Constitution and by introducing in effect any other democratic and  
representative political system. The new system has the attributes of both  
the movement political system as well as the multiparty political system  
and the question *inter alia* is whether such a system can be introduced  
under article 261 of the Constitution. This is a point of law that arises and is  
25 derived from the petition, the answer to the petitions and affidavit evidence  
of the parties as well as the submissions of counsel. Article 261 of the  
Constitution was quoted in the preamble to the Constitution (Amendment)  
Act 2005. Articles which are required to be amended under article 261  
are, articles 5 (2), 152, 176 (1), 178, 189 and 197. On the face of it, the  
30 movement political system and the multiparty political system could not to  
be changed or modified in their attributes by moving Parliament to amend  
the Constitution under article 261 of the Constitution but that is not the  
matter in this Petition.

Article 261 of the Constitution provides that:

35 261. Amendments requiring approval by district councils.

5 ~~Chapter Eight-- article 128(1); and~~

~~Chapter Sixteen~~

Of ~~particular~~ relevance is article 260 (2) (d) of the Constitution which falls under ~~political systems~~ and includes articles 69, 74 and 75 among the articles which can ~~only be~~ changed through referendum. Article 69 provides  
10 for the ~~political systems~~ in Uganda:

~~Political systems~~

(1) ~~The~~ people of Uganda shall have the right to choose and adopt a political system of their choice through free and fair elections or referenda.

(2) ~~The~~ political systems referred to in clause (1) of this article shall include—

15 (i) ~~the~~ movement political system;

(ii) ~~the~~ multiparty political system; and

(iii) ~~any~~ other democratic and representative political system.

The people of Uganda have a right to choose and adopt a political system of their choice through free and fair elections or through referenda. The  
20 people of Uganda have adopted the multiparty political system by 2005 when amendments to the political system were reintroduced. The ordinary meaning ascribed to the words and phrases used in articles 69, 70, 71 and 72 clearly since 1995 show that Uganda has been exposed to two political systems thus far. The first political system was the movement political system whose attributes were stipulated in article 70 of the Constitution of  
25 read together with article 69 of the Constitution. The second political system is the multiparty political system whose attributes are deduced from reading article 69 (2) together with article 71 of the Constitution.

The ~~multi~~ party political system is the current political system in operation  
30 in Uganda. By introducing an amendment to article 72 through the introduction of clauses (4) and (5), the multiparty political system was changed by introducing another principle allowing any person to stand for election as a candidate independent of a political organization or political

5 (1) A bill for an Act of Parliament seeking to amend any of the provisions specified in clause (2) of this article shall not be taken as passed unless—

(a) it is supported at the second and third readings in Parliament by not less than two-thirds of all members of Parliament; and

10 (b) it has been ratified by at least two-thirds of the members of the district council in each of at least two-thirds of all the districts of Uganda.

(2) The provisions referred to in clause (1) of this article are—

(a) this article;

(b) Chapter Two—article 5(2);

(c) Chapter Nine—article 152;

15 (d) Chapter Eleven—articles 176(1), 178, 189 and 197.

The effect of the amendment introduced by article 72 (4) and (5) of the Constitution is to change or modify the multiparty political system. It is expressly clear from article 69 that this can only be done by referenda or free and fair elections. I have further considered article 262 of the  
20 Constitution which deals with the amendment of the Constitution by Parliament. Article 262 provides that:

**262. Amendments by Parliament.**

A bill for an Act of Parliament to amend any provision of the Constitution, other than those referred to in articles 260 and 261 of this Constitution, shall not be  
25 taken as passed unless it is supported at the second and third readings by the votes of not less than two-thirds of all members of Parliament.

Article 262 of the Constitution does not apply to any modification of a political system which are governed by articles 69, 70 and 71 of the Constitution and I find that it is inapplicable to the amendment introduced  
30 by the Constitution (Amendment) Act 2005 in article 72. Article 72 (4) and (5) of the Constitution is inconsistent with article was 69, 70 and 71 of the Constitution and cannot be read in harmony because of the mode of amendment of the Constitution.

5 In conclusion, I would resolve issue number 2 as follows: The actions of the first and second Respondents can be carried out as individuals and they have a freedom of association but the moment they formed a political organization as evidenced by Annexure "A" which is their press statement, they had to be regulated so that they can compete on the same  
10 space as other political parties or organization. Their source of funding would be under scrutiny and they would be under obligation to account. Their organization styled the People Power/People Power Movement/People Power Uganda, by mobilising political activities and membership would be under regulatory legislation. Sponsoring a  
15 political agenda and offering a platform for candidates for election to political offices as a political organization would be in contravention of articles 72 (2) of the Constitution in so far as the above mentioned organizations are unregistered political organizations and are not subject to regulations applicable to political parties or organizations as  
20 envisaged under the multiparty political system enshrined in articles 69, 71 and 72 of the Constitution. There is however no evidence that the first and second Respondent sponsored candidates. They canvassed support for candidates of other parties.

Secondly, any freedom of Association enshrined under article 29 of the  
25 Constitution could not extend to campaigning for candidates standing as independents candidates irrespective of the express wording of article 72 (4), (5) of the Constitution which articles purport to modify the multiparty political system without compliance with the Constitution. It would, in my judgment be unconstitutional for anybody to field a  
30 candidate as an independent candidate or stand as an independent candidate under the multiparty political system without a modification of the multiparty political system as envisaged by article 69 of the Constitution. That however is an incidental point of law.

Last but not least the purpose of defence of the Constitution by the first  
35 and second respondent was not proved. What was proved was a



5    purported defence of Constitution by the third Respondent and half-  
heartedly by the first and second Respondents in forming an organization  
reflected in annexure A to the petitioner's affidavit in support of the  
petition. As noted uprising to restore Constitutional orders only arises  
where the Constitution has been overthrown through unlawful means.  
10    There was in place after the 2016 general elections an elected Parliament  
with elected an elected President sworn in according to the law. The  
Election of the President was not overturned by the Supreme Court but  
upheld. Efforts to upset that Constitutional arrangement would be  
unlawful and unconstitutional. Any freedom of association could not  
15    extend to fulfil a purpose of removing the elected President or  
Government from office. What remained was to strategise for the next  
general elections where freedom of association for that purpose could  
be asserted.

### **Issue three**

20    Whether the actions of the third Respondent under his organization the  
people's Government of participating in political activities, declaring  
himself as the People's President, appointing cabinet and ministers are  
inconsistent and contravene articles are 72 (2), 98 (1), 103 (1) and 114 (1) of  
the Constitution of Uganda 1995.

25    Having found that an independent candidate could not exist under the  
multiparty political dispensation, and that all the political organizations or  
parties are required to be registered, I do not need to repeat the  
contravention of article 72 (2) of the Constitution of the Republic of Uganda.  
However, the question of fact is that the third Respondent was a Forum for  
30    Democratic Change candidate, a registered political party or organization.

In relation to article 98 (1) of the Constitution of the Republic of Uganda, it is  
stipulated that's there shall be a President of Uganda who shall be the Head  
of State, Head of Government and Commander in Chief of the Uganda  
People's Defense Forces and the Fountain of Honor.

5     Setting up oneself as a shadow head of state and setting up a shadow Government is just a mockery. What is unconstitutional is to run a political organization without registration under article 72 (2) of the Constitution. Secondly, what is unlawful is to purport to restore duly elected Government without following the route of a petition to the Supreme Court to that effect.

10    Any political organization which is registered is subject to Parliamentary control through the relevant law regulating their organization and operation. The third Respondent contested as a Forum for Democratic Change (FDC) candidate. In the premises, there was no inconsistency with article 98 (1) of the Constitution of the Republic of Uganda as there was no

15    separate head of state that had been lawfully sworn in. Similarly, there was no election of another President under article 103 (1) of the Constitution of the Republic of Uganda and therefore there was no contravention of the Constitution. Further, there was no contravention of article 114 (1) of the Constitution which deals with the appointment of cabinet ministers and

20    other ministers by the President of the Republic of Uganda. In the premises, I would answer issue number three in the negative.

#### Issue 4

Whether the fourth Respondent's failure to halt the activities of the first, second and third Respondents contravenes article 119 (4) (a) of the

25    Constitution of Uganda, 1995. The material article of the Constitution cited above provides as follows:

(4) The functions of the Attorney General shall include the following –

(a) to give legal advice and legal services to the Government on any subject;

The Attorney General is the legal representative of Government in

30    proceedings in the courts of law or other legal proceedings to which the Government is a party under article 119 (4) (c) of the Constitution of the Republic of Uganda.

The Petitioner's Counsel submitted that the actions of the first, second and third Respondents offend the Constitution, The Political Parties and

5 Organizations Act and have caused and continue to cause social disorder and political chaos. The Petitioner's Counsel submitted that the fourth Respondent as the principal legal adviser of Government should have advised the responsible organs of Governments to halt the illegal and unconstitutional actions of the Respondents.

10 I do not agree. The Attorney General is only a legal representative in court proceedings and a duty to advise Government cannot be considered in isolation of the duty of the relevant department. The Attorney General cannot be found to be in violation of his duties without evidence to support a finding that his opinion was sought or called for. The Attorney General

15 has no legal duty to advise Government to do what they are supposed to do but to give legal advice where it is sought or called for. For instance, the Attorney General cannot ask the minister of health to carry out his duties which he or she is sworn to do but may give legal advice if it is required. Whatever happens in the country does not have to be within the knowledge

20 of the Attorney General and only his opinion may be sought on particular matters referred for his or her office for that purpose for his legal advice.

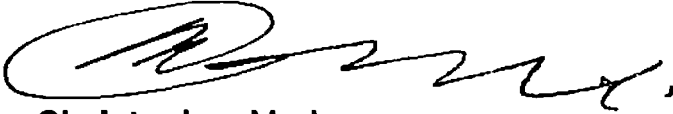
For that reason, I would answer issue number four in the negative.

In the premises, only issues 1 and 2 succeed as stated in the judgment with each party to bear its own costs. I would issue the following declaration:

- 25 1. The actions of the first and second Respondents in establishing an unregistered political organization/party, under the names and style "People Power Movement", "People Power Uganda" and "People Power" used interchangeably and mobilising political activities and membership, appointing regional coordinators with a
- 30 view to influencing political process, sponsoring political agenda and offering a platform to candidates for election to political offices for purposes of participating in governance are in contravention of articles 72 (2) of the Constitution of Uganda 1995.

- 5        2.     The Petition having partially succeeded on a point of public interest,  
             I would order that it succeeds with no order as to costs.

Dated at Kampala the 27<sup>th</sup> day of April 2021



10     **Christopher Madrama**

**Justice of Constitutional Court**

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
*[Coram: Buteera, DCJ; Kakuru, Bamugemereire, Madrama, Mulyagonja; JJA/JJCC]*  
**CONSTITUTIONAL PETITION NO. 16 OF 2019**

**NTARE ADENS RUTARO:..... PETITIONERS**

**VERSUS**

<b>1. JOEL SSENYONYI</b> <b>2. ROBERT KYAGULANYI SENTAMU</b> <b>3. BESIGYE KIZZA</b> <b>4. ATTORNEY GENERALEAL</b>	}	<b>.....RESPONDENTS</b>
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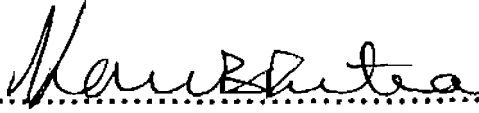
**JUDGMENT OF RICHARD BUTEERA, DCJ**

I have had the benefit of reading in draft the Judgment of my learned sister Irene Mulyagonja, JA/JCC.

I agree with her that this petition ought to be dismissed for the reasons she has set out in her judgment. I also concur with the orders she has proposed.

As Kakuru and Bamugemereire, JJA/JJCC also agree, by a majority of 4 to 1, this petition is hereby dismissed with no orders as to costs.

Dated at Kampala this.....<sup>27<sup>th</sup></sup>.....day of.....<sup>April</sup>.....2021

..........  
**RICHARD BUTEERA**  
**DEPUTY CHIEF JUSTICE**

**THE REPUBLIC OF UGANDA**  
**IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA**  
**CONSTITUTIONAL PETITION NO.16 OF 2019**

**NTARE ADENS RUTARO ..... PETITIONER**

**VERSUS**

- 1. JOEL SSENKYONYI**
- 2. ROBERT KYAGULANYI SENTAMU**
- 3. BESIGYE KIZZA**
- 4. ATTORNEY GENERAL ..... RESPONDENTS**

**CORAM: Hon. Mr. Justice Richard Buteera, DCJ**  
**Hon. Mr. Justice Kenneth Kakuru, JA/JCC**  
**Hon. Lady Justice Catherine Bamugemereire B.K, JA/JCC.**  
**Hon. Mr. Justice Christopher Madrama, JA/JCC**  
**Hon. Lady Justice Irene Esther Mulyagonja, JA/JCC**

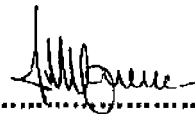
**JUDGMENT OF JUSTICE KENNETH KAKURU, JA/ JCC**

I have had the opportunity of reading in draft the Judgment of my learned sister Hon. Irene Mulyagonja, JA/JCC.

I agree with her that, this petition ought to fail for the reasons she has set out in her judgment.

I also agree with the orders she has proposed and I have nothing useful to add.

**Dated at Kampala this 27<sup>th</sup> day of April 2021.**



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

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

**CONSTITUTIONAL PETITIONAL NO. 016 of 2019**

**NTARE ADENS RUTARO..... PETITIONER**

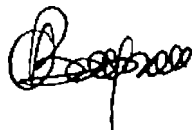
**VERSUS**

- 1. JOEL SENYONYI**
- 2. ROBERT KYAGUANYI SENTAMU**
- 3. BESIGYE KIZZA**
- 4. ATTORNEY GENERAL ..... RESPONDENTS**

**Coram:**           Hon. Mr. Justice Richard Buteera, DCJ  
                      Hon. Mr. Justice Kenneth Kakuru, JCC  
                      Hon. Lady Justice Catherine Bamugemereire, JCC  
                      Hon. Mr. Christopher Madrama, JCC  
                      Hon. Lady Justice Irene Esther Mulyagonja, JCC

**JUDGMENT OF CATHERINE BAMUGEMEREIRE, JCC**

I have had the benefit of reading in draft the Judgment of my Learned Sister Irene Mulyagonja JCC. I agree with her reasoning and conclusions.



**Catherine Bamugemereire**  
**Justice of the Constitutional Court**

27-04-2021