

would have been charged under the Penal Code Act for holding illegal demonstrations being detained as terrorists.

Further that he observed that the Act does not provide for Judicial oversight in the issuance of warrants for searches and arrests enforcing the same which has led to breach of people's freedoms guaranteed under the Constitution. That further the unlimited power given to the Minister to Intercept Communication, in Section 19 of the Anti-Terrorism Act has the chilling effect of preventing people from expressing themselves which is contrary to Article 29(1)(a) of the Constitution. That Regulation of Interception of Communications Act due to its failure to provide for Judicial Safeguards is unconstitutional for breaching the right to privacy guaranteed under Article 27 of the Constitution.

Mr. Ssebagala further claims that he observed that Section 11(1)(c) of the Anti-Terrorism Act proscribed meetings to be addressed by terrorists even when the presumed terrorist is not to talk about terrorism. That taking into account the Minister's power to declare any person or organization terrorist, the section has the effect of limiting the freedoms of association and assembly guaranteed in Article 29(1)(d) & (e) of the Constitution.

It is because of this that he caused this petition to be lodged through his lawyers Rwakafuzi & Co. Advocates.

The Petition

The Petition was brought under Article 137 (3) of the Constitution of the Republic of Uganda 1995 and the Constitutional Court (Petitions and References) Rules S.I 91/2005 seeking declarations that;

- (a) S.7(2) of the Anti-Terrorism Act, (as amended) is over broad and thus fails to define the offence of terrorism contrary to the requirement in Article 28(12) of the Constitution that every offence must be defined and ascertained.
- (b) S.9(1) and 9(2) of the Anti-Terrorism Act is unconstitutional for abridging freedom of expression guaranteed in Article 29(1) (a) of the Constitution;

(c) S.10(2) of the Anti-Terrorism Act is inconsistent with the Constitution for breaching the right to be presumed innocent guaranteed in Article 28(3) (a) and the freedom of association guaranteed in Article 29(1) (e) of the Constitution;

5 (d) S.11(1) (c) of the Anti-Terrorism Act is inconsistent with the Constitution for limiting the freedoms of association and expression guaranteed in Article 29(1) (a) and (e) of the Constitution.

10 (e) S.19 of the Anti-Terrorism Act which empowers the Minister to authorize any security person to secretly intercept communication and search the premises of any individual infringes the right to privacy guaranteed in Article 27 of the Constitution.

15 (f) The Regulation of Interception of Communications Act to the extent that it provides for interception of communication without judicial safeguards is unconstitutional for breaching the right to privacy guaranteed in Article 27 of the Constitution.

20 *Article 137 of the Constitution of the Republic of Uganda provides for Questions as to the interpretation of the constitution and states as far as is relevant that;*

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

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

25 **(3) A person who alleges that-**

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

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

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

5 In clause 3 the Article clearly shows that only a person can Petition the Constitutional Court. In the instant case however, the Petition as presented to this court does not clearly state the personality status of the Petitioner. It therefore follows that the Petition is not properly before this court. On this ground alone I would dismiss the Petition for being improperly before the court.

10 However, for purposes of completeness I shall consider the merits of the petition.

Representation

15 At the hearing of the Petition, the Petitioner was represented by Ms. Nakigudde while the respondent was represented by Geoffrey Madette, Senior State Attorney.

Burden of proof

20 In the case of Tusingwire v Attorney General (SUPREME Court Constitutional Appeal 4 of 2016) [2017] UGSC 11 (05 May 2017); It was held that S. 106 of the Evidence Act puts the burden of proof in Civil Proceedings when a fact is especially within the knowledge of that person, on that person who alleges to know those facts. Rule 12 (I) of the Constitutional Court Petitions and References Rules provides that (all evidence at the trial in favour or against shall be by way of affidavits filed in Court.)

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30 In the case of Phillip Karugaba Vs. Attorney General Constitutional Petition No. 11 of 2002 at page 20, it was held that the petitioner has the burden to show that the rule or law he is challenging is clearly inconsistent and incompatible with the principles laid down in the constitution'

In the Constitutional Petition No 14 of 2011 Advocate Coalition and for Development and Environment Vs. Attorney General it was held

that it is trite law that Courts of law act on credible evidence adduced before them and do not indulge in conjecture attractive reasoning or fanciful theories

The Jurisdiction of the **Constitutional Court**.

- 5 The jurisdiction of the Constitutional Court of Uganda is derived from the provision of Article 137 of the 1995 Constitution.

Article 137 provides that:

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

(3) A person who alleges that__

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

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

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

a) grant an order of redress; or

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

- 25 The Supreme Court has interpreted this Article in several cases. The first case is **Ismail Serugo v Kampala City Council Constitutional Appeal No. 2 of 1998 (SC)**. This case was referred to by Odoki CJ, (as he then was) in the case of **Raphael Baku Obudra v Attorney General Constitutional Appeal No. 1 of 2003 (SC)**. While
30 addressing the issue of what amounts to a cause of action in constitutional matters. He observed:

5 "According to the principles in *Serugo* (supra) the petitioner had to show that the provisions of the section he is complaining about violated a right guaranteed by the Constitution. The instant petition does not allege those facts, which are alleged to contravene the provisions of the Constitution or those that are inconsistent with its provisions. For those reasons we think the petition does not disclose a cause of action. There would be nothing to interpret. The petition would be dismissed with costs.

10 **In *Serugo vs Kampala City Council, Constitutional Appeal No.2 of 1998***, this Court pronounced itself on the meaning of a cause of action as regards Constitutional petitions. Generally, the main elements required to establish a cause of action in a plaint apply to a Constitutional petition. But specifically, I agree with the opinion of Mulenga, JSC in that case that a petition brought under Article 137 (3) of the Constitution "sufficiently disclose a cause of action if it describes the act or omission complained of and shows the provision of the Constitution with which the act or omission is alleged to be inconsistent or which is alleged to have been contravened by the act or omission and pray for a declaration to that effect."

20 *In my opinion, where a petition challenges the constitutionality of an Act of Parliament, it sufficiently discloses a cause of action if it specifies the Act or its provision complained of and identifies the provision of the Constitution with which the Act or its provision is inconsistent or in contravention, and seeks a declaration to that effect. A liberal and broader interpretation should in my view be given to a Constitutional petition than a plaint when determining whether a cause of action has been established."* (sic)

30 **Principles of constitutional interpretation**

The principles of Constitutional interpretation have been laid down in several decided cases by the Supreme Court, this Court and Courts of other jurisdictions. They have also been expounded upon in a number of legal literature of persuasive authority. These principles are;

1. 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 with or in contravention of the Constitution is null and void to the extent of the inconsistency. See: - Article 2(2) of the Constitution.
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2. In determining the constitutionality of a legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining constitutionality, of either an unconstitutional purpose or an unconstitutional effect animated by the object the legislation intends to achieve. See:- **Attorney General vs. Salvatori Abuki Constitution Appeal No. 1 of 1998.**(SCU)
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3. The Constitution must be interpreted as a whole. This principle was settled in the case of **South Dakota V North Carolina 192 US 268 (1940) 448** by the Supreme Court of the US that “no single provision of the constitution is to be segregated from others and be considered alone but that all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the purpose of the instrument”. Therefore, in law, the Constitution is a wholesome legal document and all provisions must be regarded as constituting it. The normal logic in this canon is that in order to ascertain the true meaning and intention of the legislators, all relevant provisions must be considered. It is thus dangerous to consider any one particular human right provision in isolation of all others, and any Court which tries to do this is bound to get an inconsistent conclusion.
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4. Where words are clear and unambiguous, they must be given their primary, plain, ordinary and natural meaning. Such language must be given in its common and natural sense and, natural sense means that natural sense which they bore before the Constitution came into force. The cardinal rule for the construction of Acts in parliament is that they should be construed according to the situation expressed in the Acts themselves. The tribunal that has to construe an Act of a legislature or indeed any other document has to determine the
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intention as expressed by the words used...if the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law giver.

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5. Narrow construction to be preferred in case of derogation from a guaranteed right. It is not in doubt that save for the rights mentioned in article 44 which are stated to be non-derogable, the rest can be limited. But the power to do so is not at large and is not to be arbitrarily exercised by Courts. Indeed, under Article 43, it is stated that in the enjoyment of the rights and freedom prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedom of others or the public interest. Public interest is in turn stated not to permit among others any limitation of the enjoyment of those rights beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in the constitution.
 6. A constitutional provision containing a fundamental right is a permanent provision intended to cater for all times to come and must be given an interpretation that realizes the full benefit of the guaranteed right (**Attorney General V Uganda Law Society Constitutional Appeal No. 1 of 2006 (SC)**).
 7. The Constitutional Court has no jurisdiction in any matter which does not involve the interpretation of a provision of the Constitution. Also for the Constitutional Court to have jurisdiction, the petition must show on the face of it that the interpretation of a provision of the Constitution is required. An application for redress can be made to the Constitutional Court only in the context of a petition under Article 137 Constitution, brought principally for interpretation of the Constitution (**Attorney General v Tinyefuza Constitutional Appeal No. 1 of 1997**).

Resolution of the issues

The parties did not file written submissions as directed by court. However, the record has a joint scheduling memorandum.

5 The petitioner sought for five declarations which can be deduced from the agreed issues.

Issue 1 *Whether or not section 7(2) of the Anti-Terrorism Act is inconsistent with or in contravention of Article 28(12) of the Constitution of the Republic of Uganda 1995?*

10 The long title of the Anti-Terrorism Act, Act No. 14 of 2002 provides that the Act was enacted to provide for the punishment of persons who plan, instigate, support, finance or execute acts of terrorism; to prescribe terrorist organizations and to provide for the punishment of persons who are members of, or who profess in public to be members of, or who convene or attend meetings of, or who support
15 or finance or facilitate the activities of terrorist organizations; to provide for investigation of acts of terrorism and obtaining information in respect of such acts including the authorizing of the interception of the correspondence of and the surveillance of persons suspected to be planning or to be involved in acts of terrorism; and
20 to provide for other connected matters.

The Anti-Terrorism Act, 2002 came into force on 7th June 2002. The Act has since been amended three times, in 2015, 2016 and 2017 through the Anti-Terrorism (Amendment) Act, Act No. 9 of 2015, the Anti-Terrorism (Amendment) Act, 2016 and the Anti-Terrorism
25 (Amendment) Act, 2017.

The Anti-Terrorism (Amendment) Act, Act No. 9 of 2015 was enacted and assented to on 19th June 2015 and its long title provides that it is “An Act to amend the Anti-Terrorism Act, 2002 to harmonise the definition of “funds” with that contained in the International
30 Convention for the Suppression of the Financing of Terrorism, 1999; to amend the definitions of “terrorism” and “acts of terrorism” to include the international aspects envisaged by the Convention; and for related purposes.” Act No. 9 of 2015 amendment came into force on 19th June 2015.

Therefore, the Anti-Terrorism Act was enacted by the Parliament of Uganda in keeping with International Law and treaty obligations under Objective XXVII(i)(b) of the National Objectives and Directive Principles of State Policy.

5 **Section 2** of the **Anti-Terrorism Act, 2002 (As Amended)** provides that *unless the context otherwise requires, terrorism has the meaning assigned to it in section 7*”.

Section 7(2) of the **Anti-Terrorism Act, 2002** as amended by the **Anti-Terrorism (Amendment) Act, 2017** provides that:

10 “(2) A person commits an act of terrorism who, for purposes of influencing the Government or an international organization or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out all or any of the following
15 acts—

(a) intentional and unlawful manufacture, delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or Government facility, a public transportation system or an
20 infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss;

(b) direct involvement or complicity in the murder, kidnapping, abducting, maiming or attack, whether actual, attempted or
25 threatened, on the person, official premises, private accommodation, or means of transport or diplomatic agents or other internationally protected persons;

(c) direct involvement or complicity in the murder, kidnapping, abducting, maiming or attack, whether actual, attempted or threatened
30 on the person, official premises, private accommodation, or means of transport or diplomatic agents or other internationally protected persons;

(d) intentional and unlawful provision or collection of funds or services, or providing or receiving training, whether attempted or actual, with

the intention or knowledge that any part of the funds or services or training may be used to carry out any of the terrorist activities under this Act;

- 5 *(e) direct involvement or complicity in the seizure or detention of, and threat to kill, injure or continue to detain a hostage, whether actual or attempted in order to compel a State, an international inter-governmental organisation, a person or group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage;*
- 10 *(f) unlawful seizure of an aircraft or public transport or the hijacking of passengers or group of persons for ransom;*
- (g) (Deleted)*
- 15 *(h) unlawful importation, sale, making, manufacture or distribution of any firearms, explosive, ammunition or bomb and generally providing weapons to terrorist organisations;”*
- (i) intentional development or production or use of, or complicity in the development or production or use of a biological weapon;*
- (j) unlawful possession of explosives, ammunition, bomb or any materials for making of any of the foregoing.*
- 20 *(k) any act of violence aimed at causing the death of a civilian not engaged in armed conflict;*
- (l) creating a serious risk to the health or safety of the public or a section of the public;*
- (m) causing serious damage to property;*
- 25 *(n) releasing any dangerous, hazardous, toxic or radioactive substance or microbial or other biological agents or toxins into the environment;*
- 30 *(o) interfering with an electronic system resulting in the disruption of the provision of communication, financial, transport or other essential or emergency services;*

- (p) any act prejudicial to national security or public safety;
- (q) possessing property for commission of acts of terrorism;
- (r) arranging for the retention or control of property belonging to a terrorist;
- 5 (s) knowingly dealing in property owned or controlled by terrorist organisations;
- (t) soliciting or giving support to terrorist organisations;
- (u) committing an act of terrorism in a foreign state;
- (v) promoting any offence under this Act;
- 10 (w) unlawful possession of materials for promoting terrorism such as audio or video tapes, written literature or electronic literature;
- (x) (Repealed).

Article 28(12) of the **Constitution of Uganda 1995** provides that:

- 15 **“Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.”**

Section 7(2) of the Anti-Terrorism Act, 2002 (As Amended) defines the offence of terrorism and **Section 7(1)** of the **Anti-Terrorism Act** prescribes the penalty for it as follows;

- 20 **“(1) Subject to this Act, a person who engages in or carries out any act of terrorism commits an offence and is, on conviction—**
- (a) liable to suffer death, if the offence directly results in the death of any person; and**
- (b) in any other case, liable to imprisonment for life.”**

- 25 It is therefore my finding that the offence of terrorism is properly defined, its elements clearly outlined and its penalty prescribed in Section 7(1) (a) & (b) and 7(2) of the Anti-Terrorism Act, 2002 (As Amended). The impugned provision cannot be said to be inconsistent

with or in contravention of Article 28(12) of the Constitution of Uganda.

Issue 2 Whether or not Sections 9(1) and 9(2) of the Anti-Terrorism Act are inconsistent with or in contravention of Article 29(1) (a) of the Constitution of the Republic of Uganda 1995?

Section 9(1) and (2) of the Anti-Terrorism Act, 2002 (As Amended) provides for establishment of terrorist institutions and states as follows:

“(1) Any person who establishes, runs or supports any institution for—

10 *(a) promoting terrorism;*

(b) publishing and disseminating news or materials that promote terrorism; or

(c) training or mobilising any group of persons or recruiting persons for carrying out terrorism or mobilising funds for the purpose of terrorism;

commits an offence and shall be liable on conviction, to suffer death.

15 *(2) Any person who, without establishing or running an institution for the purpose, trains any person for carrying out terrorism, publishes or disseminates materials that promote terrorism, commits an offence and shall be liable on conviction, to suffer death. “*

Article 29(1)(a) of the 1995 Constitution of Uganda states that:

“(1) Every person shall have the right to—

20 *(a) freedom of speech and expression which shall include freedom of the press and other media.”*

It is important to note that Chapter 4 of the Constitution of the Republic of Uganda guarantees various Fundamental rights and freedoms. Article 20 of the Constitution provides that; “Fundamental rights and freedoms of the individual are
25 inherent and not granted by the State.

The rights and freedoms enshrined under Article 29(1)(a) of the Constitution are not non-derogable as those stated under Article 44 of the Constitution of the Republic of Uganda.

Article 44 of the Ugandan Constitution states that:

“Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—

5 *(a) freedom from torture and cruel, inhuman or degrading treatment or punishment;*

(b) freedom from slavery or servitude;

(c) the right to fair hearing;

(d) the right to an order of habeas corpus.”

10 This means that the right to freedom of speech and expression which includes freedom of the press is not an absolute. The exercise of such right can accordingly be regulated. Article 43(1) of the Constitution of Uganda of the Republic of Uganda, 1995, provides that in the enjoyment of rights and freedoms prescribed in this Chapter, no persons shall prejudice the fundamental or other human rights and freedoms of others.

15 Objective III(v) of the National Objectives and Directive Principles of State Policy enjoins the State to provide a peaceful, secure and stable political environment which is necessary for economic development. Objective IV(i) of the National Objectives and Directive Principles of State Policy provides for national
20 sovereignty, independence and territorial integrity. It states that the State and citizens of Uganda shall at all times defend the independence, sovereignty and territorial integrity of Uganda.

It is therefore clearly demonstrated in the above stated provisions that International Law and International Human Rights Instruments recognize limitations to the right to freedom of expression. **Articles 19(2) and (3) of the**
25 **International Covenant on Civil and Political Rights (ICCPR)** states:

“(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

30 *(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject*

to certain restrictions, but these shall only be such as are provided by law and are necessary;

(a) For respect of the rights or reputation of others;

5 *(b) For the protection of national security or public order (ordre public), or of public health or morals.”*

The Respondent submits that the limitation on the individual right to freedom of expression outlined in Article 19(3)(a) of the ICCPR is similar to Articles 9 (1) & (2) and 27(2) of the African Charter and Article 43(1) of the Constitution of the Republic of Uganda.

10 **Article 9** of the African Charter provides as follows:

(1) “Every individual shall have the right to receive information.

(2) Every individual shall have the right to express and disseminate his opinion within the law.”

15 All these provisions are connected to **Article 27(2)** of the African Charter which states that:

“The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.”

20 This court held in **Buwembo Vs Attorney General Constitutional Reference No. 1 of 2008** that the right to freedom of expression can be limited to protect other competing fundamental rights including public interest, State security, and sovereignty. Freedom of expression in Uganda has been subject to a number of restrictions since colonial period to date. The enactment of the 1995 Constitution
25 guaranteed the right to freedom of expression and right of access to information in the possession of the state. These constitutional guarantees have been restricted by the enactment of punitive laws amongst which is the Anti-Terrorism Act which criminalizes publication of material that promotes terrorism.

30 It is my considered view that Section 9(1) and (2) of the Anti-Terrorism Act are not an infringement to the freedom of expression

but criminalize the publication of news or material that promotes terrorism in Uganda.

I am accordingly inclined to find and I hereby do find that Section 9(1) & (2) of the Anti-Terrorism Act, 2002 (As Amended) derive from Article 43(1) of the Constitution of Uganda and are thus not inconsistent with Article 29(1)(a) of the Ugandan Constitution. I would answer this issue 2 in the negative.

Issue 3 *Whether or not Section 10(2) of the Anti-Terrorism Act is inconsistent with or in contravention of Articles 28(3) (a) and 29(1) (e) of the Constitution of the Republic of Uganda, 1995?*

The marginal note in Section 10 of the Anti-Terrorism Act, 2002 (As Amended) provides for terrorist organisations and **subsection (2) of section 10** of the Act states as follows:

“(2) The Minister may, by statutory instrument, made with the approval of the Cabinet, amend the Second Schedule.”

The petitioner alleges that the impugned section, which empowers the Minister to declare an organization terrorist without judicial safeguards is inconsistent with the Constitution for breaching the right to be presumed innocent and freedom of association guaranteed under the Constitution. The second schedule to the Anti-Terrorism Act names the terrorist organisations and it states;

SECOND SCHEDULE

SECTION 10(1)

TERRORIST ORGANISATIONS

1. The Lords' Resistance Army.

2. The Lords' Resistance Movement.

3. Allied Democratic Forces.

4. Al-queda.

Section 2 of the Anti-Terrorism Act, 2002 (As Amended) provides that; *“In this Act, unless the context otherwise requires – ‘Minister’ means the Minister responsible for Internal Affairs”*.

Article 28(3)(a) of the Uganda Constitution provides that:

5 *“(3) Every person who is charged with a criminal offence shall—*

(a) Be presumed to be innocent until proved guilty or until that person has pleaded guilty.”

Article 29(1)(e) of the Constitution provides that:

“(1) Every person shall have the right to—

10 *(e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civil organisations.”*

The Respondent submits that provisions of section 10(2) of the Anti-Terrorism Act, 2002 (As Amended) make provision for the person who has the mandate to amend the Second Schedule to the Act and outlines where approval must be obtained and how the amendment shall be made. The provision of the Impugned Act does not provide give the Minister unlimited power to amend without following any due process.

20 Section 10(2) of the Anti-Terrorism Act (As Amended) is in no way inconsistent with the rights enshrined under Article 29(1)(e) of the Constitution of the Republic of Uganda 1995.

The Minister’s power to amend the schedule is in not absolute for reasons that the Minister can only amend the schedule by statutory instrument and with approval of cabinet. Further; the legislative process in Uganda takes the following steps; First the Ministry concerned approaches Cabinet through a Cabinet Memorandum with a proposal for Cabinet to approve the principles for the drafting of the Bill. Cabinet approval in principle is required before drafting of the subject legislation. Cabinet then considers the proposals as contained in the Cabinet Memorandum of the Minister concerned and approves the principles on the basis of which a Bill is to be drafted. In the course of drafting the Bill, the draftsman is required

to bear in mind the need to keep informed the Law Officers namely, the Attorney General and the Solicitor General.

Therefore, I do not agree with the petitioner that the impugned section empowers the Minister to declare an organization terrorist without judicial safeguards. The section is clear that the amendment can be done, but with approval of cabinet and by statutory legislation and in no instance does it infringe freedom of association and expression.

The legal process of Judicial Review is also permanently available to any person dissatisfied with the decision of the Minister to go and challenge the Statutory Instrument before the High Court of Uganda.

I therefore find and hold that Section 10(2) of the Act is not inconsistent with or in contravention of Articles 28(3)(a) and 29(1)(e) of the Ugandan Constitution of the Republic of Uganda, 1995.

Issue 4 Whether or not Section 11(1)(c) of the Anti-Terrorism Act is inconsistent with or in contravention of Article 29(1) (a) and (e) of the Constitution?

Section 11(1)(c) of the Anti-Terrorism Act, 2002 (As Amended) provides that:

“(1) A person who—

(c) willfully arranges or assist in the arrangement of a meeting to be addressed by a person belonging or professing to belong to a terrorist organisation or addresses any meeting (whether or not it is a meeting to which the public are admitted) knowing that the meeting is—

(i) to support a terrorist organisation;

(ii) to further the activities of a terrorist organisation; commits an offence.”

This section makes an offence of the act of arranging or assisting in the arrangement of a meeting to be addressed by persons belonging or professing to belong to a terrorist organization or addressing any meeting to support a terrorist organization or to further the activities of a terrorist organization knowingly.

The petitioner in the instant case alleges that the impugned section infringes the freedom of speech and assembly guaranteed under Article 29(1) (a) and (e) of the Constitution.

Article 29(1) (a) and (e) state;

5 29. *Protection of freedom of conscience, expression, movement, religion, assembly and association.*

(1) Every person shall have the right to—

(a) freedom of speech and expression which shall include freedom of the press and other media;

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

This court in **Muwanga Kivumbi Vs Attorney General Constitutional Petition No. 9 of 2005** held that the rights and freedoms which are enshrined in these articles are not absolute. They are subject to restrictions enshrined in Article 43 of the Constitution which provides as follows:

20 *(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental other human rights and freedoms of other or public interest.*
(3) 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 democratic society, or what is provided in this Constitution".

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30 I am inclined to therefore find that Section 11(1)(c) of the Anti-Terrorism Act is not in contravention of Article 29(1)(a) of the Constitution of the Republic of Uganda which enshrines the right to freedom of speech and expression or Article 29(1)(e) of the Ugandan Constitution which relates to the right to freedom of association including the freedom to form and join associations or unions, trade unions and political and other civic organizations.

5 The right to freedom of speech and association in as far as it relates to arrangement of a meetings to be addressed by a person belonging or professing to belong to a terrorist organization is prohibited for obvious reasons. The section seeks to prevent spread of terrorist groups within the country and this is not unconstitutional in as far as protection of the citizens of Uganda is concerned.

10 I therefore find that Section 11(1) (c) of the Anti-Terrorism Act is not unconstitutional and answer this issue 4 in the negative. Section 11(1)(c) of the Anti-Terrorism Act is not inconsistent with or in contravention of Article 29(1)(a) & (e) of the 1995 Constitution of the Republic Uganda.

Issue 5 Whether or not Section 19 of the Anti-Terrorism Act and the Regulation of Interception of Communications Act is inconsistent with Article 27 of the Constitution?

15 Section 19 of the Anti-Terrorism Act, 2002 (As Amended) provides for powers of an authorized officer appointed by the Minister responsible for Internal Affairs under Section 18 of the Act. It states as follows:

“(1) Subject to this Act, an authorised officer shall have the right to intercept the communications or a person and otherwise conduct surveillance of a person under this Act.

20 *(2) The powers of an authorised officer shall be exercised in respect of a person or a group or category of persons suspected of committing any offence under this Act.*

(3) The functions of an authorised officer shall be exercised only in respect of the person or group or category of persons described in the order.

(4) The purposes for which interception or surveillance may be conducted under this Part are—

25 *(a) safeguarding the public interest;*

(b) prevention of the violation of the fundamental and other human rights and freedoms of any person from terrorism;

(c) preventing or detecting the commission of any offence under this Act; or

(d) safeguarding the national economy from terrorism.

(5) *The scope of the interception and surveillance allowed under this Part is limited to—*

(a) *the interception of letters and postal packages of any person;*

(b) *interception of the telephone calls, faxes, emails and other communications made or issued by or received by or addressed to a person;*

5 (c) *monitoring meetings of any group of persons;*

(d) *surveillance of the movements and activities of any person;*

(e) *electronic surveillance of any person;*

(f) *access to bank accounts of any person; and*

(g) *searching of the premises of any person.*

10 (6) *For the avoidance of doubt, power given to an authorised officer under subsection (5) includes—*

(a) *the right to detain and make copies of any matter intercepted by the authorised officer;*

(b) *the right to take photographs of the person being surveilled and any other person in the company of that person, whether at a meeting or otherwise; and*

15 (c) *the power to do any other thing reasonably necessary for the purposes of this subsection.”*

The long title to the Regulation of Interception of Communications Act, Act No. 18 of 2010 provides that the *Act was enacted by Parliament to provide for the lawful interception and monitoring of certain communications in the course of their transmission through a telecommunication, postal or any other related service or system in Uganda; to*
20 *provide for the establishment of a monitoring centre; and to provide for any other related matters.”* The Regulation of Interception of Communications Act, Act No. 18 of 2010 was assented to on 5th August 2020 and came into force on 3rd September 2010.

25 Section 4(2) & (3) of the Regulation of Interception of Communications Act, 2010 provide for the requirement of making an application by an authorized person to a designated judge to issue a warrant for the interception of any communication and it states as follows:

“(2) An application under subsection (1) shall be made by an authorised person to a designated judge to issue a warrant for the interception of any communication.

(3) *An application under subsection (1) shall contain the following information—*

- (a) *the person or customer, if known, whose communication is required to be intercepted;*
- (b) *the service provider to whom the direction to intercept the communication must be addressed, if applicable;*
- 5 (c) *the nature and location of the facilities from which, or the place at which, the communication is to be intercepted, if known;*
- (d) *full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;*
- (e) *the period for which the warrant is required to be issued; and*
- 10 (f) *any other information which may be required by a designated judge to make an appropriate decision.”*

Section 5 of the Regulation of Interception of Communications Act, 2010 also provides for the issuance of a warrant by the designated Judge to an authorized person upon satisfaction of certain conditions. It states as follows:

15 ***“5. Issue of warrant.***

(1) *A warrant shall be issued by a designated judge to an authorised person referred to in section 4(1) if there are reasonable grounds for a designated judge to believe that—*

- (a) *an offence which may result to loss of life or threat to life has been or is being or will probably be committed;*
- 20 (b) *an offence of drug trafficking or human trafficking has been or is being or will probably be committed;*
- (c) *the gathering of information concerning an actual threat to national security or to any national economic interest is necessary;*
- (d) *the gathering of information concerning a potential threat to public safety, national*
25 *security or any national economic interest is necessary; or*

(e) there is a threat to the national interest involving the State's international relations or obligations.

5 (2) In the case of urgency or existence of exceptional circumstances, a designated judge may permit an oral application by an authorized person if the designated judge is of the opinion that it is not reasonably practicable to make a written application, but in such a case a formal application under this Part shall be lodged within forty-eight hours with the designated judge.

(3) A designated judge may, if he or she is of the opinion that the circumstances so require—

10 (a) upon an application being made under this Part, issue an order rejecting the application; or

(b) after a warrant has been issued, amend or revoke the warrant.”

Articles 27(1)(a) & (b) and 27(2) of the 1995 Constitution of Uganda provide for the right to privacy of person, home and other property. They state as follows:

“(1) No person shall be subjected to—

15 (a) unlawful search of the person, home or other property of that person; or

(b) unlawful entry by others of the premises of that person.

(2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.”

20 This right to privacy of person, home and other property is not absolute and can be subjected to regulations sanctioned by lawful orders of court. The rights and freedoms enshrined under Article 27 are not under Article 44 of the Ugandan Constitution which prohibits derogation from particular human rights and freedoms.

25 The provisions of section 19 of the Anti-Terrorism Act, 2002 (As Amended) and the Regulation of Interception of Communications Act, 2010 are demonstrably justifiable limitations in free and democratic societies. They can be invoked in public interest for the protection of life, property and the rights of others, to protect national security and in the process of detecting and preventing crime.

30

Chapter 4 of the Constitution of the Republic of Uganda, 1995 under which Article 27 falls deals with protection and promotion of fundamental and other human rights and freedoms. Some of these rights are absolute while others are subject to some limitation and qualifications. The articles which have been cited give rights and freedoms which are not absolute. They protect the right to own property either alone or in association with others. The articles also protect the right to privacy and against unlawful searches and intrusions.

10 The Supreme Court held in **Akankwasa Damian Vs Uganda Constitutional Reference No. 5 of 2011** that;

15 *When considering the constitutionality of any legislation its purpose and effect must be taken into account. If the purpose of an Act of Parliament is inconsistent with a provision of the Constitution, the Act or the section which is being challenged will be declared unconstitutional. In the same way, if the effect of implementing a provision of the Act is inconsistent with a provision of the Constitution, the provision would be declared unconstitutional. The reason for this is that the Constitution is the*
20 *supreme law of the land. There is a rebuttable presumption that every legislation is constitutional and the onus of rebutting the presumption rests on the person or persons who are challenging its constitutionality.*

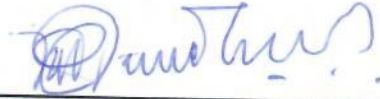
25 For the reasons stated herein above I would answer this Issue 5 in the negative and find that the provisions of section 19 of the Anti-Terrorism Act, 2002 (As Amended) are not inconsistent with or in contravention of the right to privacy guaranteed under Article 27 of the 1995 Constitution of the Republic of Uganda.

Issue 6 Whether the Petitioner is entitled to the declarations and orders prayed for in the Petition?

30 **Having resolved all issues in the negative**, in the result I would decline to grant the declarations sought and would dismiss the petition and order that each party meets its own costs of the petition.

I so order.

Dated this 2nd day of Nov 2022



5

STEPHEN MUSOTA, JA/JCC



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA**

CORAM: BARISHAKI, MUSOTA, KIBEEDI, MULYAGONJA & MUGENYI, JJCC

CONSTITUTIONAL PETITION NO. 7 OF 2017

UNWANTED WITNESS PETITIONER

VERSUS

ATTORNEY GENERAL RESPONDENT

JUDGMENT OF MONICA K. MUGENYI, JCC

I have had the benefit of reading in draft the lead Judgment of my brother Hon. Justice Stephen Musota, JCC in this matter. I agree with the decision arrived at and the orders therein, and have nothing useful to add.

Dated and delivered at Kampala this 22nd day of Nov, 2022.

Monica K. Mugenyi

Monica K. Mugenyi

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
Coram: Barishaki, Musota, Mutangula Kibeedi, Mulyagonja,
and Mugenyi, JJCC

CONSTITUTIONAL PETITION NO. 07 OF 2017

UNWANTED WITNESS ::::::::::::::::::::::::::::::::::: PETITIONER

VERSUS

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

JUDGMENT OF IRENE MULYAGONJA, JA/ JCC

I have had the benefit of reading in draft the judgment of my learned brother, **Stephen Musota, JA/JCC**. I agree that the petition should fail for the reasons that he had given and with the orders that he has proposed.

Dated at Kampala this 28th day of Nov 2022.


Irene Mulyagonja

JUSTICE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

(Coram: Cheborion Barishaki, Musota , Kibeedi, Mulyagonja & Mugenyi, JJA/JJCC)

CONSTITUTIONAL PETITION NO. 07 OF 2017

UNWANTED WITNESS **PETITIONER**

VERSUS

ATTORNEY GENERAL **RESPONDENT**

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JCC

I have had the benefit of reading in draft the judgment prepared by my learned brother, Musota, JCC, and I agree that the Petition is devoid of merit and ought to be dismissed in the terms proposed.

Signed, dated and delivered at Kampala this 22nd day Nov 2022



MUZAMIRU MUTANGULA KIBEEDI

JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 07 OF 2017

UNWANTED WITNESS:.....PETITIONER

VERSUS

ATTORNEY GENERAL:.....RESPONDENT

CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA/JCC

HON. JUSTICE STEPHEN MUSOTA JA/JCC

HON. JUSTICE IRENE MULYAGONJA, JA/JCC

HON. JUSTICE MUZAMIRU KIBEEDI, JA/JCC

HON. JUSTICE MONICA MUGENYI, JA/JCC

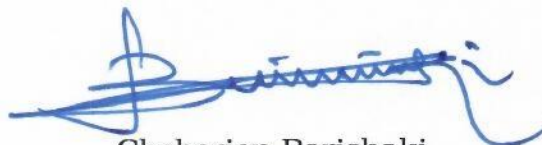
JUDGMENT OF CHEBORION BARISHAKI JA/JCC

I have had the benefit of reading in draft the judgment prepared by my brother Justice Stephen Musota JA/JCC and I agree with the analysis and conclusion he reaches that the petition should fail. I also agree with the orders he has proposed. Since Irene Mulyagonja, Muzamiru Kibeedi and Monica Mugenyi JJA/JJCC also agree, the Petition is dismissed.

Each party shall bear its own costs.

It is so ordered.

Dated at Kampala this ... 22nd ... day of ... Nov2022



Cheborion Barishaki

JUSTICE OF APPEAL/CONSTITUTIONAL COURT