

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 008 OF 2015**

1. TULSA INVESTMENTS LTD

2. KASANGAKI GEORGEIOUS:.....PETITIONERS

VERSUS

1. ATTORNEY GENERAL

2. KCB BANK UGANDA LIMITED:.....RESPONDENTS

**CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JCC
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC
HON. LADY JUSTICE HELLEN OBURA, JCC
HON. LADY JUSTICE MONICA K. MUGENYI, JCC**

JUDGMENT OF ELIZABETH MUSOKE, JCC

This Petition was lodged in this Court pursuant to the provisions of **Article 137** of the **1995 Constitution** and the **Constitutional Court (Petitions and References) Rules, S.I 91 of 2005**. The petitioners are challenging, as unconstitutional, the manner in which the Uganda Anti-Money Laundering Legal Regime was applied to them, by the 2nd respondent. The petitioners also challenge the constitutionality of some provisions in the Anti-Money Laundering Act, 2013 and the attendant Regulations made thereunder, as well as the constitutionality of some provisions of the related **Financial Institutions (Anti-Money Laundering) Regulations, 2010**.

Background

The Parliament of Uganda enacted the Anti-Money Laundering Act, 2013 ("AMLA") as part of Government's efforts, in accordance with its international expectations and obligations, to combat money laundering. **Section 1** of the **AMLA** defines money laundering as the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or

movement of the proceeds of crime and any activity which constitutes a crime under Section 116 of this Act. The money laundering process is often used to hide illegitimately obtained property, and if successfully carried out, money laundering may be used to facilitate criminal activities in turn undermining public peace and tranquility.

The AMLA establishes several measures aimed at combatting money laundering, including criminalization of acts of money laundering (Section 3). The AMLA also places obligations on institutions and other persons that are susceptible to being used in money laundering, by among other things; requiring them to identify their customers (Section 6); requiring them to keep records of dealings with customers (Section 7); recording and reporting suspicious transactions (Section 8); and monitoring and reporting suspicious transactions.

This Petition primarily relates to the constitutionality of the measures highlighted above, and in some respects to the alleged unconstitutional application of the said measures against the petitioners by the 2nd respondent Bank. The factual basis for this limb of the Petition is that in 2014, the 2nd respondent KCB Bank Ltd ("KCB") implemented the freezing of accounts held by the 1st petitioner Tulsa Investments Ltd ("Tulsa"), one of its customers. KCB told the petitioners that Tulsa's bank account was frozen owing to suspicion that it had been used or was continuing to be used for money laundering. The petitioners disputed KCB's reasons and in this Petition, they contend that there was no sound basis for freezing Tulsa's account. In the alternative, that if the basis for freezing Tulsa's account was to ensure implementation of measures contained in the AMLA, those measures are unconstitutional.

The petitioners allege that application of the highlighted measures would lead to violation of several rights guaranteed them under the 1995 Constitution, namely; right to privacy; right to own property; right to freedom of association; right to freedom of contract; and the right to a fair hearing. The petitioners also claim that in some respects implementation of

the Anti-Money Laundering legal regime violates the principle of legality enshrined under the 1995 Constitution.

The other limb of the Petition relates to a labour dispute in which KCB is accused of having unlawfully ended the employment of its then employee, the 2nd Petitioner Ms. Kasangaki Georgeous ("Ms. Kasangaki"). It is worth mentioning that Ms. Kasangaki was a director in Tulsa and one of the signatories to its account with KCB, and the initiation of disciplinary action and her subsequent removal from employment with KCB followed accusations that Tulsa's bank account was being used for money laundering. The 2nd petitioner alleges that the manner of her dismissal calls for constitutional interpretation.

More extensive assessment of the claims and evidence for the petitioners will be conducted in due course. For now, I must state that in view of the allegations of unconstitutionality highlighted above, under paragraph 10 of the Petition, the petitioners prayed this Court to grant the following redress:

- "a) A declaration that the act of the 2nd respondent freezing the 1st Petitioner's Uganda Shillings Bank Account No. 2202428917 and United States Dollars Account No. 2201841616 held with the 2nd respondent bank without any Court Order or any hearing is inconsistent with and/or in contravention of articles 2 (2), 26 (1) (2), 27 (2), 28 (1) (3) (a) and (b), 42, 43 (1) (2) (c) and 44 (c) of the 1995 Constitution.**
- b) A declaration that the act of indefinitely suspending the 2nd petitioner without any hearing is in breach of the Constitution, Employment Act and the 2nd respondent's statutes which guarantee a fair hearing and is inconsistent with and/or in contravention of Articles 28 (1), 40 (1), (2) and (3), Articles 42, 43 (1) and (2) (c), 44 (c) and 45 of the Constitution.**
- c) A declaration that the act of freezing the Bank Accounts deprived the petitioners of property without due process and also punished them before their civil rights could be determined either in civil or criminal process and this was inconsistent with and/or in contravention of Articles 28 (1), 44 (c), 43 (2) (c), 20 (1) and (2), 21 (1) and 45 of the Constitution.**

- d) A declaration that the act of indefinitely suspending the 2nd petitioner a female employee without cause is inconsistent with and/or in contravention of Articles 2 (1) and (2), 20 (1) and (2), 21 (1), (2) and (3), 28 (1), 33 (1), (3), (4) and (5), 42, 43 (1), (2) (b) and (c), 44 (c), 45 and 173 of the Constitution.
- e) A declaration that Section 1 of the Anti-Money Laundering Act, 2013 illegally confers commercial banks with unfettered rights to interfere with and pry into a private person's property by directing them to furnish plausible reasons for withdrawals of money from their account and investments and is inconsistent with and/or in contravention of Article 27 (2) of the Constitution.
- f) A declaration that the offence of money laundering under the Anti-Money Laundering Act 2013 and Regulation 2 of the Financial Institutions (Anti-Money Laundering) Regulations, 2010 is omnibus, undefined, discriminatory, speculative and sanctions/validates expropriation of private property which is inconsistent with and/or in contravention of private property which is inconsistent with and/or in contravention of Articles 2 (2), 20 (1) and (2), 21 (1) and (3), 28 (1) (3) (a), and (b), 28 (7), (8) and (12), 27 (2), 26 (1) and (2), 40 (2) and 3 (a), 43 (2) (c), 44 (c) and 45 and of the Constitution.
- g) A declaration that Section 1 of the Anti-Money Laundering Act, 2013 criminalizes perceived intention, pries into a private individual's freedom to acquire, own and use property and breached the principle of legality, freedom of trade and to contract and is inconsistent with and/or in contravention of Articles 28 (1) (3) (a), and (b), 28 (7) and (12), 44 (c) and 43 (2) (c), 45 and, 21 (1), 20 (1) and (2), 2 (2), 26 (1) and (2) and 27 (2) of the Constitution.
- h) A declaration that Section 1 of the Anti-Money Laundering Act 2013 derogates from the petitioner's right to a fair hearing by omnibus inclusion of judicial officers in competent authority for investigating and implementation of executive functions fuses executive and judicial power which violates the doctrine of separation of powers and whittles down impartiality of judicial officers to supervise and control executive administration and actions and is inconsistent with Articles 2 (2), 126 (1), 128 (1), (2)

and (3), 129, 138, 139, 141, 142, 143, 144, 149, 150, 151, 20 (1) and (2), 21 (1), 28 (1), 44 (c) and 45 of the Constitution.

- i) A declaration that Section 1 of the Anti-Money Laundering Act 2013 and Regulation 2 of the Anti-Money Laundering Regulations restricts and derogates from the right to freely associate, own and acquire property from other sources and is inconsistent with and/or in contravention of Articles 26 (1) and (2), 27 (2), 29, 31 (1), (2) and (4), 40, 43 (1) (2) and (c), 45, 20 (1), (2) and 21 (1) of the Constitution.
- j) A declaration that the Anti-Money Laundering Act 2013 and Financial Institutions Act (Anti-Money Laundering) Regulations 2010 empowers the state to interfere with individual freedom to contract and purports to determine how to use one's money by proscribing withdrawal of assets immediately they are deposited and this is inconsistent with and/or in contravention of Articles 43 (1), (2) (c), 20 (1) and (2), 21 (1), 40 and 45 of the Constitution.
- k) A declaration that the Anti-Money Laundering Act, 2013 irregularly legalizes self-incrimination, overly allows provision (sic) into one's privacy through its mandatory disclosure of one's own money, their purpose and purpose for money withdrawal and this is inconsistent and/or in contravention of Articles 20 (1), (2), 21 (1), 26 (1) and (2), 27 (2), 28 (1) (3) (a), (b) and (c) 28 (7), (8) and (11), 43 (1), (2) and (c) and 44 (c) of the Constitution.
- l) A declaration that Regulation 14 of the Financial Institution (Anti-Money Laundering) Regulations 2010 which legalizes secrecy and denial of access to information in state hands on penal accusation of Money Laundering is inconsistent with and/or in contravention of Articles 28 (1) (3) (a), (b) and (c), 41, 42, 44 (c), 21 (1), 20 (1) and (2), 23 (1), (4) and (5), 45, 2 (2) of the Constitution.
- m) A declaration that the act of limitation of an individual's freedom of trade and choice by requiring ascertain of an individual's reasons for choice of a particular financial institution is inconsistent with and/or in contravention of Articles 21 (1), (2) and (3), 26 (1), (2) (b) (i) & (ii), 27 (2), 29 (1) (a), (b) and (e), 3 (1), 40 (2), 43 (1) and (2) (c), 20 (1) and (2) and 45 of the Constitution.

- n) A declaration that Section 2 of the Financial Institutions Anti-Money Laundering Regulations to the extent it condemns an allegedly relatively inactive account from receiving or disbursing large sums of money which have no obvious purpose unduly interferes with the right to make savings, a person's privacy and property and freedoms and is inconsistent with and/or in contravention of Articles 27 (2), 43 (2) (c) and 45 of the Constitution.**
- o) A declaration that the relationship between M/S TULSA INVESTMENTS LTD and the respondent bank was civil and contractual to which the [2nd] petitioner was not a party.**
- p) A declaration that the 2nd respondent acted arbitrarily, high handedly and oppressively when it indefinitely suspended the petitioner from her job without cause or giving her any hearing.**
- q) A declaration that the 2nd respondent had no power or authority to indefinitely suspend the [2nd] petitioner from her job without cause or giving her any hearing as this is prohibited by the Constitution and the Employment Act.**
- r) A declaration that the respondent prejudged the [2nd] petitioner as guilty without any investigation, charges, complaint and other basic requirements is in breach of the Constitution and statutory duty imposed by the Employment Act of Uganda.**
- s) An order doth issue to quash the decision contained in the [2nd] respondent's suspension letter to the [2nd] petitioner dated 14/11/2014.**
- t) An order forbidding the continuing with the implementation of the illegal suspension contained in the said letter in as far as it relates to the petitioner.**
- u) An order prohibiting the respondent from taking further action against the 1st petitioner in relation to its business dealings with customers.**
- v) An order that the respondent to reinstate 2nd petitioner to her job with her full salary and benefits.**
- w) An order directing the respondents to unconditionally unfreeze the 1st petitioners bank accounts with immediate effect.**

- x) An order of injunction doth issue restraining the 1st respondent from proceeding to implement the decision to close the 1st petitioner's accounts or to remove the 2nd petitioner from her office through actions by whatever name called be it suspension or dismissal and/or cause her arrest and prosecution based on allegations the subject of this Petition.**
- y) An order for special damages of Shs. 2,800,000,000/=.**
- z) An order requiring the respondents to pay exemplary and punitive damages.**
- aa) General damages.**
- bb) Costs of the petition."**

The evidence in support of the Petition is contained in an affidavit deposed by Mr. Simon Kasangaki, a director in Tulsa and another by Ms. Kasangaki, the 2nd Petitioner.

The 1st respondent opposes the Petition and refutes the allegations made therein. He raises a preliminary objection that the Petition is bad in law, frivolous, prolix and raises no issues or questions for constitutional interpretation and prays for dismissal. As regards the substantive merits, the 1st respondent offers a general rebuttal stating that there was no unconstitutionality as alleged in the Petition. Further, the 1st respondent states that the Petition contains only allegations of human rights violations, matters falling outside the jurisdiction of this Court, which ought to have been instituted in another competent Court. The 1st respondent prays this Court to dismiss the Petition with costs.

The evidence in support of the 1st respondent's case is contained in an affidavit filed by Ms. Kukunda Claire, a State Attorney in the 1st respondent's Chambers.

The 2nd respondent, KCB also opposes the Petition and raises a preliminary objection that the Petition is misconceived, speculative, and an abuse of Court process and that the prayers therein are untenable in law. As for the substance of the Petition, KCB states that it is engaged in the banking business and Tulsa has accounts with it as alleged in the Petition. KCB also

points out that it has obligations under the Uganda anti-money laundering legal regime aimed at combatting money laundering including flagging and freezing accounts should a customer be suspected of money laundering. KCB further states that it is in that context that Tulsa's accounts were frozen after it was suspected that those accounts were being used for money laundering. Because Tulsa's accounts were held by the 2nd petitioner, its employee KCB considered that the 2nd petitioner was engaging in employment misconduct and consequently disciplinary proceedings were opened against her that saw her suspended from her employment.

KCB insists that it was enjoined under the Uganda anti-money laundering legal regime to take the impugned actions against the petitioners. Further, that the petitioners' case was reported to the Financial Intelligence Authority (FIA), and only the FIA can order the unfreezing of Tulsa's accounts. KCB insists that it acted in accordance with the constitution and asks this Court to dismiss the Petition with costs.

The evidence in support of KCB's case is contained in the affidavit of Mr. George Asea-Aswa, an employee of KCB in the position of Head Risk Management.

Representation

At the hearing, Dr. James Akampumuza, learned counsel appeared for the petitioners. Mr. Richard Adrole, Principal State Attorney and Mr. Mark Muwonge, State Attorney, both from the Attorney General's Chambers, jointly appeared for the 1st respondent. Mr. Andrew Kihika appeared for the 2nd respondent.

Written submissions were filed for the petitioners and the 1st respondent in accordance with Court's directives are on record, and have been considered in this judgment. No submissions were filed for the 2nd respondent.

It should be noted that the submissions for the petitioners were filed on 18th August, 2021, contrary to Court's directions to file submissions by 10th May, 2021. By that time, submissions had already been filed for the 1st respondent

on 11th August, 2021. The following issues were set out in the 1st respondent's submissions:

- "1. Whether the Petition before Court raises any questions for interpretation.**
- 2. Whether Section 1 of the Anti-Money Laundering Act, 2013 is inconsistent with and in contravention of Articles 2 (2), 20 (1) (2), 21 (1) (3), 28 (1) (3) (a) (b) (7) (12), 27 (2), 26 (1) (2), 40 (2) (3) (a), 43 (2) (c), 44 (c), 43 (c), 45, 126 (1), 128 (1) (2) (3), 129, 138, 139, 141, 142, 143, 144, 148, 149, 150, 151 of the 1995 Constitution.**
- 3. Whether the offence of Money Laundering under the Anti-Money Laundering Act 2013 and Regulation 2 of the Financial Institutions (Anti-Money Laundering) Regulations 2010 is omnibus, undefined, discriminatory, speculative and sanctions/validates expropriation of private property which is inconsistent with and/or in contravention of Article 2 (2), 20 (1) (2), 21 (1) (3), 26 (1) (2), 28 (1) (3) (a) (b) (7) (12) 44 (c) 43 (2) (c) and 45 of the 1995 Constitution."**

In the petitioners' belated submissions, the following issues are set out:

- "1. Whether the act of freezing the 1st petitioner's bank accounts without any Court order or any hearing deprived the petitioners of property without due process and is inconsistent with and/or in contravention of articles 2(2), 20 (1) (2), 21 (1), 26 (1) (2), 27 (2), 28 (1) (3) (a) (b), 42, 43 (1) (2) (c) and 44 (c) of the 1995 Constitution.**
- 2. Whether the act of indefinitely suspending the 2nd petitioner a female employee without cause is inconsistent with and/or in contravention of Articles 2 (1) (2), 20 (1) (2), 21 (1) (2) (3), 28 (1), 33 (1) (3) (4) (5), 40 (1) (2) (3), 42, 43 (1) (2) (b) (c), 44 (c), 45 and 173 of the 1995 Constitution.**
- 3. Whether Section 1 of the Anti-Money Laundering Act, 2013 by its inclusion of judicial officers is competent authority for investigating, reporting and implementation of executive functions is inconsistent with and/or in contravention of Articles 2 (2), 126 (1), 128 (1) (2) (3), 129, 138, 139, 141, 142, 143, 144,**

148, 149, 150, 151, 20 (1) (2), 21 (1), 28 (1), 44 (c) and 45 of the 1995 Constitution.

- 4. Whether Section 1 of the Anti-Money Laundering Act, 2013 is inconsistent with and/or in contravention of Articles 2 (2), 20 (1) (2), 21 (1), 26 (1) (2), 27 (2), 28 (1) (3) (a) (b) (7) (12), 44 (c), 43 (2) (c), 45, 126 (1), 128 (1) (2) (3), 129, 138, 139, 141, 142, 143, 144, 148, 149, 150, 152 of the 1995 Constitution.**
- 5. Whether the cited provisions of the Anti-Money Laundering Act 2013 and the Anti-Money Laundering Regulations 2010 are inconsistent with and/or in contravention of the 1995 Constitution.**
- 6. What remedies are available to the petitioners."**

Taking into account both sets of issues, I would frame the following issues for determination:

- "1. Whether the Petition before Court raises any questions for constitutional interpretation.**
- 2. Whether the act of freezing the 1st petitioner's bank accounts without any Court order or any hearing deprived the petitioners of property without due process and is inconsistent with and/or in contravention of articles 2(2), 20 (1) (2), 21 (1), 26 (1) (2), 27 (2), 28 (1) (3) (a) (b), 42, 43 (1) (2) (c) and 44 (c) of the 1995 Constitution.**
- 3. Whether the offence of Money Laundering under the Anti-Money Laundering Act 2013 and Regulation 2 of the Financial Institutions (Anti-Money Laundering) Regulations 2010 is omnibus, undefined, discriminatory, speculative and sanctions/validates expropriation of private property which is inconsistent with and/or in contravention of Article 2 (2), 20 (1) (2), 21 (1) (3), 26 (1) (2), 28 (1) (3) (a) (b) (7) (12) 44 (c) 43 (2) (c) and 45 of the 1995 Constitution."**
- 4. Whether the several cited provisions of the Anti-Money Laundering Act 2013 and the Financial Institutions (Anti-Money Laundering) Regulations 2010 are inconsistent with and/or in contravention of the 1995 Constitution.**

5. **Whether Section 1 of the Anti-Money Laundering Act, 2013 by its inclusion of judicial officers in competent authority for investigating, reporting and implementation of executive functions is inconsistent with and/or in contravention of Articles 2 (2), 126 (1), 128 (1) (2) (3), 129, 138, 139, 141, 142, 143, 144, 148, 149, 150, 151, 20 (1) (2), 21 (1), 28 (1), 44 (c) and 45 of the 1995 Constitution.**
6. **Whether the act of indefinitely suspending the 2nd petitioner a female employee without cause is inconsistent with and/or in contravention of Articles 2 (1) (2), 20 (1) (2), 21 (1) (2) (3), 28 (1), 33 (1) (3) (4) (5), 40 (1) (2) (3), 42, 43 (1) (2) (b) (c), 44 (c), 45 and 173 of the 1995 Constitution.**
7. **What remedies are available to the parties?"**

I have carefully studied the Court record, and considered the points raised in the submissions for the parties, and the law and authorities cited in support thereof. Other applicable law and authorities not cited have also been considered. I will now proceed to resolve the issues highlighted above.

Issue 1 – Whether the Petition before Court raises any questions for constitutional interpretation.

Both the 1st and 2nd respondents pleaded that the Petition raises no questions for constitutional interpretation and urged this Court not to entertain it. It was submitted for the 1st respondent that a Petition may only be properly deemed to raise questions for Constitutional interpretation and therefore properly before the Constitutional Court if the Petition raises matters that depend for their adjudication on interpretation and/or construction of the entire Constitution or some provisions in the Constitution. Counsel for the 1st respondent relied on the authorities of **Mbabali Jude vs. Edward Kiwanuka Sekandi, Constitutional Petition No. 0028 of 2012 (unreported) (per Kakuru, JCC); Ismail Serugo vs. Kampala City Council and Another, Constitutional Appeal No. 2 of 1998 (Per Kanyeihamba, JSC quoting with approval from his judgment in Attorney General vs. Tinyefuza, Constitutional Appeal No. 1 of 1997) (unreported).**

Counsel contended that a cursory glance reveals that the present Petition sets out no questions for constitutional interpretation of the manner envisaged in the above cited authorities, but that the Petition relates to enforcement of human rights and other matters which can best be resolved by the High Court in exercise of its unlimited original jurisdiction. Furthermore, it was argued that the Petition discloses no cause of action against the 1st respondent as it fails to specify the acts committed by the 1st respondent that are unconstitutional.

In reply, it was submitted for the petitioners that the Petition sets out several questions for constitutional interpretation and that this Court has jurisdiction to determine it. Counsel for the petitioners submitted that a Petition is deemed to set out questions for constitutional interpretation if it alleges that an Act of Parliament, or an act or omission of the respondent violates specified provisions of the 1995 Constitution and prays for specific declarations. Counsel relied on the authorities of **Baku Raphael and Another vs. Attorney General, Constitutional Appeal No. 1 of 2003 (unreported)** and **Uganda National Roads Authority vs. Irumba Asumani and Another, Constitutional Appeal No. 02 of 2014 (unreported)**, in support of his submissions.

According to counsel for the petitioners, in paragraphs 8 (a) – (n) and 10 (a) – (r) of the Petition, the petitioners set out the provisions of the impugned legislation as well as the acts and omissions of the respondent and cite the provisions of the 1995 Constitution that they violate. Thus, in counsel's view, all the matters therein set out raise questions for constitutional interpretation and are rightly before this Court.

I note that the jurisdiction of the Constitutional Court is set out under **Article 137** of the **1995 Constitution**, and I reproduce the relevant provisions below:

"The constitutional court.

137. Questions as to the interpretation of the Constitution.

(1) Any question as to the interpretation of this Constitution shall be

determined by the Court of Appeal sitting as the constitutional court.

(2) ...

(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

(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—

(a) grant an order of redress; or

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

The majority of the jurisprudence of this Court and the Supreme Court holds that the matters which should be entertained in the Constitutional Court must relate primarily to interpretation of a provision of the 1995 Constitution. If a matter does not require interpretation of a provision of the Constitution, then there is no juristic scope for the invocation of the jurisdiction of this Court (**See: Charles Kabagambe vs. Uganda Electricity Board, Constitutional Petition No. 2 of 1999 (unreported)**). In my judgment in the case of **United Organisation for Batwa Development in Uganda and 11 Others vs. Attorney General and 2 Others, Constitutional Petition No. 03 of 2013 (unreported)**, I surveyed several leading cases on jurisdiction of this Court including Attorney General vs Tinyefuza, Constitutional Appeal No. 1 of 1997 (unreported), Ismail Serugo vs. KCC and Another, Constitutional Appeal No. 2 of 1998 (unreported) and Charles Kabagambe vs. UEB, Constitutional Petition No. 2 of 1999 (unreported) and held:

“After considering the above authorities, I hold the view that the import of the relevant provisions of Article 137 as articulated in the decisions

referred to above is that the Constitutional Court may only entertain a Petition if it alleges that either an Act of Parliament or any other law, or acts or omissions attributed to any person or authority are inconsistent with or in contravention of a provision of the 1995 Constitution; and in addition, the determination of the allegations in the Petition must require interpretation of the Constitution for their resolution.

The next step is to ascertain the meaning of "interpretation of the Constitution" for purposes of Article 137. According to the Merriam-Webster Dictionary (2021), "interpretation" means the act or result of interpreting. "Interpret" means to explain or tell the meaning of. The authorities, however, indicate that constitutional interpretation is to be understood as distinct from enforcement of the Constitution, and Petitions which set out matters for enforcement are to be taken as incompetent to be entertained by this Court.

In *Kabagambe vs UEB* (*supra*), this Court held to the effect that the Constitutional Court has no original jurisdiction to entertain matters involving allegations of rights violations and those dealt with by specific laws. The Court held that such matters are better enforced by a competent court and if a question of interpretation of the Constitutional arises in that Court, a reference to the Constitutional Court may be made."

I still hold the same view. I further note that the authority of **Mbabali Jude** (*supra*) cited by counsel for the 1st respondent applies the line of reasoning in the authorities referred to earlier. I prefer that line of reasoning to the one employed in the **Baku Raphael and Irumba Asumani authorities** (*supra*) cited for the petitioners, and any related cases. Thus, whether or not the present Petition is properly before this Court turns on whether any of the allegations raised in the petition depend for their determination, on the interpretation of a provision or provisions of the 1995 Constitution. It is to that investigation that I now turn.

It is clear that some of the matters raised in the Petition relate to issues that do not require Constitutional interpretation. In terms of the **Kabagambe authority** (*supra*), such matters can be dealt with under other specific laws and actions for redress based on those laws should have been instituted elsewhere and not in this Court. The allegations concerning the unlawful

termination of the 2nd petitioner's employment with the 2nd respondent, pleaded at paragraphs 8 (b) and (d) of the Petition, are surely governed by the Employment Act, 2006 and ought to have been commenced as a labour action in the High Court or the Industrial Court. I would therefore find that issue (6) on the alleged indefinite suspension of the 2nd petitioner from the 2nd respondent's employment raises no question for constitutional interpretation and ought to have been brought before another competent Court.

Further, I find that issue 2 on whether the act of the 2nd respondent freezing the 1st petitioner's bank violated the rights of the petitioners not to be deprived of property without due process, in my view, also concerns enforcement of rights and should best have been resolved by an action envisaged under Article 50 of the 1995 Constitution.

The remaining issues, namely: issues 3, 4, 5 and 7 disclose questions for constitutional interpretation. Issues 3, 4 and 5 contain allegations that certain provisions of the impugned anti-money laundering legislation are inconsistent with and/or in contravention of named Articles of the 1995 Constitution, thus satisfying the provisions of **Article 137 (3) (a) of the 1995 Constitution**. Whether or not the allegations are correct goes to the merit of the Petition and will be decided after considering them. Issue 7 relates to the remedies available in the present case.

I will therefore move to consideration of those issues, below.

Issue 3 – Whether the offence of Money Laundering under the Anti-Money Laundering Act 2013 and Regulation 2 of the Financial Institutions (Anti-Money Laundering) Regulations 2010 is omnibus, undefined, discriminatory, speculative and sanctions/validates expropriation of private property which is inconsistent with and/or in contravention of Article 2 (2), 20 (1) (2), 21 (1) (3), 26 (1) (2), 28 (1) (3) (a) (b) (7) (12) 44 (c) 43 (2) (c) and 45 of the 1995 Constitution.”

Counsel for the petitioner contended that this issue arises out of the averments in paragraph 8 (e) – (n) of the Petition. He submitted that the gist of the petitioners' case is that the offence of money laundering under the Act and the impugned regulations is omnibus, undefined, discriminatory, speculative and sanctions/validates expropriation of private property which is inconsistent with several provisions of the 1995 Constitution. Counsel referred to **Regulation 2** of the impugned regulations which defines "a transaction with no apparent or visible economic purposes" to include a transaction that gives rise to a reasonable suspicion that it may involve the laundering of money or proceeds of any crime and is made in circumstances of unusual or unjustified complexity, and submitted that the phrase "reasonable suspicion" is vague.

Counsel further submitted that the Governor, Bank of Uganda usurped the powers of Parliament in contravention of **Articles 2 (2)** and **79 (2)** of the 1995 Constitution, when he made the Regulations, an Independent Law, yet only Parliament can make such laws.

In reply, counsel for the 1st respondent submitted that the offence of money laundering is provided for under **Sections 3, 116 and 136** of the **AMLA**, and that the highlighted provisions sufficiently define the acts and omissions that will result in commission of the offence. In counsel's view, none of the highlighted provisions is omnibus, undefined, discriminatory, speculative nor do they validate expropriation of private property. Further still, counsel contended that a person accused of committing acts of money laundering is guaranteed the trial safeguards under Article 28 of the 1995 Constitution before he/she is punished.

I have considered counsel's submissions on this issue. In my view the allegation that the AMLA and the impugned regulations are vague and omnibus arises solely from Paragraph 8 (f) of the Petition which states as follows:

"That your petitioners are interested in and/or aggrieved by the following matters being inconsistent with the Constitution:

...

f) The offence of money laundering under the Anti-Money Laundering Act 2013 and Regulation 2 of the Financial Institutions (Anti-Money Laundering) Regulations, 2010 is omnibus, undefined, discriminatory, speculative and sanctions/validates expropriation of private property which is inconsistent with and/or in contravention of Articles 2 (2), 20 (1) (2), 21 (1) (3), 28 (1) (3) (a) (b) (7) (8) (12), 27 (2), 26 (1) (2), 40 (2) (3) (a), 43 (2) (c) and 45 of the 1995 Constitution."

Article 28 (12) of the 1995 Constitution requires that a criminal offence is adequately defined. It provides:

"(12) 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."

In **Attorney General vs. Abuki, Constitutional Appeal No. 1 of 1998 (unreported)** the Supreme Court (per Wambuzi, CJ) held to the effect that an offence is properly defined for purposes of Article 28 (12) if the provision creating the offence gives a fair definition of the offence and sufficient notice of the conduct prohibited by the offence. Wambuzi, C.J also held:

"Quite clearly the Article [Article 28 (12) of the 1995 Constitution] requires a criminal offence to be defined by law. It does not require every word used in the law to be defined. Nor does it require the offence to be defined in the section which creates the offence."

The AMLA establishes a regulatory framework to assist in the country's efforts to combat money laundering. The framework also creates criminal offences to sanction those that commit acts of money laundering. The offences created under the AMLA can be traced to **Sections 3** and **116** of the Act. **Section 3** of the AMLA provides:

"3. Prohibition of money laundering

It is prohibited for any person to intentionally—

(a) convert, transfer, transport or transmit property, knowing or suspecting that such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions; or

(b) conceal, disguise or impede the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting that such property to be the proceeds of crime; or

(c) acquire, possess, use or administer property, knowing, at the time of receipt, that the property is the proceeds of crime; or

(d) act to avoid the transaction reporting requirements provided in Part III of this Act;

(e) assist another to benefit from known proceeds of crime; or

(f) use known proceeds of crime to facilitate the commission of a crime;

or

(g) participate in, associate with, conspire to commit, attempt to commit, aid and abet, or facilitate and counsel the commission of any of the acts described in subsections (a) to (f)."

Section 116 of the AMLA provides:

"116. Prohibition of money laundering

A person who—

(a) converts, transfers, transports and transmits property knowingly or having reasons to believe that such property to be proceeds of crime, for purposes of concealing or disguising the illicit origin of the property or assisting any other person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his/her actions;

(b) conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement or ownership of or its rights with respect to property knowing or having reasons to believe such property to be proceeds of a crime, commits an offence;

(c) acquires, possesses, uses or administers property knowing or having reason to believe at the time of receipt that the property is the proceeds of crime commits an offence;

(d) acts to avoid a transaction reporting requirements provided in Part III of this Act commits an offence;

(e) assists another person to benefit from known proceeds of crime commits an offence;

(f) uses known proceeds of crime to facilitate the commission of a crime commits an offence;

(g) participates in, associates with, conspires to commit, attempts to commit, aid and abate or facilitate and counsel the commission of any of the acts described in sections (a) to (f) above commits an offence.

Further still, the punishment for committing the offences created under Sections 3 and 116 is provided for under Section 136 of the AMLA.

I wish to stress that Section 116 above criminalizes various acts as can be seen in paragraphs (a) to (g), and each crime relates to a different act. The petitioners state in their Petition that they challenge the offence of money laundering as being imprecise, without directing us to any offending provision. The submissions of counsel for the petitioners are imprecise. The petitioners do not, in their Petition, make reference to Section 3 nor 116 of the AMLA which prohibit acts of money laundering. In my view, as the petitioners do not, in their Petition, list the provisions in the AMLA that they believe create offences that are not adequately defined, it is unnecessary to discuss issue 3 any further. I would therefore answer issue 3 in the negative.

Issue 4 – Whether the several cited provisions of the Anti-Money Laundering Act 2013 and the Financial Institution (Anti-Money Laundering) Regulations 2010 are inconsistent with and/or in contravention of the 1995 Constitution.

On issue 4, counsel for the petitioners submitted that some provisions of the AMLA and the impugned Regulations violate several rights of citizens. For instance, **Section 1 (d)** of the **AMLA** gives unfettered powers to commercial banks to interfere and pry with a private person's property by requiring citizens to give plausible reasons for withdrawal of money from their accounts and investments. Counsel further contended that **Section 1** of the **AMLA** is unconstitutional because it permits the infringement of constitutional guaranteed rights such as freedom to acquire, own and use property, freedom of trade and freedom of contract. Counsel further contended that the said provision breaches the principle of legality. In support of his submissions, counsel referred to several provisions of Section 1 of the AMLA, which I have not found necessary to repeat here.

Furthermore, counsel submitted that the AMLA permits banks and the Financial Intelligence Authority to deprive a citizen of his/her private property, on grounds of non-compliance with the Act, without hearing the affected person. In counsel's view, this constitutes an unreasonable derogation from the right to a fair hearing and to property which are guaranteed under the 1995 Constitution.

In reply, counsel for the 1st respondent submitted that the provisions of Section 1 of the AMLA that are referred to in the submissions of his counterpart for the petitioners are only definition sections and do not deprive the citizens of any rights. Further, that, in any case, the intention of the legislature in enacting the impugned provision is clear from reading the said provisions. The legislature intended to establish a regulatory framework to monitor the source of money so as to combat money laundering.

Furthermore, counsel for the 1st respondent submitted that there is a presumption of constitutionality of the AMLA considering that that Act was enacted when the 1995 Constitution is in force. Thus, in counsel's view, it should be assumed that the powers given to the regulators and supervisors under the AMLA were enacted subject to the fundamental rights and freedoms enshrined under the 1995 Constitution.

In my assessment, issue 4 cannot succeed. Section 1 of the AMLA, as rightly submitted by counsel for the 1st respondent, is a definition section, and on its own, imposes no obligations on citizens.

Issue 5 – Whether Section 1 of the Anti-Money Laundering Act, 2013 by its inclusion of judicial officers in competent authority for investigating, reporting and implementation of executive functions is inconsistent with and/or in contravention of Articles 2 (2), 126 (1), 128 (1) (2) (3), 129, 138, 139, 141, 142, 143, 144, 148, 149, 150, 151, 20 (1) (2), 21 (1), 28 (1), 44 (c) and 45 of the 1995 Constitution.

On issue 5, counsel submitted that **Section 1** of the **AMLA** permits the appointment of judicial officers as members of the Financial Intelligence Authority (FIA), the relevant authority created under AMLA, which is a body

under the executive. In counsel's view, the involvement of judicial officers in the said authority leads to fusion of executive and judicial power, violates the doctrine of separation of powers and whittles down the impartiality of judicial officers to supervise and control executive administrative actions and decisions which in turn derogates from the right to a fair hearing.

Furthermore, with regard to the right to a fair hearing, counsel contended that under Section 2 (2) of the AMLA, trial of crimes under the Act are entrusted to courts of law, yet some judicial officers who preside over the courts also sit on the relevant authorities established under the AMLA. This in counsel's view turns judicial officers into the investigators, prosecutors and judges with respect to money laundering offences.

Counsel further submitted that the AMLA places responsibilities on judicial officers and lawyers in their dealings with their clients which pose difficult questions with respect to the boundary line between judicial independence, liberty, conflicting legal and ethical obligations. Further still, that involvement of judicial officers in the relevant authority under the AMLA violates judicial independence in that such judicial officers are under the control of members of the executive.

Furthermore, counsel contended that the AMLA undermines judicial immunity by making judicial officers liable to the measures under its operation. Counsel pointed out that, under **Section 1 (g)** of the Act, judicial officers are labelled as "politically exposed persons" and that stricter measures are applied to people in that category. In counsel's view, placing judicial officers in the "politically exposed persons" category, exposes them to the vagaries of administrative and political control through spying and unfounded suspicions which may undermine their independence and immunity. Counsel was of the further view that permitting judicial officers to serve on the relevant authority and thereby asking them to investigate on behalf of the state is an act aimed at repudiating the constitutionally protected judicial immunity.

Still on the question of judicial independence, counsel submitted that the possibility of judicial officers acting as members of the relevant authority

under the AMLA undermines the effective and fair discharge of the judicial functions. Counsel contended that judicial officers may be required to give information obtained during exercise of their judicial functions to the police and the prosecution. Further, that because judicial officers deal with information subject to advocate-client privilege gathered by lawyers, such privileged information may be placed in the hands of law enforcement agents. Further still, counsel contended that judicial officers are liable to sanctions including imprisonment, for non-compliance with the requirements under the AMLA which undermines judicial independence.

In reply, counsel for the 1st respondent submitted that the AMLA does not turn judicial officers into investigators as claimed in the submissions of counsel for the petitioners. To the contrary, counsel contended that under the framework established under Part V of the AMLA, judicial officers exercise a judicial function, and in doing so, the judicial officers are not subject to the control of anyone.

Counsel further submitted that contrary to the submission for the petitioners, Section 20 (1) of the AMLA, does not turn judicial officers into policemen and prosecutors, and that such investigative functions are reserved for the Financial Intelligence Authority.

Furthermore, counsel contended that the submission for the petitioners that the AMLA allows for violation of the principle of advocate-client privilege, is based on a misunderstanding of the provisions of that Act. In counsel's view, the AMLA does not in any way affect advocate-client privilege. The requirement for lawyers to report about the activities of their clients is vital in fighting money laundering. Moreover, counsel submitted that the AMLA, under Part V, provides for a fair process of obtaining information from advocates which requires an order of court.

Counsel for the 1st respondent also submitted that the submission for the petitioners that the framework under the AMLA may lead to advocates' self-incrimination, was not pleaded by the petitioners and amounts to them departing from their pleadings. Counsel submitted that the legal proposition is that parties are bound by their pleadings and the court is not obliged to

resolve issues that were not included in the pleadings. Counsel referred to the following authorities, in support of his submissions: **Fang Min vs. Belex Tours and Travel Ltd, Supreme Court Civil Appeal No. 6 of 2013; and Attorney General vs. Ssemwogerere and Another, Constitutional Appeal No. 3 of 2004.**

In view of the above submissions, counsel prayed that this Court answers issue 5 in the negative.

I have considered the submissions for all the parties on this point. The petitioners pleaded as far as relevant to this issues, at paragraph 8 of the Petition, as follows:

"8. That your petitioners are interested in and/or aggrieved by the following matters being inconsistent with the Constitution whereby your petitioners are:

h) Section 1 of the Anti-Money Laundering Act derogates from petitioners' right to a fair hearing by omnibus inclusion of judicial officers in the competent authority for investigating and implementation of executive functions, fuses executive and judicial power which violates the doctrine of separation of powers and whittles down impartiality of judicial officers to supervise and control executive administrative actions and decisions and is inconsistent with and/or in contravention of Articles 2 (2), 126 (1), 128 (1) (2) (3), 129, 138, 139, 141, 142, 143, 144, 148, 149, 150, 151, 20 (1) (2), 21 (1), 28 (1), 44 (c) and 45 of the 1995 Constitution."

I earlier stated that Section 1 of the AMLA is an interpretation section that sets out definitions for key words and phrases used in the Act. The said provision does not permit for inclusion of judicial officers in "the competent authority for investigating and implementation of executive functions" as alleged in the Petition. Neither does the said provision "fuse executive and judicial power". I also noted that the affidavits sworn in support of the Petition do not offer any clarification on the averments in Paragraph 8 (h) of the Petition.

Counsel for the petitioners made various points, all purporting to arise from the averments under Paragraph 8 (h) of the Petition. First, he submitted that **Section 1** of the **AMLA** violates the principle of judicial independence and separation of powers because the provision permits for appointment of judicial officers to serve as members of the Financial Intelligence Authority (FIA), the body created under the AMLA, and a body that falls under the executive. The challenge with this submission is that Section 1 is merely a definition section and does not prescribe the composition of the FIA. Thus, in my view, the averments in the Petition as well as the submissions of counsel for the petitioners, on this point are misconceived. I do not have to consider them.

Counsel for the petitioners also made submissions regarding the alleged negative impact of the AMLA on the advocate-client privilege. However, this issue was not pleaded in the Petition. I also do not have to consider it, as in my view, the proposition that a party is bound not to pursue issues not set out in its pleadings is now well-established.

I would find that issue 5, too, must fail.

Issue 7 – What remedies are available to the parties?

Having answered all issues in the negative, I would dismiss the Petition, and make no order as to costs.

Dated at Kampala this 6th day of Dec 2022.



.....
Elizabeth Musoke

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 008 OF 2015

1. TULSA INVESTMENTS
2. KASANGAKI GEORGEIOUSPETITIONERS
VERSUS
1. ATTORNEY GENERAL
2. KCB BANK UGANDA LIMITED RESPONDENTS

[CORAM: *Buteera, DCJ, Geoffrey Kiryabwire, Elizabeth Musoke,*
Hellen Obura & Monica Mugenyi, JJCC]


JUDGMENT OF MR. JUSTICE RICHARD BUTEERA, DCJ

I have had the benefit of reading in draft the Judgment prepared by my learned sister, Lady Justice Elizabeth Musoke.

I agree with her findings and reasoning and have nothing useful to add.

Since all the members of the Panel agree with the lead judgment of the Hon. Lady Justice Musoke, JCC, it is, therefore, the unanimous decision of this Court that this Petition fails. It is hereby dismissed with no order as to costs.

Dated at Kampala this^{6th} day of^{Dec}..... 2022


Richard Buteera
Deputy Chief Justice

**THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 008 OF 2015**

1. TULSA INVESTMENTS

2. KASANGAKI GEORGEIOUS.....PETITIONERS

VERSUS

1. ATTORNEY GENERAL

2. KCB BANK UGANDA LIMITED.....RESPONDENTS

**CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JCC
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC
HON. LADY JUSTICE HELLEN OBURA, JCC
HON. LADY JUSTICE MONICA MUGENYI, JCC**

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

I have had the opportunity of reading the draft Judgment of the Hon. Lady Justice Elizabeth Musoke, JCC.

I agree with her Judgment and I have nothing more useful to add.

Dated at Kampala this.....6th.....day of Dec 2022.


.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA/JCC

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

(CORAM: BUTEERA, DCJ; KIRYABWIRE, MUSOKE, OBURA & MUGENYI, JJCC)

CONSTITUTIONAL PETITION NO. 008 OF 2015

1. TULSA INVESTMENTS
2. KASANGAKI GEORGEIOUSPETITIONERS

VERSUS

1. ATTORNEY GENERAL
2. KCB BANK UGANDA LIMITED.....RESPONDENTS

JUDGMENT OF HELLEN OBURA, JA/JCC

I have had the benefit of reading in draft the judgment of my learned sister, Hon. Lady Justice Elizabeth Musoke, JA/JCC in the above Petition and I concur with her findings on all the issues with nothing useful to add. I therefore agree with her conclusion that the Petition be dismissed with no order as to costs.

Dated at Kampala this 6th day of Dec 2022



Hellen Obura

JUSTICE OF APPEAL/CONSTITUTIONAL COURT



THE REPUBLIC OF UGANDA

**THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA**

CORAM: BUTEERA, DCJ; KIRYABWIRE, MUSOKE, OBURA & MUGENYI, JJCC

CONSTITUTIONAL PETITION NO. 8 OF 2015

1. TULSA INVESTMENTS
2. KASANGAKI GEORGEIOUS PETITIONERS

VERSUS

1. ATTORNEY GENERAL
2. KCB BANK UGANDA LIMITED RESPONDENTS

JUDGMENT OF MONICA K. MUGENYI, JA

I have had the benefit of reading in draft the Judgment of my sister, Hon. Lady Justice Elizabeth Musoke, JCC. I agree with the findings made and the conclusions in respect thereof, and have nothing useful to add.

Dated and delivered at Kampala this 6th day of Dec, 2022.



Monica K. Mugenyi

Justice of the Constitutional Court