THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

Coram: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi & Luswata JJCC

CONSTITUTIONAL PETITION NO 032 OF 2020

1. **UGANDA LAW SOCIETY**
2. **UGANDA MEDICAL ASSOCIATION**
3. **UGANDA INSTITUTION OF PROFESSIONAL ENGINEERS**
4. **INSTITUTION OF SURVEYORS OF UGANDA**
5. **INSTITUTION OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA**
6. **PHARMACEUTICAL SOCIETY OF UGANDA**
7. **UGANDA VETERINARY ASSOCIATION**
8. **UGANDA SOCIETY OF ARCHIVES**
9. **ASSOCIATION OF GRADUATE NURSES & MIDWIVES OF UGANDA**
10. **INSURANCE TRAINING COLLEGE**
11. **MEDICAL CLINICAL OFFICERS PROFESSIONALS UGANDA ASSOCIATION**
12. **UGANDA DENTAL ASSOCIATION**
13. **UGANDA VETERINARY PROFESSIONALS ASSOCIATION OF UGANDA**

} **PETITIONERS**

VERSUS

ATTORNEY GENERAL::RESPONDENT

JUDGMENT OF IRENE MULYAGONJA, JCC

Introduction

This petition was brought under Article 137 (3) of the Constitution of the Republic of Uganda, 1995. The petitioners complained that section 2 (a) of the Stamp Duty (Amendment) Act, 2020 is unconstitutional because it is in contravention of and inconsistent with Articles 21 (1) and (3), 40 (2) and 92 of the Constitution of the Republic of Uganda.

Background

The petitioners are all bodies that were established by statute or incorporated by professionals to bring members in each field of practice together for various objectives, but all with the aim of promoting professional standards, improving and maintaining the ethical delivery of services by each of them in Uganda. They state that Parliament enacted the Stamp Duty (Amendment) Act, 2020, which commenced on 1st July 2020, and introduced a new item in the Second Schedule to the Stamp Duty Act, 2014 (the parent Act) levying stamp duty on every professional license or certificate in the amount of UGX 100,000/= (One Hundred Thousand, only) per annum.

The petitioners further state that the basis of the amendment was in a Report of the Parliamentary Committee on Finance, Planning and Economic Development on the Stamp Duty (Amendment) Bill, 2000, where it was stated that the justification for the charge was to enable the Uganda Revenue Authority (URA) to get information about professional service providers and enforce compliance with section 135 (3) of the Income Tax Act. Section 135 of the Income Tax Act requires an applicant to have a Tax Identification Number (TIN) before they can obtain a license or certificate to practice their profession.

The petitioners explained that the members of each of the professions represented in the petition are required to renew their licences or certificates to practice annually for which they pay, and they are issued by the various professional bodies under specific laws governing their professions. That therefore, they are aggrieved by the additional levy that was introduced by the impugned amendment to the Stamp Duty Act.

The petitioners went on to assert that the impugned amendment had the effect of discriminating against private practitioners, compared to professionals in the same fields that are employed by government and other public bodies who are exempted from annual renewal of practicing certificates and licenses. Further, that the amendment to bring the new levy or tax on board was with the intention of circumventing various decisions of the High Court that were previously handed down in favour of some of the petitioners and in effect, reintroducing a tax or charge that was struck out by the courts. That as a result, it was in breach of the principle of separation of powers.

The petitioners finally contend that the purpose for which the impugned provision was enacted is not regulatory of professionals but constitutes a clog on their freedom to practice their professions. They prayed for the following declarations and orders:

i) A declaration that section 2 (a) of the Stamp Duty (Amendment) Act, 2020 is inconsistent with and in contraventions of Articles 21 (1), 40 (2) and 92 of the Constitution of Uganda and is therefore null and void;

ii) The costs of this petition be granted to the petitioners.

Some of the petitioners filed affidavits in support of the petition in which they detailed the allegedly deleterious effect of the impugned provision on the members of each of their professions. The affidavits were deposed on 17th December 2020 by the following officials: Nabasa Phiona Wall, then President of the Uganda Law Society (1st petitioner); Dr Richard Idro, President of the Uganda Medical Association (2nd petitioner); Engineer Ben Kyemba, President of the Uganda Institute of Professional Engineers (3rd petitioner); Dr Ranald Ssengendo, President of the Institution of Uganda Chartered Surveyors (4th petitioner); CPA Frederick Kibeedi, President of the Institute of Certified Public

Accountants of Uganda (5th petitioner); Dr Sylvia Angubua Baluka, PHD, President of the Uganda Veterinary Association (7th petitioner); Annet Cara Namugosa, Secretary General of the Medical Clinical Officers Professionals Association (11th petitioner); and Dr Godfrey Bataringaya, President of the Uganda Dental Association (12th petitioner).

The respondent filed an answer to oppose the petition. It was supported by the affidavit of Mr Oburu Odoi Jimmy, Principle State Attorney in the Attorney General's Chambers, sworn on 22nd January 2021.

But before I go on, I observed that while the petitioners complain about section 2 (a) of the Stamp Duty (Amendment) Act of 2020, section 2 (a) does not impose a duty on professional licenses. Instead, it substitutes item 27 of the parent Act with the terms *"Debenture- whether a mortgage debenture or not, being of a marketable security – of the total value,"* against which the levy is stated to be *"NIL."* The item that imposes stamp duty on professional licenses or certificates is stated in section 2 (h) where it is provided that the Stamp Duty Act, 2014 is amended in the Schedule by inserting immediately after item 63 a new item, *"63A Professional license or certificate 100,000/="*

The respondent did not complain about the error. Indeed, in the answer to the petition it was taken to be the correct provision and referred to all through, as well as in the affidavit in support and the submissions of counsel. There is no doubt that this was an error on the part of counsel for the petitioners in reading the Amendment to the Act. Since the petitioners are not responsible for drafting their proceedings I will consider it as an error by the Advocate and it has long been settled that such errors should not be visited upon clients. I will therefore henceforth refer to the correct provision which is section 2 (h) of the Stamp Duty (Amendment) Act, 2020.

In the respondent's answer, it was denied that the impugned provision is discriminatory, and further asserted that it does not contravene Articles 21 (1) and (3) of the Constitution because it does not disjoin or strip the petitioners of equal protection of the law on the basis of their professions. Further, that the payment of stamp duty as a professional is not one of the aspects of discrimination envisaged by Article 21 (1) and (3) of the Constitution. It was further explained that every person in Uganda has the right to practice his or her profession and carry on any lawful occupation, trade or business but that is subject to the laws applicable to it. And that therefore, section 2 (h) of the Stamp Duty (Amendment) Act which requires professionals to pay stamp duty does not disentitle them from practicing their professions.

The respondent further contends that the provision did not circumvent any High Court decision; neither is it a retrospective enactment by Parliament with regard to the payment of stamp duty by the petitioners. That the object of section 2 (h) of the Stamp Duty (Amendment) Act of 2020, which amended the Act of 2014 is to provide for the payment of stamp duty on a professional licence or certificate. That this was intended to enable URA to obtain the necessary information about professional service providers for purposes of enhancing their tax compliance. Further that it is in compliance with section 135 (3) of the Income Tax Act, which requires a taxpayer identification number before a licence is issued.

The respondent further stated that section 2 (h) of the Stamp Duty (Amendment) Act, 2020 is neither in conflict with nor inconsistent with the Constitution or the enactments that impose payment of fees for practising certificates or licence renewals to the Law Council or the regulatory bodies of the various professions to which the petitioners subscribe. Further, that the impugned provision is not discriminatory

of professionals in private practice as compared to professionals in public service because the latter are regulated under a different tax regime. They are required to pay tax as "Pay As You Earn" (PAYE) and local service tax, which is different from professionals in private practice who are essentially in business. The respondent thus prayed that the petition be dismissed.

Representation

At the hearing of the petition on 26 September 2023, Mr Ojambo Bichachi, Senior State Attorney, represented the respondent. The petitioners were represented by Mr Martin Asingwire. Counsel for both parties filed written submissions before the hearing which they each prayed that court considers as their final arguments in the resolution of the petition. The petition was therefore determined wholly on the basis of written arguments.

In his submissions, counsel for the petitioners framed 2 broad issues as follows:

1. Whether section 2 (h) of the Stamp Duty (Amendment) Act, 2020 was enacted in bad faith and is inconsistent with and in contravention of Articles 21 (1) and (3), 40 (2) and 92 of the Constitution.
2. What remedies are available to the parties.

However, in his submissions under the first issue , counsel presented his arguments under 3 sub-headings as: Complaint on discrimination; Complaint on economic rights and Complaint on retrospective legislation; and finally, the remedies available to the parties. Counsel for the respondent did not follow the same sub-headings in his submissions. He addressed court on the first issue broadly, after which he addressed the remedies sought by the petitioners.

There is no contest that there are questions in this petition as to the interpretation of the Constitution under Article 137 (3) (a). I have carefully perused the petition and find that there are three specific questions to be answered as follows:

i) Whether section 2 (h) of the Stamp Duty (Amendment) Act, 2020 is inconsistent with and/or in contravention of Article 21 (1) and (3) of the Constitution;

ii) Whether section 2 (h) of the Stamp Duty (Amendment) Act, 2020 is inconsistent with and/or in contravention of Article 40 (2) of the Constitution;

iii) Whether section 2 (h) of the Stamp Duty (Amendment) Act, 2020 is inconsistent with and/or in contravention of Article 92 of the Constitution, and if so, whether it was enacted in bad faith;

iv) And finally, in relation to each of the above, whether the petitioners are entitled to the declarations and orders sought.

I will now proceed to resolve the petition along those lines, taking into consideration the submissions that are relevant to each of the questions. The submissions are reviewed immediately before I resolve each of the questions.

1. Whether section 2 (h) of the Stamp Duty (Amendment) Act is inconsistent with or in contravention of Article 21 (1) and (3) of the Constitution.

Submissions of Counsel

Mr Asingwire for the petitioners, explained the genesis of the amendment to bring section 2 (h) of the Stamp Duty (Amendment) Act to bear on the petitioners and other professionals. He stated that it arose from a Report of the Committee of Finance and Economic

Development on the Stamp Duty (Amendment) Bill, 2020. He pointed out that the respondent admitted this in the reply to the petition where it was stated that the justification for the amendment was to enable URA to get information about professional service providers and enforce tax compliance in accordance with section 135 (3) of the Income Tax Act. He explained that this provision requires a Tax Payer Identification Number to be shown before any person is issued with any license.

Counsel reproduced section 135 (3) of the Income Tax Act verbatim in his submissions and further explained that that the Act was amended by section 24 of the Income Tax (Amendment) Act 2015, to insert subsection 3 of section 135 which provides that every local authority, government institution and regulatory body shall require a tax payer identification number from any person applying for a license or any form of authorisation necessary for purposes of conducting any business in Uganda.

He went on to submit that it is clear from the terms of section 135 (3) of the Income Tax Act that the current legal regime is sufficient to ensure that all professionals are compliant with the Act. Further, that a right should not be taken away lightly, as it was intimated in **Muwanga Kivumbi v Attorney General, Constitutional Petition No. 9 of 2005,** where this court (Kikonyogo, DCJ) found that the Police had many other provisions of the law to stop lawlessness during public assemblies, so that the new provisions that were enacted to stop them were unjustifiable.

Turning to the specific complaint about section 2 (h) of the impugned Act being discriminatory against professionals, counsel for the petitioners drew it to the court's attention that at the time he presented his arguments, the Attorney General's Chambers employed approximately 114 legal practitioners, while the Directorate of Public

Prosecutions had about 350. That all of them were exempted from the annual renewal of licences under the Advocates Act by law. That as a result, they are by law not burdened by the procedures and charges as private practitioners are each year to get a licence, such as the approval chambers in which they practice.

He charged that the law as it stands already negatively discriminates against private practitioners by placing a further burden on them as a class of professionals. He went on to explain that such discrimination was on the ground of their social and economic standing. Further, that the reference to Advocates here applies to the petitioners in other professions who too have been further burdened by the effects of the impugned amendment, because they are required to renew their licences and certificates each year under the laws that regulate their practice. He concluded that the impugned amendment has created an imbalance by further burdening practitioners who are already burdened for no good reason or public benefit.

Addressing the import of Article 21 (1) and (3) of the Constitution, Mr Tusingwire referred court to the decision in **Caroline Turyatemba & 4 Others v. Attorney General & Another, Constitutional Petition No. 15 of 2006; [2011] UGSC 13**, in which the court cited with approval the decision of the European Court of Human Rights in **Cha'are Shalom Ve Tsedek v. France, Application No. 27417/95**, for the dictum that discrimination is only justified where it complies with the principle of legality being prescribed by law to ensure public safety, order, health, morals and fundamental human rights and freedoms that are necessary to achieve a concerned objective, in the nature of affirmative action.

He opined that clearly the purpose upon which the preferential treatment was based demonises the targeted category of persons and makes them feel less important and not much of practitioners, like their

counterparts employed by government or other government bodies. That the overly expensive tax and fees imposed on private practitioners is burdensome and this is compounded by the impugned provision. He went on to submit that while clause (3) of Article 21 of the Constitution defines what amounts to discrimination, it was not intended to limit the enjoyment of freedom from discrimination in aspects of life that were not mentioned in the provision. He referred to the dictum of the Supreme Court in **Christopher Madrama Izama v. Attorney General, Supreme Court Constitutional Appeal No 01 of 2016,** to support his submission.

Counsel further drew our attention to the decision of this court in **Fuelex (U) Ltd v. URA, Constitutional Petition No. 25 of 2007; [2020] UGCC 10,** a reference from the Tax Appeals Tribunal in which it was found and held that section 15 of the Tax Appeals Tribunal Act which required a person who objected to an assessment of tax by URA to the Tribunal to pay 30% of the tax assessed, or the part of it that was not in dispute pending resolution of the objection, was a variant of infringement on the fundamental human rights and freedoms enshrined in the Constitution. That it had the effect of baring or serving as an absolute impediment to access to the courts by the aggrieved person who desired to be accorded the protection of the law. Counsel then prayed that this court finds that the impugned provision which imposes a tax on a certain group of professionals over and above taxes that are payable by others in the same profession, for no proper purpose, is discriminatory because there is no justification for it.

In reply, Mr Ojambo Bichachi referred to the content of Article 21 (1) and (3) of the Constitution and then submitted that the tax imposed on professionals under section 2 (h) of the Stamp Duty (Amendment) Act, 2020 does not fall within the ambit of discrimination that was envisaged

by the said provisions of the Constitution. He went on to submit that the provision of services as a business by a professional will automatically attract taxes in any progressive tax regime. That taxing of professionals is universally accepted as a taxable base and the same cannot be said to be discriminatory. He asserted that if the petitioners' argument in that regard were to be relied upon for the assessment and determination of tax bases and qualifications of persons and entities bound to pay tax, every person or entity would be exempted from paying tax for they would all allege discrimination.

Mr Bichachi reiterated that contrary to the appellants' submission that the impugned regulation discriminates against professionals in private practice compared to those in similar professions in government and government institutions, the latter are regulated under a different tax regime. He referred to the Public Service Standing Orders and other regulatory legislation which he did not cite. He asserted that professionals in the private sector operate as business entities which are profit oriented, while those in the public sector basically provide services to the public. That the two cannot be regulated by the same tax regime and do not form the same tax base; therefore, the application of different tax regimes does not amount to discrimination.

With regard to the petitioner's contention that they have to pay fees before they obtain their licences and join professional associations in order to be licensed to practice, which too requires them to pay professional fees, counsel submitted that such payments are distinct from and not comparable to the payment required by the impugned Act. He explained that this is so because the relevant umbrella bodies of the various professions collect those fees as non-tax revenue, but the taxes that are collected under the impugned provision go to the Consolidated

Fund. He concluded that the impugned provision is neither inconsistent with nor in contravention of Article 21 (1) and (3) of the Constitution.

Resolution on alleged violation of Article 21 (1) and (3)

It is a cardinal principle of interpretation that 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 its inconsistency. {Sec Article 2 (2) of the Constitution and **Rtd Dr. Col. Kiiza Besigye v. Y. K. Museveni; Supreme Court Presidential Election Petition No. 2 of the 2006;**}

In **Attorney General v. Salvatori Abuki, Supreme Court Constitutional Appeal No. 01 of 1999; [1999] UCSC 7**, the court relied on the decision of the Supreme Court of Canada in **R v. Big M Drug Mart Ltd, [1985] 1 S.C.R. 295**, for the principle that in determining the constitutionality of 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 an object the legislation intends to achieve. Intended and actual effects have been looked to for guidance in assessing the legislation's object and thus, its validity.

The principles above shall be the basis for the analysis here, but before I analyse the effect or import of the impugned provision, it is necessary to set it down at the onset. Section 2 (h) of the Stamp Duty (Amendment) Act, 2020 provides that:

> **The Stamp Duty Act, 2014 is amended in the Schedule-**
>
> **...**
>
> **(h) by inserting immediately after item 63 the following –**
>
> **"63A Professional License or certificate - 100,000/="**

This is in effect an amendment of section 3 of the Stamp Duty Act, 2014 which lays down the categories of instruments that are chargeable as follows:

> **3. Instruments chargeable with duty**
>
> **(1) Subject to this Act, the following instruments shall be chargeable with duty in accordance with Schedule 2—**
>
> **(a) every instrument mentioned in Schedule 2 which, not having been previously executed by a person, is executed in Uganda and relates to property situated, or to a matter or thing done or to be done, in Uganda;**
>
> **(b) a bill of exchange, cheque or promissory note drawn or made outside Uganda and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in Uganda; and**
>
> **(c) every instrument, other than a bill of exchange, cheque or promissory note, mentioned in Schedule 2, which, not having been previously executed by any person, is executed outside Uganda, relates to property situated, or to a matter or thing done or to be done, in Uganda and is received in Uganda.**
>
> **(2) Notwithstanding subsection (1) duty is not chargeable in respect of an instrument executed by, or on behalf of, or in favour of, the Government in any case where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of the instrument.**
>
> **(3) Notwithstanding subsection (1) duty is not chargeable in respect of an instrument executed by, or on behalf of, or in favour of institutions that are listed in the First Schedule of the Income Tax Act and organizations listed in the First Schedule of the Value Added Tax Act, in any case where but for this exemption, the institution or organization would be liable to pay the duty chargeable in respect of the instrument.**
>
> *{Emphasis added}*

The petitioners' complaint is based on the underlined exemptions above as discriminatory against them and other professionals in private practice. I will return to the two clauses in section 3 of the parent Act later on in this judgment.

Regarding the submission that the imposition of stamp duty on private professional practitioners while professionals in the same fields in the public service and allied organisations are exempted by the same law contravenes Article 21 (1), counsel for the respondent strenuously argued that the kind of discrimination complained about was not envisaged by the framers of Article 21 (3) of the Constitution; meaning that it does not fall within the categories listed therein. It is therefore necessary to set down the provision in order to interrogate the effect of the impugned provision of the law.

21. Equality and freedom from discrimination.

(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

(3) For the purposes of this article, "discriminate" means to give different treatment to different persons *attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.*

(4) Nothing in this article shall prevent Parliament from enacting laws that are necessary for—

(a) implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society; or

(b) making such provision as is required or authorised to be made under this Constitution; or

(c) providing for any matter acceptable and demonstrably justified in a free and democratic society.

(5) Nothing shall be taken to be inconsistent with this article which is allowed to be done under any provision of this Constitution.

{Emphasis added}

It is clear from clause (3) above that the framers of the Constitution identified common forms of discrimination in Uganda, mainly on the basis of our history as a nation. However, Article 45 of the Constitution provides as follows:

> **45. Human rights and freedoms additional to other rights.**
>
> **The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.**

Therefore, although certain elements of discrimination are specified in Article 21 (3) of the Constitution, Article 45 thereof is indicative of the fact that the list in the former is not exhaustive of what may be perceived to be discrimination. It should not result in the conclusion that discrimination that is prohibited by the Constitution consists merely of the 11 or so sub categories that are listed in clause 3. The right to be free from discrimination will continue to evolve, on a case-by-case, basis as our jurisprudence on Article 21 of the Constitution grows. The argument that the petitioners' complaint does not fall within the ambit of the categories identified in clauses (2) and (3) of Article 21 therefore has to be interrogated on the basis of the exemptions provided for in clause 4 thereof, which provides for the circumstances in which Parliament may lawfully enact laws that appear to be discriminatory of certain classes of persons.

The first exemption or leave to derogate from protecting the right or freedom from discrimination is found in clause 4 (a). The clause provides that nothing in Article 21 shall prevent Parliament from enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society.

The petitioners complain that the category of discrimination that they are subjected to is on the basis of their social or economic standing as private practitioners. They are aggrieved that professionals in the public sector are favoured over them because they are exempted from renewing their licenses on a yearly basis, while those in the private sector have to do so from year to year, and so pay various fees and duties each year, now augmented by stamp duty brought about by the impugned provision. Counsel for the respondent offered the justification that stamp duty is levied against the petitioners because they are taxed under a different tax regime and they work for profit, impliedly not for a salary as professionals in the public sector do. He referred to PAYE as distinctive from the regime under which professionals in private practice are taxed.

It is evident from the Income Tax Act and its various amendments that while professionals employed in the public sector are subject to a Tax referred to as PAYE, this tax is actually simply a tax on employment income which is deducted therefrom each month and remitted to URA by the employer. The same tax is levied against employees in different institutions established by law to deliver services to the public such as the URA, and the Inspectorate of Government which was singled out by counsel for the petitioners. However, professionals in private practice also pay income tax, save that it is paid annually under the same law, the Income Tax Act. The computations of tax on income for professionals in the public sector may be different from those in the private sector but it is clear that the same tax regime applies.

It is pertinent to note that the computations that are carried out for professionals in the private sector are based on their income as businesses under section 18 of the Income Tax Act. Such professionals are also subject to taxation under section 19 of the Income Tax Act, so

that where they take out their emoluments as dividends or salaries from a company or a partnership they too are taxed under the Income Tax Act. The argument that professionals in the private practice are taxed as business people and therefore their licenses ought to be subjected to an additional tax called stamp duty is therefore not sufficient justification for the additional charge.

The amendment to impose Stamp Duty on professionals that have to renew licences and certificates therefore does not fall within the ambit of Article 21 (4) (a) of the Constitution. The respondent has not shown that the amendment was necessary for implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society. I say so because the petitioner's complaint is not against all the people in Uganda but against professionals in the same professions, save that the complainants are in the private sector. There appears to me to be no imbalance in the taxation regime for lawyers or doctors, engineers and other professionals in the private sector and those in the public sector, as is evident in the Income Tax Act, because each of the two categories is taxed according to what Parliament considered to be fair and reasonable in each of the two circumstances.

Going on to the second exemption that allows derogating from the imperative of non-discrimination, Article 21 (4) (b) provides that nothing in Article 21 shall prevent Parliament from enacting laws that are necessary for making such provision as is required or authorised to be made under the Constitution. This clause seems to have empowered Parliament to amend the Stamp Duty Act because Article 152 (1) which provides for Taxation provides that *"No tax shall be imposed except under the authority of an Act of Parliament."* This may have inspired the amendment for it was thought that once stamp duty on professionals'

licenses and practicing certificates is provided for in a law enacted by Parliament, it will be collected without much ado.

This takes me back to section 3 (2) of the Stamp Duty Act, 2014, which at the risk of repetition, I will set down again for clarity of the analysis that follows. It provides as follows:

> **(2) Notwithstanding subsection (1) duty is not chargeable in respect of *an instrument executed by, or on behalf of, or in favour of, the Government* in any case where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of the instrument.**
>
> *{Emphasis added}*

Section 2 of the Stamp Duty Act, 2014, defines the word *"chargeable"* to mean:

> **an instrument chargeable under the Act or any other law in force in Uganda when the instrument was executed or, where several persons executed the instrument at different times, first executed.**

The Act does not specifically define the term *"instrument,"* But section 2 thereof provides that,

> **instrument includes a document by which a right or liability, is or purports to be created, transferred, limited, extended or recorded.**

Section 2 of the Act also provides that *"executed"* and *"execution"* used in reference to instruments means *"signed"* and *"signature,"* respectively.

In this petition, the practicing licenses and certificates issued to the petitioners are said to be instruments that are chargeable. One then wonders whether they fall under documents that are executed by the practitioners within the meaning of the Stamp Duty Act. This is especially so in view of section 3 (1) (a) which provides, among others, that chargeable instruments include:

(a) every instrument mentioned in Schedule 2 which, not having been previously executed by a person, *is executed in Uganda and relates to property situated, or to a matter or thing done or to be done, in Uganda*;

{Emphasis added}

My understanding of this provision is that a chargeable instrument must have been executed by a person in Uganda; the instrument must have been executed either in respect of property that is in Uganda, or executed in respect of a matter or thing done or to be done in Uganda. To my mind, the words that operationalises this provision *are "executed by a person"* which means the signing or affixing of a signature onto an instrument, as it is implied by the definition of *"execution"* in section 2 of the parent Act.

I am fortified in coming to this conclusion by the commentary in Halsbury's Laws of England, Volume 99 (2023)[1] where it is explained, at paragraph 1130, that stamp duty is a charge on instruments as follows:

> *Stamp duty is chargeable on instruments and not on transactions.* ***The liability of an instrument to stamp duty arises at the moment at which it is executed and depends on the law in force and the circumstances which exist at that time****. The character of the instrument must be ascertained by reference to its legal effect when it is executed. The liability of an instrument to duty is not determined as at the time when the instrument is presented for stamping, and still less when it is produced in evidence.* ***Until execution is completed no duty attaches.*** *Where an instrument was originally delivered as an escrow, duty is payable at the time when the conditions are fulfilled making the document effective as a deed. The onus of proving that an alteration was made while the instrument was still incomplete rests on the person alleging it.*
>
> *{Emphasis added}*

[1] Online Edition by LexisNexis

While it is true that certificates or licences to practice issued to the petitioners and other professionals that are affected by the impugned provision relate to services to be rendered in Uganda, as it is provided for in section 3 (1) (a) of the Stamp Duty Act, it is doubtful that the licensees execute the licenses or certificates that are required by the impugned provision to be stamped. I carefully examined the statutes under which the licences and practicing certificates are issued in order to establish whether any inference may be drawn from them that they are instruments executed by the proposed tax payers under the impugned provision.

Starting with the 1st petitioner, Advocates are indeed issued with practicing certificate annually, upon which they must now pay Stamp Duty under the impugned provision. Section 11 (1) of the Advocates Act provides as follows:

> **11. Issue of practising certificates and right to practise.**
>
> **(1) The registrar shall issue a practising certificate to every advocate whose name is on the roll and who applies for such a certificate on such form and on payment of such fee as the Law Council may, by regulations, prescribe; and different fees may be prescribed for different categories of advocates.**

The procedure for the application is under the Advocates (Enrolment and Certification) Regulations SI-267-1. The practicing certificate is executed/signed by the Chief Registrar alone as the officer who issues it under section 11 of the Act. The Advocate has nothing to do with the issue thereof; he/she only presents their application as is required by the Act and waits on the Registrar to issue the certificate.

The Medical and Dental Practitioners Act, Cap 272 provides for the issue of licenses for private practice of medical doctors and dentists in section 28 which provides, in part, as follows:

28. Licensing of private practice.

(1) A registered medical or dental practitioner may apply to the council for a licence to engage in private practice either as a general medical or dental practitioner or as a specialist in his or her area of specialisation.

(2) An application for a licence under subsection (1) shall be accompanied by a copy of the certificate of registration.

(3) The council may, if satisfied that the applicant possesses the necessary qualifications, authorise the grant of a licence for private practice in Form B set out in the Third Schedule, subject to such conditions as the council may consider fit.

(4) ...

Form B referred to above shows that it is a template for the Registration Certificate for Private Medical Practice. The document is meant to certify that it is a true copy of the entry in the Register of Medical and Dental Practitioners authorised to apply and engage in private practice, which is maintained under section 19 (1) (f) of the Act. It is signed by the Registrar and the Chairperson of the Medical and Dental Practitioners' Council. Licensees are not required to affix their signature thereto.

With regard to the professional engineers, there does not seem to be a designated certificate or license issued under the Engineers Registration Act (Cap 271). Instead, section 16 of the Act provides for a Register of Engineers in which their particulars are recorded after the Engineers' Registration Board finds them fit to practice. The registrar publishes the names, addresses and qualifications of each qualified engineer in the Gazette, as is required by section 18 of the Act. Pursuant to section 19 of the Act, a publication under section 18 is *prima facie* evidence that the person named in it has been registered under the Act. The Gazette Notice is signed by the registrar. Extracts may then be taken from it, certified by the registrar and they are receivable in all courts and other tribunals as *prima facie* evidence of the facts stated

therein. The engineers, because they do not keep the register, of course have no hand in the certification of the extracts.

The Surveyors Registration Act provides for the issue of a license in section 19. It is valid for one year and may be renewed. It is issued by the registrar which implies that it is signed by the same authority.

The Veterinary Surgeons Act provides for the issue of licenses for private practitioners under section 11, on authority of the Board. A licence issued is subject to such conditions and valid for such period as the board may determine. It is therefore does not seem to always be for one year, as other private practitioners' licenses are, unless there has been an amendment to the Act or regulations made under it that escaped my analysis. Section 10 of the Act implies that licenses to private practitioners are issued by the registrar and therefore executed by him/her.

Under the Architects Registration Act (Cap 269) practicing certificates are issued under section 14 (2). They are issued by the registrar upon application and payment of a prescribed fee and remain valid until 31st December, next after issue. It is implied that execution is by the issuing authority, the registrar.

The Nurses and Midwives Act (Cap 274) allows professionals to engage in private practice by virtue of section 30 thereof. The Nurses and Midwives Council may, if satisfied that the applicant possesses the necessary qualifications, grant a license to them which is valid for one calendar year at a time. Section 30 (7) implies that such licenses are issued by the registrar and therefore executed/signed by him/her.

Licences to professional insurers are issued by the Insurance Regulatory Authority under section 44 of the Insurance Act, Act No 6 of 2017. Section 44 (2) thereof provides that an insurance licence issued

under subsection (1) remains in force until suspended, varied or revoked. The Secretary of the Authority and the Chief Executive of the Authority are charged with authenticating its seal. The Secretary keeps the records of the Authority. It is therefore implied that he/she, alone, executes/signs licenses issued to professional insurers.

For all professionals that are petitioners herein therefore, there is none that executes/signs any license or certificate issued to them to practice. All that they do under the various laws that regulate their practice is to apply for a licence or certificate and wait for its issue. Invariably, certificates and licenses are signed or endorsed with the signature of the registrar or other person responsible for the records of the regulatory body for the profession.

For the avoidance of doubt, I analysed the instruments that were listed in Schedule 2 of the Stamp Duty Act, which fall within a total of 63 categories, excluding item 64 which provides for *"Any other provision not specifically mentioned."* I found that they all fall within the current definition of instruments for which stamp duty is chargeable in section 3 (1) of the Stamp Duty Act. Unlike the licenses sought to be stamped, they are agreements or deeds, bonds, cheques, debentures, among others, that are executed by the person that is required to pay stamp duty.

I would then conclude that in relation to the petitioners here, all the licenses and certificates that were targeted by section 2 (h) of the Stamp Duty (Amendment) Act of 2020 are exempt from being charged with stamp duty by section 3 (3) of the Stamp Duty Act of 2014. And that therefore, clearly Parliament was misled into amending a law to facilitate the collection of stamp duty on instruments that are executed by government officials and so exempted from payment of such duty by the parent Act.

As to whether the impugned provision falls within the final exception provided for in clause 4 (c) of Article 21 of the Constitution, as a law that provides for a matter that is demonstrably justifiable in a free and democratic society, the same exception is provided for in Article 43 (2) (c) of the Constitution. I therefore found it most appropriate to discuss the exception under the petitioners' complaint about the alleged violation of their social and economic rights, where the same exception is provided for.

In conclusion of the analysis about the alleged discrimination against the petitioners in their profession, I would find that since the provision does not fall within the ambit of the exceptions provided for in Article 21 (4) (b), and neither is it supported by Article 152 (1) of the Constitution, the exception under Article 21(4) (a) thereof, section 2 (h) of the Stamp Duty (Amendment) Act clearly contravenes and/or is inconsistent with Article 21 (1) and (3) of the Constitution.

2. Whether section 2 (h) of the Stamp Duty (Amendment) Act is inconsistent with or in contravention of Article 40 (2) of the Constitution.

Submissions of counsel

Counsel for the appellant submitted that while Article 40 (2) of the Constitution guarantees every person's right to practice their profession, section 2 (h) of the Stamps (Amendment) Act is not couched in regulatory but in prohibiting terms. He explained that this is so because failure to pay the tax is a total impediment to getting a license or certificate to practice. He further submitted that while the Constitution empowers Parliament to enact laws, such laws must be enacted in good faith, in public interest and if they impose a restriction on a right, it must be reasonable. He referred to **Human Rights Network Uganda & 4 Others v Attorney General, Constitutional**

Petition No 56 of 2013; [2020] UGCC 6, where the court laid down about seven (7) principles referred to as the *'constitutional yardstick'* for coming to that conclusion,

Counsel further submitted that the amendment was not intended to raise revenue but to help URA to track tax payers. He pointed out that all of the petitioners are already mandated to get licences to practice and before they get them, they are required to submit a Tax Identification Number (TIN) to the issuing body. That therefore, the desire to track tax payers was already satisfied by an existing requirement but it was brought back as a disguise in order to collect tax that the government had already desperately tried to collect before by amending the Schedule to the Trade (Licensing) Act.

Counsel went on to submit that the petitioners are all already required to pay taxes for admission, registration and annual licenses through their statutory governing bodies. Requiring them to pay more before they are allowed to practice is a clog on their right to practice their professions. He pointed out that there are already acceptable restrictions such as academic qualifications and the inspection of premises intended for the public good, ensuring quality of services and promoting skill. He contended that a law that imposes restrictions on the practice of a profession must fulfil the public interest test, among others. That the justification for the impugned provision showed that it was of no use to any person but a burden that could destroy professions and prohibit entrants. He added that a lot of fees and revenue are already collected from professionals at the time of obtaining practicing certificates or licenses.

He concluded that by not including practicing licenses and certificates in the schedule to the Stamp Duty Act, Parliament had already intentionally excluded professional licenses from the levy. And finally,

that sneaking the tax in by amendment was an attempt to impose double tax on professional licenses and a clog on the right to practice.

In reply, counsel for the respondent reiterated the contents of the reply to the petition that the right to practice ensured by Article 40 (2) of the Constitution is subject to the laws applicable thereto. He asserted that the fees payable by professionals to obtain practicing certificates and licenses are different from the tax assessed under the Stamp Duty Act. That whereas the relevant umbrella professional bodies collect fees for registration which go to their accounts, the taxes collected under the impugned Act go to the Consolidated Fund.

He also reiterated the argument that the tax was intended to enable URA to obtain the necessary information about professional service providers for purposes of enhancing tax compliance. He explained that this was in compliance with section 135 (3) of the Income Tax Act which requires every professional to present a Tax Payer Identification Number (TIN) before the issue of a license. That the payment of the tax does not disentitle professionals from practicing their professions as is alleged by the petitioners; therefore, the impugned provision is neither inconsistent with nor in contravention of Article 40 (2) of the Constitution.

Resolution on alleged violation of Article 40 (2)

The petitioners' complaint here, as I understand it, is that the failure to pay the duty imposed on them by section 2 (h) of the Stamps (Amendment) Act disentitles them from getting a licence or practicing certificate. And that without it, they are unable to practice their professions contrary to Article 40 (2) of the Constitution. They however do not point court to any provision in the impugned law that says so. The consequences for non-compliance with the requirement to stamp

chargeable instruments are contained in sections 32, 52 and 54 of the parent Act. Section 32 of the Act provides as follows:

32. Instruments not duly stamped inadmissible in evidence.

(1) An instrument chargeable with duty shall not-

(a) be admitted in evidence for any purpose by a person who has by law or consent of the parties authority to receive evidence; or

(b) be acted upon, registered or authenticated by a person, or by a public officer, unless the instrument is duly stamped.

(c) this section shall not prevent the admission of an instrument in evidence in any proceeding in a criminal court;

(d) this section shall not prevent the admission of an instrument in any court when the instrument has been executed by or on behalf of the Government, or where it bears the authentic certificate of the Uganda Revenue Authority as provided by this Act.

However, as it has been established above, all licences and certificates are issued by the Government. They are thus also exempted by section 32 (2) (d) above. If they were chargeable with duty, which they are not, the petitioners would still be able to rely on their licences and certificates to prove to courts of law that they were duly licensed to practice. But most importantly, the absence of a stamped licence or practicing certificate would not disentitle them from practicing their professions.

The second consequence of not paying stamp duty on professional licenses, and perhaps which was most worrying to the petitioners is that section 52 of the parent Act creates a debt for one who has not complied when it provides for the consequences as follows:

52. Duty as a debt due to the Government

(1) Duty, when it becomes due and payable is a debt to the Government of Uganda and is payable to the Commissioner in the manner and at the place prescribed.

(2) Duty that has not been paid when it is due and payable may be sued for and recovered in a court of competent jurisdiction by the Commissioner acting in the Commissioner's official name, subject to the general directions of the Attorney-General.

(3) In a suit under this section, the production of a certificate signed by the Commissioner stating the name and address of the person liable and the amount of duty due and payable by the person shall be sufficient evidence of the amount of duty due and payable by that person.

The debt once established may also be recovered by distraint pursuant to section 54 of the Act. Once again, this would not prevent a professional from carrying on their practice because it is trite law that distress shall not be levied upon the tools of one's trade.

Nonetheless, the impugned provision created an additional tax head for professionals in private practice on top of the other expenses incurred in the process of obtaining a licence. This is in addition to the obligation to pay income tax, just like professionals employed by government and allied institutions who have deductions taken from their income each month as PAYE.

Much as it has been established that the failure to remit the tax would not immediately prohibit the petitioners from carrying on their professions, a failure to pay may lead to enforcement, by distress to recover the tax by sale of other assets as is provided for in section 54 (3) of the Act. It provides that for purposes of executing distress under subsection (1) the Commissioner may, at any time, enter any house or premises described in the order authorising distress. This would prejudice private practitioners who already pay other taxes and charges for their licenses as it was explained in the affidavits in support of the petition. For the sum of shs 100,000, it is my view that distraint is akin to using a hammer to kill a fly. It therefore still has to be established whether this hammer hanging over the petitioners' heads is a lawful

impairment to their right to practice their professions guaranteed by Article 40 (2) of the Constitution which provides as follows:

> **(2) Every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.**

An impairment or limitation to the enjoyment of the right, like all rights in Chapter 4 of the Constitution, is only acceptable if it complies with the requirements of Article 43 thereof, which provides thus:

> **43. General limitation on fundamental and other human rights and freedoms.**
>
> **(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.**
>
> **(2) Public interest under this article shall not permit—**
>
> **(a) political persecution;**
>
> **(b) detention without trial;**
>
> ***(c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.***
>
> *{My emphasis}*

The import of Article 43 (2) (c) of the Constitution was considered by the Supreme Court in **Charles Onyango Obbo & Andrew Mujuni Mwenda v. Attorney General; Constitutional Appeal No 2 of 2002; [2004] UGSC 81.** Mulenga, JSC who wrote the lead judgment, with which the majority of the court agreed, rendered the following interpretation of the provision:

> *"It follows therefore, that subject to clause (2), any law that derogates from any human right in order to prevent prejudice to the rights or freedoms of others or the public interest, is not inconsistent with the Constitution. However, the limitation provided for in clause (1) is qualified by clause (2), which in effect introduces "a limitation upon the limitation." It is apparent from the wording of clause (2) that the framers of the Constitution were concerned about a probable danger of misuse or abuse of the*

provision in clause (1) under the guise of defence of public interest. For avoidance of that danger, they enacted clause (2), which expressly prohibits the use of political persecution and detention without trial, as (a) means of preventing, or measures to remove, prejudice to the public interest. In addition, they provided in that clause a yardstick, by which to gauge any limitation imposed on the rights in defence of public interest. The yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. This is what I have referred to as "a limitation upon the limitation". The limitation on the enjoyment of a protected right in defence of public interest is in turn limited to the measure of that yardstick. In other words, such limitation, however otherwise rationalised, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society."

{My emphasis}

The majority of the court further agreed that the onus is on the respondent to prove, by providing credible evidence, that the restriction on the right is demonstrably justifiable in a free and democratic society. The court also discussed and relied on the principles underlying Article 43 (3) of the Constitution of Uganda as they were explained by the Supreme Court of Canada, where there is a similar provision, in **R v. Oakes, [1986] 1 SCR 103**. The court then relied on the test that was formulated by the Supreme Court of Zimbabwe in **Mark Gova & Another v. Minister of Home Affairs & Another, [S.C. 36/2000: Civil Application No. 156/99],** for determining whether there is justification for imposing a limitation on guaranteed rights, as follows:

i) *the legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right;*
ii) *the measures designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational considerations;*
iii) *the means used to impair the right or freedom must be no more than necessary to accomplish the objective.*

In the instant case, the legislative objective that was offered by the respondent was not included in the affidavit in support of the Answer where the deponent, Oburu Odoi Jimmy, Principal State Attorney in the respondents' chambers generally stated in paragraph 3 thereof that the

averments in all the paragraphs of all the affidavits in support of the petition were noted but not admitted. Reversing the requirement in rule 6 (5) of the Constitutional Court (Petitions and References) Rules, 2005, that the evidence upon which the petition is opposed shall be contained in an affidavit, in paragraph 6 of the Answer to the Petition it was stated thus:

> **6. The respondent in reply to paragraphs 13 (a and g) contends that the Stamp Duty (Amendment) Act, 2020 amended Schedule 2 of the Stamp Duty Act, 2014 by imposing stamp duty of shs. 100,000 on payment of a professional license or certificate. This is intended to enable URA (Uganda Revenue Authority) to obtain the necessary information about professional service providers for purposes of enhancing their tax compliance. This is in compliance with section 135 (3) of the Income Tax Act which requires a Taxpayer Identification Number before a licence is issued.**

The fact that this was not included in the affidavit is unfortunate, to say the least. In addition to that, there was no further explanation about how Parliament arrived at the levy of shs. 100,000; not to mention how that would improve the process of obtaining information about professional service providers' tax compliance. The general statement contained in the Answer thus brings to mind the question whether the Attorney General's Chambers sought instructions from the Institution that originated the imposition of the tax, and therefore the amendment of the schedule to the Act, which would be the URA. It appears they did not; but it now falls upon this court to determine whether the legislative intent was rational, in view of the provisions of section 135 (3) of the Income Tax Act, which the collection of stamp duty was intended to support.

Section 135 of the Income Tax, as amended by the Income Tax (Amendment) Act 2015 provides for the Tax identification number as follows:

135. Tax identification number.

(1) For purposes of identification of taxpayers, the commissioner may issue a number, to be known as a tax identification number, to every taxpayer.

(2) The commissioner may require a taxpayer to show the tax identification number in any return, notice or other document used for the purposes of this Act.

(3) Every local authority, government institution, regulatory body shall require a taxpayer identification number from any person applying for a license or any form of authorisation necessary for purposes of conducting of any business in Uganda.

{My emphasis}

In all of the affidavits in support of the petition, each of the deponents stated that section 135 of the Income Tax Act was amended to make it mandatory for professional private practitioners to submit a Tax Identification Number to the regulatory authority before it issues a practicing license. I therefore accept the submission of counsel for the petitioners that the URA already had sufficient resources, in terms of legislation, upon which they could rely to get information about compliance with section 135 (3) of the Income Tax Act, and indeed all matters relating to the taxation of professionals in private practice. If it was the need to see to it that all licensed practitioners complied with section 135 (3) of the Income Tax Act, URA had the option of bringing the provisions of section 131 of the Act to bear on all regulators that issue licenses to them and obtain the necessary records. The provision gives very wide powers to the Commissioner General in that regard, partly as follows:

31. Access to books, records and computers.

(1) In order to enforce a provision of this Act, the commissioner, or any officer authorised in writing by the commissioner—

(a) shall have at all times and without any prior notice full and free access to any premises, place, book, record or computer;

(b) may make an extract or copy from any book, record or computerstored information to which access is obtained under paragraph (a) of this subsection;

(c) may seize any book or record that, in the opinion of the commissioner or the authorised officer, affords evidence which may be material in determining the liability of any person to tax, interest, penal tax or penalty under this Act;

(d) may retain any such book or record for as long as it may be required for determining a person's tax liability or for any proceeding under this Act; and

(e) may, where a hard copy or computer disk of information stored on a computer is not provided, seize and retain the computer for as long as is necessary to copy the information required.

The amendment of the Stamp Duty Act, 2014 for purposes of obtaining information was therefore, clearly not necessary. It would then be correct to come to the conclusion that the purpose of the amendment was to collect more tax from professional private practitioners, as is the purpose of all tax legislation.

As to whether the amendment of the Act was rationally connected to the objective of collecting information about compliance with taxation laws was not arbitrary, unfair or based on irrational considerations, the question cannot be answered in the positive in view of the answer to the first question in the test approved in **Onyago Obbo's** case (supra). The amendment was clearly arbitrary because there was no evidence adduced in this petition that URA had a great need for a law to collect information about the tax payers in private practice, especially in the face of current legislation for that purpose. In addition, the respondent did not adduce any evidence to justify it. I would therefore come to the conclusion that the measure was not only unfair; it was also arbitrary and irrational in the circumstances.

In answer to whether the means used to impair the right or freedom was no more than necessary to accomplish the objective, we must keep

it in mind that the objective of the amendment was to gather information to improve compliance of professionals in private practice, in support of section 135 (3) of the Income Tax Act. It is my view that if it was evident to URA that such professionals are not tax compliant, then the respondent here has not proved it to this court. And even if it had been proved, the imposition of further taxes to ensure compliance by private practitioners would not make them more so.

As observed earlier, the imposition of stamp duty by payment of shs 100,000, though it may appear a paltry sum to URA in view of the status of professionals in private practice, has consequences if the tax is not paid as is provided for by section 54 of the Act. The consequences are not proportionate to the amount that has to be paid, reinforcing my view that Parliament imposed a tax on professionals in private practice that was not consistent with the original intentions of the Stamp Duty Act.

I find that the means used to impair the right or freedom was much more than was necessary to accomplish the objective. I would then conclude that the imposition of a tax called stamp duty on the issue of practicing licenses to professionals in private practice in Uganda is not demonstrably justifiable in a free and democratic society. It was imposed in contravention of Article 40 (1) of the Constitution to the extent that it places a disproportionate burden on them that hangs over their heads should they fail to pay the tax.

Counsel for the petitioners also submitted that the tax was imposed in bad faith. However, in order to prove bad faith in this court, the provisions of Order 6 rule 3 of the Civil Procedure Rules must be satisfied. It provides for the particulars to be given where necessary as follows:

3. Particulars to be given where necessary.

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings.

In **Robert Mwesigwa, Abel Nayebaza & 134 Others v Bank of Uganda, Commercial Court High Court Civil suit 588 of 2003; [2005] UGComm 10**, it was held in respect of parties that sought to prove bad faith against the defendant that consistent with Order 6 rule 2 of the CPR, at the time, it was necessary that the alleged acts of bad faith be pleaded so that the Defendant gets to know how to counter them. That imputing bad faith about a party, be it an artificial or natural person, is a grave matter because it goes to one's reputation and professionalism.

In this case, the allegations of bad faith were not included in the petition. Instead, each of the deponents to the affidavit in support stated that the amendment to impose stamp duty was not in good faith to protect the interests of the public but in bad faith for it discriminated against members of the professions in private practice.

Black's Law Dictionary (supra) defines *"bad faith"* as *"dishonesty of belief or purpose."* In this case, the petitioners state the purpose for which the amendment was not justified. It has also been found that the tax levied is discriminatory against the petitioners as a category in their professions as distinct from persons in similar professions in the public service. There may have been a lapse or error on the part of the legislature but it cannot be imputed that the body enacted a statute in bad faith.

3. Whether section 2 (h) of the Stamp Duty (Amendment) Act is inconsistent with and/or in contravention of Article 92 of the Constitution.

Submissions of counsel

Counsel for the petitioners submitted that Parliament acted ultra vires its legislative powers when it amended the Stamp Duty Act, and in contravention of Article 92 of the Constitution. He emphasised that Article 92 which provides that Parliament shall not pass any law to alter the decision or judgment of any court as between the parties thereto.

He referred to the decision in **Human Rights Network Uganda & 4 Others v. Attorney General, Constitutional Petition No 56 of 2013**, where it was observed that the history of Article 92 of the Constitution was to prevent the legislature from violating property rights of successful litigants accruing from specific judicial decisions. Further, that the context of that petition called for a broader and purposive application of the provision to the decision made in the public interest and not conferring any particular individual property rights on any litigant. He then drew our attention to the decisions that the petitioners were interested in as follows:

i) Stanbic Bank Uganda Ltd & 3 Others v. Attorney General, High Court Miscellaneous Cause No 645 of 2011;
ii) Pharmaceutical Society of Uganda v. Attorney General, Miscellaneous Cause No 260 of 2019;
iii) NC Bank Ltd & 24 Others v. KCCA & Attorney General, High Court Miscellaneous Cause No. 2 of 2018;
iv) Uganda Law Society v. KCCA and Attorney General, Miscellaneous Cause No 243 of 2017; and

v) Uganda Clearing & Forwarding Association v. KCCA & Attorney General, Miscellaneous Cause No 439 of 2017.

Counsel for the petitioners went on to explain that in all of the decisions above, it was found that the professionals involved already had a separate regime for fees and taxes under their governing and regulatory bodies. And for that reason, they did not require a separate licence and imposing it on them would amount to double taxation. Further, that it was held that a professional should not face requirements and restrictions from one governing regime and have to face restrictions from another arm or branch of government.

He added that all of the decisions recognised the fact that the laws available were sufficient to govern professionals, so that requiring them to pay shs 100,000 per year in order to issue them with another license was not necessary. He opined that it was not by coincidence that government came up with another tax requiring the professionals to pay shs 100,000 which the courts in the decisions above held they should not pay. That this, coupled with the justification that the government gave for imposing the impugned tax, implies that it was meant to replace that which was quashed after the amendment of the Schedule to the Trade (Licensing) Act.

Counsel for the petitioners went on to submit that the impugned section 2 (h) of the Stamp Duty (Amendment) Act, 2020 is without a doubt *in pari materia* with the nullified Schedules of the Trade (Licencing) Act. That though the two have different names, the subject matter, purpose and effect were only modified and varied in the same degree but its true identity was never lost or destroyed. He explained that the impugned tax and that which had been imposed under the Trade (Licensing) Act had the same purpose: to regulate licensing. That the restriction that attaches to obtaining a practicing certificate or license through the

payment of a similar amount of money is clearly what the court laboured to explain in the previous decisions as illegal and unfair.

In reply, counsel for the respondent submitted that the amendment of the Schedule to the Stamp Duty Act was not an attempt to circumvent the various High Court decisions that struck out the tax under the Trade (Licencing) Act.

He reiterated that the objective of section 2 (h) of the Stamp Duty (Amendment) Act was to provide for the payment of stamp duty on professional licenses or certificates and to clarify on the requirements for incentives on strategic investment projects. He contended that this was completely different from section 5 of the Trade (Licensing) (Amendment) Act and Item 27 in Part A and C of the same Act, which had hitherto exempted the petitioners from paying for trading licences. That the amendment was therefore not inconsistent with Article 92 of the Constitution.

Resolution on alleged contravention of Article 92 of the Constitution

The petitioners' complaint in this regard stems from the decisions of the High Court in the various applications listed above, wherein the imposition of a new license upon professionals in private practice had been achieved by amending the Trade (Licensing) Act and the Schedule thereto.

The background to that dispute was that section 3 of the Trade (Licencing) Act, Cap 101, provides for the designation of business areas and trading centres by the Minister responsible for local administrations and urban authorities. Section 8 thereof prohibits carrying on certain business in the designated areas without a trading licence in the following terms:

8. Trading prohibited without a trading licence.

(1) Subject to subsection (2), no person shall trade in any goods or carry on any business specified in the Schedule to this Act unless he or she is in possession of a trading licence granted to him or her for that purpose under this Act.

(2) No trading licence shall be required in any event for—

(a) the trade of a planter, farmer, gardener, dairyperson or agriculturist in respect of the sale of his or her own dairy or agricultural produce;

(b) the trade of a person in respect of goods bona fide made by him or her by his or her handicraft in or on any premises where he or she normally resides, or by the handicraft of persons normally residing with him or her or who are his or her employees or members of his or her family;

(c) the trade carried on in any market established under the Markets Act;

(d) the sale of tobacco, cigarettes, newspapers, books, non-intoxicating liquor or playing cards by the management of a proprietary or members club to its members in the club premises;

(e) any other trade which the Minister may, by statutory instrument, declare to be a trade for which no trading licence is required under this Act; or

(f) *any trade or business in respect of which a separate licence is required by or under any written law.*

{Emphasis added}

The petitioners here originally fell in the category provided for in clause (f) of subsection 2 above, while section 30 of the Act provided for license fees to be paid on the grant of a trading license as follows:

30. Licence fees.

(1) The fees specified in the Schedule to this Act shall be payable on the issue of a licence in the areas set out in the Schedule in respect of the various trades specified in that Schedule.

(2) For the purposes of determining the fees payable in any city, municipality or town, the Minister shall, by statutory order, divide the area of any city, municipality or town into two grades.

(3) The Minister may, by statutory instrument, amend the Schedule to this Act.

As it was provided for in section 30 (3) above, in 2011, the Minister of Trade, Industry and Cooperatives amended the Schedule by publishing the Trade (Licensing) (Amendment of Schedule) Instrument, SI No 2 of 2011. It included businesses that were hitherto exempt from obtaining trading licenses by section 8 (2) (f) of the Act. The commercial banks challenged items 25 and 28 of the Schedule which required them to obtain trading licenses for all their premises, including any place where they placed an Automatic Teller Machine (ATM) at the cost of between shs 63,000 and 525,000, depending on the grading assigned to them in the Schedule. They argued that they were exempt from paying for trading licenses by virtue of section 8 (2) (f) of the Trade (Licencing) Act. And that in addition, they were not traders; rather they rendered services and so did not fall under the definition of businesses required to pay for and obtain trade licenses.

In their application for judicial review, **Stanbic Bank (U) Ltd & 3 Others v Attorney General [2011] UGCommC 118**, it was held that it was not proper for the Minister to purport to amend the law by putting a schedule in place that was in conflict with the Trade (Licensing) Act and the Local Governments Act, as well as in competition with the Financial Institutions Act, the law under which banks are licensed. The court issued an injunction to prohibit the respondent, his servants and agents from implementing items 25 and 28 of the Schedule against all banks.

As a result, in 2015, Parliament enacted the Trade (Licensing) (Amendment) Act of 2015. As a precursor to the determination of the question whether the amendment to the Stamp Duty Act relates to the same subject as the amendment to the Trade (Licensing) Act of 2015

and its schedules, I am of the view that the Amendment to the latter was brought about by the decisions of the Commercial Court in **Stanbic Bank & 4 Others v Attorney General** (supra). The amendment dealt with all the shortcomings of the Trade (Licensing) Act that the court pointed out in its ruling, in order to ensure that the Act could be applied to more businesses than it did before, including those that provide services.

For example, while it was held that the Act could not apply to banks because section 1 thereof described *"trade"* or *"trading"* as *"selling goods for which a license under the Act is required, in any trading premises whether by retail or wholesale,"* the definition was amended by section 1 (c) of the Amended Act to read: *"trade"* or *"trading"* means *"selling of goods* ***or services*** *for which a license under this Act is required."* Section 8 (1) of the Act was also amended to include services. Clause (f) of subsection (2) which exempted trades or businesses in respect of which a separate license is required by or under any written law was repealed so that all trades and businesses in the designated areas were brought under the Trade (Licensing) Act and made liable to pay for licenses, as it was intended by the Minister when she published the Trade (Licensing) (Amendment of Schedules) Act (No 2) of 2011.

In addition, before the amendment of section 33 of the Trade (Licensing) Act, which was a corollary of section 8 (f) thereof, specifically provided for licenses required under other Acts in the following terms:

> **33. Licences required under other Acts.**
>
> **Nothing in this Act shall be construed so as to entitle the holder of any licence granted under this Act *to sell any article or substance for the sale* of which a separate licence is required by any written law for the time being in force.**
>
> *{My emphasis}*

The provision was contentious for it related to the rights of persons who provide services and do not sell articles or substances, as was the intention of the parent Act. It was therefore held in the **Stanbic Bank** case (supra) that the licenses that were granted to banks to carry on their business were the principal licenses, not that which was then required by the amended schedule to the Trade (Licensing) Act. The provision was therefore amended by section 18 of the Trading (Licensing) (Amendment) Act to remove the expression *"to sell any article or substance for the sale"* to read thus,

> **Nothing in this Act shall be construed so as to entitle the holder of any licence granted under this Act *to carry on any trade the carrying on* of which a separate licence is required by any written law for the time being in force."**
>
> *My emphasis*

For the avoidance of doubt therefore, all businesses that did not obtained a license under the Trade (Licensing) Act as amended, whether for the sale of goods or delivery of services, were thus rendered unlawful by section 8 and 33 thereof.

In what appears to be a protest to the said further amendment of the Act, in **NC Bank & 24 Others v. KCCA & Attorney General [2019] UGHCCD 71**, 25 banks challenged the requirement to pay for and obtain trading licenses on top of the license that is issued to them by the Central Bank. The court found and ordered that a writ of certiorari issues quashing Item 25 of Part A and Item 20 of Part C of the schedule to the Amendment, which required banks to obtain trading licenses because it was still inconsistent with or *ultra vires* the Trade (Licensing) Act as amended. However, the court found that trading licenses for ATMs were consistent with the provisions of the amended Act, for ATMs that were not located on bank premises. Banks were thus still required to pay for licenses for each of such ATMs to local authorities or KCCA.

However, an order ws issued prohibiting the respondents from levying license fees on Banks under the amendment.

The banks are not party to this petition but the decisions above go to show how blanket amendments to a schedule without carefully considering its effect on persons affected and how they are affected, as well as other related legislation, may occasion an injustice to persons added to the schedule. It may also result in unnecessary litigation.

Uganda Law Society, the 1st petitioner, challenged the payment of fees for an additional license under the Trading (Licensing) (Amendment) Act, 2015 and its amended schedule of 2017, in **Uganda Law Society v Kampala Capital City Authority & Attorney General HCMA No. 243 of 2017; [2020] UGHCCD 82**. The argument of the Law Society in this application was that the imposition of stamp duty is similar to the levy that had been imposed upon its constituents in private practice under the Trade (Licensing) Act and its amendments. I must therefore carefully review the decision to establish whether the amendment of the Stamp Duty Act to impose a tax upon lawyers in private practice on obtaining a practicing certificate amounts to retrospective legislation that is prohibited by Article 92 of the Constitution.

Following the enactment of the Trade (Licensing) (Amendment) Act, 2015, which repealed section 8 (2) (f) that had hitherto exempted persons already licenced under other laws from obtaining trading licenses, as well as the amendment of section 1 (h) which originally defined *"trade"* to mean the *"selling of goods"* to include the sale of services, the Minister for Trade, Industry and Cooperatives published SI No 2 of 2017, The Trade (Licensing) (Amendment of Schedule) Instrument. By the amendment, fees were levied against Law Firms in Part 1 of Schedule 2 as professional services, being payment for a trading license. The amounts to be paid by a firm, categorised in three

grades in the Municipalities and Towns, ranged between Shs 36,000 and Shs 150,000. In Part C of Schedule 2 which attached to Cities, law firms were listed under Item 25; fees for trading licences were within the ranges of Shs 90,000 and 337,000.

In their **HCMA No 243 of 2017,** ULS sought an order of *certiorari* to quash items 17 (in Part A) and item 25 (in Part C) of the Trade (Licensing) (Amendment of Schedule) Instrument No. 2 of 2017. In the two items, the Act required law firms that had already been issued with annual Practicing Certificates to practice as Advocates, and annual Certificates of Approval of Chambers, both under the Advocates Act (Cap. 267) in respect of which the necessary dues had been paid, to further apply and pay for a trading license issued by the Town Clerk of a Municipal Council, Town or a City. They also sought an order prohibiting the respondents from implementing items 17 and 25 of the Trade (Licensing) (Amendment of Schedule) Instrument No. 2 of 2017 from taking effect, as well as prohibiting the respondents or their agents, from enforcing the trade license provisions against law firms or Advocates.

With regard to the amendment of the Act to repeal section 8 (2) (f) the court found that:

> *"The Minister in coming up with the schedule ought to have been guided by the history of the Act and mischief it intended to serve since 1969. It could not be imagined that in 1969 there were no law firms, but rather the Act intended to regulate unlicensed trade within the original meaning of the statute. That spirit should be maintained in coming up with the schedule to the Act rather (than) imposing several licences to different trade and business (sic) (professions) that are already licenced under different legal regimes which would amount to double taxation.*
>
> ...
>
> *The Minister had to bear in mind that the original Act had a reason why it had barred issuance of licences to those businesses/trades in respect of which a separate license is required by or under any other written law*

as per section 8(2)(f). By repealing this provision under the Amendment Act, it should not be construed that the Minister was given a blank cheque of power to exercise discretion to require licences for those businesses/professions which are already licensed under different legal regimes. A delegated legislation may be struck down or challenged on ground of non-application of the mind of the delegate to the relevant facts and circumstances in taking decisions."

The court went further to find that the requirement for a trading licence issued by the Town, Municipality or City Council on top of that which is issued under the Advocates Act would dilute the latter. That with such licenses in place, it could be inferred that an Advocate, or one who is not, could easily practice without the practicing certificate required by the Advocates Act and get away with it. With regard to the payment for the second licence, the court found and held thus:

"It is clear that the money paid by the advocates for Practicing Certificates and Approval of Chambers is paid to Central Government. The imposition of licences by the local government administration would indeed amount to double taxation as argued by the applicant's counsel. In the case of ***Stanbic Bank of Uganda Ltd, Barclays Bank of Uganda Ltd, Centenary Rural Development Bank Ltd*** *and* ***Standard Chartered Bank Ltd vs Attorney General; HCT-00-CC-MA 0645-2011,*** *court held that;*

> *'It is also my view that the issuance of two licenses for the same business, one by the Central Government and another by the local government cannot be a rational manner of improving the collection of revenue. Given the financial linkages between the central government and the local governments it appears to be double collection that would be unfair to the licensee....'*

Court came to the conclusion that the same principle would apply to Advocates and other professionals that obtain licenses under other laws, and that as a result the decision to include items 17 and 25 of in the amended schedule was illegal and irrational as it was in total disregard of the existing laws mandated to license different businesses or professions, such as the Advocates Act, and the Regulations made thereunder. Further, that the imposition of the license fees under the

Trade (Licensing) Act (as amended) amounted to double taxation which was unfair to the individuals concerned. In conclusion, it was held that the decision of the Minister was illegal and irrational or *ultra vires* the existing laws in respect of licensing of Advocates. Further, that it was unfair and amounted to double taxation and was directly in conflict with the Advocates Act. The orders that were sought were accordingly granted.

Counsel for the petitioners now asserts that the imposition of stamp duty is a challenge to the decision in **ULS v KCCA & Attorney General**, which should not be allowed by this court because it is prohibited by Article 92 of the Constitution which provides as follows:

> **92. Restriction on retrospective legislation**
>
> **Parliament shall not pass any law to alter the decision or judgment of any court as between the parties to the decision or judgment.**

This court considered the provision above in **Human Rights Network Uganda & 4 Others v. Attorney General, Constitutional Petition No. 56 of 2013; [2020] UGCC 6**, in which the petitioners challenged the enactment of the Public Order and Management Act, 2013 (referred to in the judgment as "POMA"). The petitioners' grievance in the petition was that section 8 thereof was enacted to overturn the decision of this court in **Muwanga Kivumbi v. Attorney General, Constitutional Petition No. 9 of 2005; [2008] UGCC 34**, because in that case, it was held that section 32 (2) of the Police Act (Cap 303) which vested powers in the Inspector General of Police to give notice in writing to a person responsible for convening an assembly or forming a procession, to prohibit it was contrary to provisions of the Constitution.

Unlike the question in this petition, the question in **Uganda Human Rights Network's** petition was direct and straight forward in that

section 32 of the Police Act provided for the "Power to regulate assemblies," and subsection (2) thereof provided thus:

> **(2) If it comes to the knowledge of the inspector general that it is intended to convene any assembly or form any procession on any public road or street or at any place of public resort, and the inspector general has reasonable grounds for believing that the assembly or procession is likely to cause a breach of the peace, the inspector general may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession.**

On the other hand, in section 8 of POMA, an ostensibly new piece of legislation enacted after the decision in **Muwanga Kivumbi** (supra), provided as follows:

> **8. Powers of authorised officer**
>
> **(1) Subject to the directions of the Inspector General of Police, an authorised officer or any other police officer of or above the rank of inspector, may stop or prevent the holding of a public meeting where the public meeting is held contrary to this Act.**
>
> **(2) An authorised officer may, for the purposes of subsection (1), issue orders including an order for the dispersal of the public meeting, as are reasonable in the circumstances.**
>
> **(3) An authorised officer shall, in issuing an order under subsection (2), have regard to the rights and freedoms of the persons in respect of whom the order has been issued and the rights and freedoms of other persons.**
>
> **(4) A person who neglects or refuses to obey an order issued under this section commits the offence of disobedience of lawful orders and is liable on conviction to the penalty for that offence under section 117 of the Penal Code Act.**

In the lead judgment, with which the majority of the court agreed, Barishaki, JCC found and held, at page 17 and 18 of his opinion, that:

> ***Without any hesitation therefore, I find that the provisions of Section 8 of the Public Order Management Act 2013 are in pari materia with the nullified Section 32 (2) of the Police Act.*** *The*

Justices of the Constitutional Court who determined ***Muwanga Kivumbi vs Attorney General*** *laboured to explain, in individual judgments, the reasons why the police cannot be permitted to have powers to stop the holding of a public gathering including a protest or demonstration ostensibly on grounds that such public meeting would cause a breach of the peace. It is a pity that their explanations for nullifying Section 32 (2) of the Police Act were contemptuously ignored by Parliament and the Executive.*

...

Consequently, the enactment of Section 8 of the Public Order Management Act 2013 was done in blatant disregard, by Parliament, of Article 92 of the Constitution. This impugned provision was calculated, rather unfortunately, to water down the import of this Court's decision in ***Muwanga Kivumbi vs Attorney General****. On this ground alone, I would answer the framed issue in the affirmative and allow the present petition.*

{Emphasis added}

From the decision above, it appears to me that the operative phrase that would bring the force of Article 92 of the Constitution to bear on a particular piece of legislation is *"in pari materia."* But what does it mean?

Black's Law Dictionary, 9th Edition, West Publishing Company, defines *"in pari materia"* in Latin to mean *"in the same matter;"* or *"on the same subject; relating to the same matter."* And with regard to the enactment of statutes, in **Independent Institute of Education (Pty) Limited v. Kwazulu Natal Law Society & 27 Others [2019] ZACC 47**, Theron, J, at paragraph 38 of his opinion, had this to say:

[38] It is a well-established canon of statutory construction that every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed (sic) statute enacted by the Legislature. Statutes dealing with the same subject matter, or which are in pari materia, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent

with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.

In his opinion, Theron, J had recourse to the reasoning of the court of first instance in **Commander v. Collector of Customs, 1920 AD 510 at 513**, which he quoted as follows:

"Customs Management Acts and their relative Tariff Acts may, I think, very fairly be taken to be statutes in pari materia, and the rule was thus laid down by Lord Mansfield, CJ, as far back as 1788 in the King v Loxdale: 'Where there are different statutes in pari materia, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system, and as explanatory of each other.' Or as Lord Esher, MR, in Hodgson v Bell puts it: 'It is a clear rule of construction that, where you find a construction has been put upon words in a former Act, which is in pari materia with the one under consideration, and when you find that the same words are used in the later Act as in the former, you must apply the same construction to the later Act'."

In my view, that would answer the question whether in the circumstances of this case, the Stamp Duty (Amendment) Act, 2020 can be construed to be *in pari materia* with the Trade (Licensing) (Amendment) Act, 2015 and it Schedules, for purposes of interpretation of Article 92 of the Constitution.

Counsel for the petitioners asserted that the subject of the Trade (Licensing) (Amendment) Act, 2015 and the Trade (Licensing) (Amendment of Schedules) Instrument No 2 of 2017, in as far as they relate to the petitioners both relate to the same subject: dues that are payable to government before a practicing certificate or license can be issued.

As I understand it, the Trade (Licensing) Act and the amendments thereto, required Advocates and other professionals in private practice

to pay for a license as it was specified in Part A of Schedule 2 of the Act, as amended in 2017. The petitioners were all included there under in items 25, 26, 27, 33, 34, 35, 36, 37 and 38. The origin of the requirement to obtain licenses under the Trade (Licensing) Act and its amendments can be traced to section 80 of Local Governments Act, Cap 234, which provides as follows:—

> **80. Power to levy taxes.**
>
> **(1) *Local governments may levy, charge and collect fees and taxes, including rates, rents, royalties, stamp duties, personal graduated tax, and registration and licensing fees and the fees and taxes that are specified in the Fifth Schedule*.**
>
> **(2) Each local government shall draw up a comprehensive list of all its internal revenue sources and maintain data on total potential collectable revenues.**
>
> **(3) A local government may collect fees or taxes on behalf of the Government as its agent; and where a local government acts as an agent, a portion of the funds collected shall be retained by the local government as may be agreed upon between the two parties; and any extra obligation transferred to a local government by the Government shall be fully financed by the Government.**
>
> **(4) A village council may, with the approval of the sub county council, impose a service fee in the course of execution of its functions.**
>
> *{Emphasis added}*

Though subsection (1) of the provision was amended by section 18 of the Local Governments (Amendment) Act, 2005, by removing *"graduated tax,"* there is still no doubt that Parliament classified *"taxes"* in section 80 of the Act to include both licencing and registration fees, as well as stamp duty. Statutes on license fees and stamp duty on professionals to obtain licences are therefore without a doubt *in pari materia*, as it is shown above; each of them is a tax in its own right that may be imposed, either by the local or central government.

It is immaterial that license fees are further classified in the general scheme of things as "Non-Tax Revenue" and that in this case they are collected by the licensing bodies. It then becomes clear that when the Minister for Trade, Industry and Cooperatives tried to levy fees for licenses for professionals to be collected by Municipalities, Towns and the City, she did so in order to have the local governments collect revenue or tax through that channel, just as the central government does or would.

This effort was thwarted by the decision of the High Court in **Uganda Law Society v. KCCA & Attorney General (supra)** which was handed down on 8th May 2020. Notably, on the same day, the same court handed down a decision in favour of the 6th Petitioner in **Pharmaceutical Society of Uganda v Attorney General, Miscellaneous Cause No 260 of 2019, [2020] UGHCCD 85**, where they protested the imposition of fees for a trading license under the same provisions as the ULS challenged it. The court rendered a decision that was far reaching in its consequences when Ssekaana, J held, at page 10 of his judgment that:

> *"The inclusion of pharmacies and drug stores among the areas of issuance of trading licenses is illegal and contrary to the National Drug Policy and Authority Act and it conflicts which specific legislation. Where two legislations conflict i.e. between general legislation and specific legislation, the specific legislation overrides the general legislation on the subject matter.* ***Generaliabus specialia derogant or Generalia specialibus non derogant****. No latter general Act can prevail over an earlier special Act. Meaning general things do not derogate from special things. See* ***Eaton Towers Uganda Limited v Attorney General & Jinja Municipal Council Misc. Cause No. 84 of 2019."***
>
> *{Emphasis added}*

Having hit a legal roadblock to collecting license fees from professionals in private practice through the local governments under the Trade

(Licensing) Act, the government now seeks to collect a tax on licenses directly by the URA from the same group of persons through the impugned amendment of the Stamp Duty Act.

It is not in contest that Parliament has the overarching constitutional power to legislate upon any matter for the peace, order, development and good governance of Uganda, by virtue of Article 79 (1) of the Constitution. By virtue of the same provision, Parliament has the power to amend laws where there are apparent errors or gaps therein. However, that power does not extend to making laws that contravene the order that is envisaged by Article 92 of the Constitution.

In respect to making retrospective laws, the Supreme Court of India while considering a provision that is similar to our Article 92 in **Misrilal Jain & Others v State of Orissa & Another, 1977 AIR 1686; 1977 SCR (3) 714**, made the following general comment, at page 6 of the judgment of the court, about the validation of tax laws:

> *"There is a large volume of authority showing that if the vice from which an enactment suffers is cured by due compliance with the legal or constitutional requirements, the legislature has the competence to validate the enactment and such validation does not constitute an encroachment on the functions of the judiciary.* ***The validity of a validating taxing law depends upon whether the legislature possesses the competence over the subject matter of the law, whether in making the validation it has removed the defect from which the earlier enactment suffered and whether it has made due and adequate provision in the validating law for a valid imposition of the tax;*** *(See, for example Prithvi Cotton Mills v. Broach Borough Municipality(3) (1) [1964] 5 S.C.R. 975 (2) [1966] 1 S.C.R. 890. (3) [1970]1 S.C.R. 388.)"*

It cannot be said that the Legislature, though it had the competence in the matter over which it legislated, removed the defects from which the Trade (Licensing) Act and it's amendment as well as the amendment of its Schedules suffered. It has been established that the enactment was

for an unjustifiable purpose, it continued to impose a tax on practicing certificates and licenses where other dues for them had been imposed by specific legislation in respect of each of the professions that are petitioners before this court. Parliament also did so in the face of several elaborate decisions of the courts that ruled that further taxes should not be imposed on obtaining practicing certificates and licences by professionals.

The importance of Article 92 of the Constitution was emphasised by this court in **Human Rights Network & Others** (supra) at pages 4 and 5 of the opinion of Kiryabwire, JCC, where he observed as follows:

> *"... I find that this entire matter points to the need for this Court to reassert two important constitutional principles. First, is the supremacy of the Constitution to which all authorities and persons in Uganda should adhere to. (sic)*
>
> *Article 2 (1) of the Constitution provides:*
>
> > *'This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda ...'*
>
> *The second principle is that the variation of a court decision by Parliament is inconsistent with the notion of the independence of the judiciary as provided for under Article 128 by de facto providing an alternative source of control or direction over the decisions that the Judiciary renders. Such alternative source or direction is an interference with the courts judicial function. Article 128 (1) - (3) of the Constitution is very clear and self-explanatory in this regard.*
>
> ...
>
> *It is the mandate of the courts to resolve disputes through the exercise of judicial power as provided for under Article 126 of the Constitution. It matters not in my view, whether the subject matter of the dispute is one that relates to issues of fundamental rights and freedoms (as is the case in this matter) or some other issue or subject like land and or crime. Indeed, in our adversarial system of adjudication there may be successful or unsuccessful parties as a result of a decision or judgment that has been rendered by the courts. That is how it is. If a party is dissatisfied with a decision rendered by the courts, then the Constitution has established an elaborate appellate system for such a party to*

pursue. It is not open for that authority or person instead to seek to overturn the court decision through legislation. To do so is not only to attack the Constitution which is the supreme law of the land by operating outside its parameters but also to undermine the independence of the judiciary."

The statement of Kiryabwire, JCC needs no elaboration. In this petition therefore, I would therefore find that the inclusion of section 2 (h) in the Stamps (Amendment) Act, 2020, to facilitate the collection of stamp duty as a tax from the petitioners on obtaining a license to practice or certificate to practice was inconsistent with and in contravention of Article 92 of the Constitution.

Remedies

The petitioners sought a declaration that section 2 (a) *(sic)* of the Stamp Duty (Amendment) Act is inconsistent with and in contravention of articled 21 (1), 40 (2) and 92 of the Constitution, and the costs of the petition. However, the provision of the impugned Act that imposes stamp duty Shs 100,000/- on professional licenses or certificates in the amended Act is section 2 (h) thereof. The declarations shall be made in that regard, not in respect of section 2 (a) as it was stated in the petition and parts of the submissions of counsel.

The petition has been successful and I would hold that it is allowed with the following declarations:

a) To the extent that it does not fall within the ambit of the exceptions provided for by Article 21 (4) (a) and (b) of the Constitution, section 2 (h) of the Stamp Duty (Amendment) Act, 2020 is discriminatory against professionals in private practice and is therefore inconsistent with and/or in contravention of Articles 21 (1) and (3) and 152 (1) of the Constitution and therefore to that extent, void.

b) To the extent that it places a disproportionate burden on professionals in private practice that hangs over their heads should they fail to pay the tax, the imposition of stamp duty of shs 100,000 on them on top of other levies collected through their regulatory bodies for the same certificates is in contravention of and/or inconsistent with Article 40 (1) of the Constitution, and to that extent void.

c) The inclusion of section 2 (h) in the Stamps (Amendment) Act, 2020, to facilitate the collection of stamp duty of shs 100,000 as a tax from the petitioners on obtaining a license or certificate to practice is inconsistent with and/or in contravention of Article 92 of the Constitution, and therefore void.

Since the petition was brought in the public interest, I would order that each party bears their own costs.

Dated at Kampala this 13TH day of FEB 2023.4

Irene Mulyagonja
JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi & Luswata, JJCC]

CONSTITUTIONAL PETITION NO 032 OF 2020

BETWEEN

Uganda Law Society==========Petitioner No.1

Uganda Medical Association========== Petitioner No.2

Uganda Institution of Professional Engineers=========Petitioner No.3

Institution of Surveyors of Uganda==========Petitioner No.4

Institution of Certified Public Accountants of Uganda===Petitioner No.5

Pharmaceutical Society of Uganda========== Petitioner No.6

Uganda Veterinary Association==========Petitioner No.7

Uganda Society of Archives==========Petitioner No.8

Association of Graduate Nurses & Midwives of Uganda==Petitioner No.9

Insurance Training College==========Petitioner No.10

Medical Clinical Officers Professionals Uganda Association==========Petitioner No.11

Uganda Dental Association==========Petitioner No.12

Uganda Veterinary Professionals Association of Uganda==========Petitioner No.13

AND

ATTORNEY GENERAL==========RESPONDENT

JUDGMENT OF FREDRICK EGONDA-NTENDE, JCC

[1] I have had the opportunity to read in draft the judgment of my sister, Mulyagonja, JCC. I agree with it and have nothing useful to add.

[2] As Bamugemereire, Luswata and Mugenyi agree with it too, this petition is allowed with the orders proposed by Mulyagonja, JCC.

Signed, dated and delivered at Kampala this 13TH day of FEB 2024

Fredrick Egonda-Ntende
Justice of the Constitutional Court

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO 032 OF 2020
Coram: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi & Luswata, JJCC

1. UGANDA LAW SOCIETY
2. UGANDA MEDICAL ASSOCIATION
3. UGANDA INSTITUTION OF PROFESSIONAL ENGINEERS
4. INSTITUTION OF SURVEYORS OF UGANDA
5. INSTITUTION OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA
6. PHARMACEUTICAL SOCIETY OF UGANDA
7. UGANDA VETERINARY ASSOCIATION
8. UGANDA SOCIETY OF ARCHIVES
9. ASSOCIATION OF GRADUATE NURSES & MIDWIVES OF UGANDA
10. INSURANCE TRAINING COLLEGE
11. MEDICAL CLINICAL OFFICERS PROFESSIONALS UGANDA ASSOCIATION
12. UGANDA DENTAL ASSOCIATION
13. UGANDA VETERINARY PROFESSIONALS ASSOCIATION OF UGANDA

} PETITIONERS

VERSUS

ATTORNEY GENERAL::RESPONDENT

JUDGMENT OF CATHERINE BAMUMEREIRE JJC

I have read the draft opinion of my learned sister Mulyagonja JCC. I agree with her conclusions and declarations. I would allow the petition with no order as to costs.

Catherine Bamugemereire
Justice of the Constitutional Court

13TH/02/2024

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi & Luswata, JJCC

CONSTITUTIONAL PETITION NO 032 OF 2020

1. **UGANDA LAW SOCIETY** 2. **UGANDA MEDICAL ASSOCIATION** 3. **UGANDA INSTITUTION OF PROFESSIONAL ENGINEERS** 4. **INSTITUTION OF SURVEYORS OF UGANDA** 5. **INSTITUTION OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA** 6. **PHARMACEUTICAL SOCIETY OF UGANDA** 7. **UGANDA VETERINARY ASSOCIATION** 8. **UGANDA SOCIETY OF ARCHIVES** 9. **ASSOCIATION OF GRADUATE NURSES & MIDWIVES OF UGANDA** 10. **INSURANCE TRAINING COLLEGE** 11. **MEDICAL CLINICAL OFFICERS PROFESSIONALS UGANDA ASSOCIATION** 12. **UGANDA DENTAL ASSOCIATION** 13. **UGANDA VETERINARY PROFESSIONALS ASSOCIATION OF UGANDA**	**PETITIONERS**

VERSUS

ATTORNEY GENERAL::RESPONDENT

JUDGMENT OF EVA LUSWATA, JCC

I have had the opportunity to read in draft the judgment of my learned sister Hon. Irene Mulyagonja, JA.

I agree with her and have nothing useful to add.

Dated, signed and delivered at Kampala this ..13TH.. day of ..FEB.... 2024.

....

EVA K. LUSWATA
JUSTICE OF APPEAL/ CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO 032 OF 2020
Coram: Egonda-Ntende, Bamugemereire, Mulyagonja, Mugenyi & Luswata, JJCC

1. UGANDA LAW SOCIETY
2. UGANDA MEDICAL ASSOCIATION
3. UGANDA INSTITUTION OF PROFESSIONAL ENGINEERS
4. INSTITUTION OF SURVEYORS OF UGANDA
5. INSTITUTION OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA
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12. UGANDA DENTAL ASSOCIATION
13. UGANDA VETERINARY PROFESSIONALS ASSOCIATION OF UGANDA

} **PETITIONERS**

VERSUS

ATTORNEY GENERAL::RESPONDENT

JUDGMENT OF CATHERINE BAMUMEREIRE JJC

I have read the draft opinion of my learned sister Mulyagonja JCC. I agree with her conclusions and declarations. I would allow the petition with no order as to costs.

Catherine Bamugemereire
Justice of the Constitutional Court

13/02/2024